

ARTICLE 10

TIME

10.1 DEFINITIONS

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

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

10.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 11.8.

10.2 PROGRESS AND COMPLETION

10.2.1 Time limits stated in the Contract Documents are of the essence. By executing the Construction Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Contractor's Work. By executing the Design Services Agreement, the Architect confirms that the time period allotted is reasonable for performing the Architect's Work.

10.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Developer in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 13 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

10.3 DELAYS AND EXTENSIONS OF TIME

10.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or the Owner's authorized representatives, the Developer or Architect, or of an authorized representative thereof, or of a separate contractor employed by the Owner or the Developer, or by changes ordered in the Work not caused by the fault of the Contractor, or by labor disputes except labor disputes caused by Contractor's violation of any collective bargaining agreement, fire, industry wide material or transportation shortages, unavoidable casualties, weather conditions not customarily encountered in the area surrounding the Project which effect the progress of the Work, or other causes beyond the Contractor's reasonable control or by other causes which justify the delay, then the Contract Time shall be extended by Change Order to the extent of such delay. Except for delays caused by actions of the Owner or the Developer, delays resulting from the foregoing causes shall not entitle the Contractor to any increase in the Construction GMP. For delays caused exclusively by the Owner or the Developer, the fee due to the Contractor shall not be increased, but the Developer shall reimburse the Contractor for the reasonable amount of any actual increase in cost that the Contractor becomes obligated to pay to third-parties for their work on the Project as well as agreed upon general conditions costs of the Contractor if such increased costs are in excess of the Construction GMP.

10.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraphs 6.3 and 6.4.

10.3.3 This paragraph does not preclude recovery of damages for delay by any party under other provisions of the Contract Documents.

ARTICLE 11

PAYMENTS AND COMPLETION

11.1 CONSTRUCTION GMP

11.1.1 The Construction GMP is stated in the Construction Agreement and, including authorized adjustments, is the total amount payable to the Contractor for performance of the Contractor's Work under the Contract Documents.

11.1.2 The amount due the Architect shall be paid as provided in the Design Services Agreement. The Architect shall not be entitled to receive payments hereunder until Architect has provided such lien waivers, including lien waivers from Architect's consultants, detailed description of services, and sworn statements or certificates regarding Architect's services and compliance with the requirements

of the Contract Documents as the Developer may reasonably require in connection with the payment due Architect.

11.1.3 In the event any amount properly payable to Developer, Architect or Contractor hereunder is not paid within thirty (30) days after the same is properly due, such amount shall bear interest until paid at the rate of one percentage point in excess of the interest announced from time to time by the First National Bank of Detroit at Detroit, Michigan, or any successor thereto, as its corporate base rate, changing as and when said corporate base rate changes, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be charged; provided, however, no interest shall accrue or be payable on any payments not made to the Architect or the Contractor by Developer as a result of a good faith, valid dispute over the Architect's performance of the Architect's Work or the Contractor's performance of the Contractor's Work.

11.2 SCHEDULE OF VALUES

11.2.1 Upon full execution of the Construction Agreement, the Contractor shall submit to the Developer and the Architect 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 Developer and Architect may require. This schedule, unless objected to by the Architect or the Developer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

11.2.2 Any schedule of values which fails to include sufficient detail, is unbalanced or exhibits "front-loading" of the value of the Work shall be rejected. If a schedule of values had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

11.3 APPLICATIONS FOR PAYMENT

11.3.1 At least fifteen (15) business days before the date established for each progress payment, the Contractor shall submit to the Developer and Architect a draft itemized Application for Payment for operations completed in accordance with the schedule of values. The Architect and the Developer shall have three (3) business days to review and comment on the draft Application for Payment. At least ten (10) business days before the date established for each progress payment, the Contractor shall submit to the Developer, the Architect and the Owner the actual itemized Application for Payment (the "Actual Application for Payment"). Such Actual Application for Payment shall be notarized and supported by such data substantiating the Contractor's right to payment as the Developer, the Architect or the Escrow Agent may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage as provided for elsewhere in the Contract Documents.

11.3.1.1 Such Actual Application for Payment may include requests for payment on account of changes in the Work which have been properly approved or authorized pursuant to Subparagraph 9.3.1 by Construction Change Directive but not yet included in Change Orders.

11.3.1.2 Such Actual Application for Payment shall not intentionally include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

11.3.1.3 Each Actual Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Developer and the Escrow Agent, if any:

- .1** a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and materialmen with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and materialmen in the requested progress payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and materialmen;
- .2** duly executed waivers of mechanics' and materialmen's liens from all Subcontractors and, when appropriate, from materialmen and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in the previous Application for Payment; and

- .3 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Developer or the Architect. If required by the Escrow Agent, the Contractor shall execute a gap undertaking in form and substance satisfactory to Contractor and such title insurer.

11.3.2 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 Developer, payment may 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 Developer to establish the Owner's title to such materials and equipment or otherwise protect the Developer's or the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Contractor shall also comply with the following specific requirements:

- .1 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Developer and the Owner, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- .2 With each Application for Payment, the Contractor shall submit to the Developer a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Developer for materials stored off the Project site in an amount not less than the total value thereof and shall provide the Developer with satisfactory evidence of such insurance coverage along with the Application for Payment for such materials;
- .3 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site;
- .4 Representatives of the Owner, the Developer and the Architect shall have the right to make inspections of the storage areas at any time; and
- .5 Such materials shall be (1) protected from diversion, destruction, theft and damage to the satisfaction of the Owner, the Developer and the Architect, (2) specifically marked for use on the Project, (3) segregated from other materials at the storage facility, and (4) if not stored at the site, stored in a bonded warehouse.

11.3.3 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 Developer 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.

- .1** To the extent of payments received, the Contractor further expressly undertakes to indemnify, hold harmless, appear and defend the Contractor's Indemnitees, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against the Contractor's Indemnitees as a result of liens filed against: (i) the Contractor's Work, (ii) the Project site and any improvements thereon, (iii) payment due the Contractor or, (iv) any portion of the property of any of the indemnitees; and referred to collectively as "liens" in this Paragraph 11.3.3. To the extent of payments received, the Contractor hereby agrees to indemnify, appear and defend and hold the Contractor's Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.
- .2** The Developer shall release any payments withheld due to a lien if the Contractor obtains security acceptable to the Developer or a lien bond which is: (1) issued by a surety acceptable to the Developer, (2) in form and substance satisfactory to the Developer, and (3) in an amount not less than One Hundred Fifty percent (150%) of such lien claim or such other amount as may be reasonably required by the Escrow Agent, if any, to insure over such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Paragraph 11.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall be reimbursable to the Contractor so long as it shall not cause any increase to the Construction GMP.

11.4 CERTIFICATES FOR PAYMENT

11.4.1 The Architect shall, within three (3) business days after receipt of a draft Application for Payment comment on same to the Contractor and shall prepare a Certificate for Payment based on the draft Application for Payment, taking into account the Architect's and the Developer's comments to same. Upon receipt of the Actual Application for Payment, the Architect shall immediately issue a Certificate for Payment to the Developer (assuming the Actual Application for Payment is substantially in the form of the draft Application for Payment), with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and the Developer in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 11.5.1.

11.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Developer and Owner, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that 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 correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation by the Architect to the Developer and the Owner 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 or (2) reviewed construction means, methods, techniques, sequences or procedures.

11.5 DECISIONS TO WITHHOLD CERTIFICATION

11.5.1 The Architect or Developer may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Developer and Owner, if in the Architect's opinion the representations to the Developer and the Owner required by Subparagraph 11.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application for Payment, the Architect shall notify the Contractor and the Developer as provided in Subparagraph 11.4.1. If the Contractor, Developer 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 Developer and the Owner. The Architect and/or the Developer may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued and withhold payment, to such extent as may be necessary in the Architect's or the Developer's opinion to protect the Owner or the Developer from loss because of:

- .1** defective Work not remedied;
- .2** third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Construction GMP;
- .5** loss or damage incurred by the Owner, the Developer or another contractor;
- .6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay; or
- .7** persistent failure to carry out the Work in accordance with the Contract Documents.

11.5.2 When the above reasons for withholding certification or payment are removed, certification will be made for amounts previously withheld.

11.5.3 If the Contractor disputes any determination by the Architect or Developer with regard to any Certificate of Payment, the Contractor nevertheless expeditiously shall continue to prosecute the Work.

11.5.4 The Developer shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Work for which payment is being withheld shall have been rejected due to non-compliance with the Contract Documents.

11.6 PROGRESS PAYMENTS

11.6.1 The Architect's Certificate of Payment shall be processed and forwarded to the Developer immediately upon receipt of the Architect's receipt of the Contractor's Actual Application for Payment (assuming the final Application for Payment is substantially the same as the draft Application for Payment reviewed by the Architect). Upon the Developer's receipt of the Certificate for Payment, the Developer shall deliver the Certificate for Payment to the Owner. The forwarding of the Certificate for Payment to the Owner by the Developer shall not constitute the Developer's unconditional acceptance of the Certificate of Payment, and the Developer shall not be deemed to have approved the Certificate of Payment until such time as both the Developer and the Owner approve such Certificate for Payment. Within thirty (30) days after the delivery of a properly submitted and correct Certificate for Payment to the Owner, the Developer (or the Escrow Agent) shall pay the Contractor the amount specified in such Certificate for Payment (which shall provide for all applicable retentions). Developer and/or the Escrow Agent reserve the right to pay each individual Subcontractor and/or materialmen individually. Such payment to the Contractor shall not constitute approval or acceptance by the Developer of any item of cost in the Application for Payment. No partial payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or relieve the Contractor of any of its obligations hereunder with respect thereto. The Developer shall make no payment until the Developer has received from the Contractor a release of liens from the Contractor for the Contractor and all Subcontractors for the portion of the work covered by the immediately preceding Application for Payment, provided Contractor has been paid all sums due under such Application for Payment.

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

11.6.3 Unless otherwise determined by the Architect and/or the Developer, the Architect and the Developer shall have no obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

11.6.4 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 11.6.2 and 11.6.3.

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

11.6.7 Contractor and Architect acknowledge that the Owner has the right to require that all payments to the Developer, Architect and Contractor from the Owner shall be made through a construction escrow established with an "Escrow Agent". If required by the Developer, the Architect and the Contractor hereby agree to execute an Escrow Agreement which shall be (1) consistent with the requirements of the Contract Documents, except as the standard procedures of the Escrow Agent may otherwise require, and (2) otherwise in form and substance reasonably satisfactory to the Developer, the Architect and the Contractor.

11.6.8 If the Developer is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly by the Contractor upon demand from the Developer. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment to the Developer which is due to the Developer, or the Developer incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Developer shall have an absolute right to offset such amount against the Construction GMP and may, in the Developer's sole discretion, elect either to: (1) deduct an amount equal to that which the Developer is entitled from any payment then or thereafter due the Contractor, or (2) issue a written notice to the Contractor reducing the Construction GMP by an amount equal to that to which the Developer is entitled.

11.7 FAILURE OF PAYMENT

11.7.1 If the Architect does not issue a Certificate of Payment, through no fault of the Contractor, as provided herein, or if the Developer does not deliver the Certificate of Payment to the Owner, through no fault of the Contractor, as provided herein, or if the Developer does not make payment to the Contractor within thirty (30) days after delivery of the proper Application and Certificate for Payment to the Owner, then the Contractor may, upon ten (10) additional business days' written notice to the Developer, stop the Work until payment of the amount properly owing has been received.

11.8 SUBSTANTIAL COMPLETION

11.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof as indicated in the Contract Documents is sufficiently complete in accordance with the Contract Documents so that the Owner can, in the Developer's opinion, occupy or utilize the Work for its intended use.

11.8.2 When the Contractor considers that the Work, or a portion thereof which the Developer agrees to accept separately, is substantially complete, the Contractor (after a walk-through with the Owner, the Developer and the Architect) shall prepare and submit to the Architect, the Owner and the Developer a comprehensive list of items to be completed or corrected. Upon acceptance of the punch-list by the Developer, the Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Developer and the Architect reserve the right to add to the list within thirty (30) days after receipt of an acceptable list from the Contractor. Upon receipt of the Contractor's list, the Architect and Developer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Developer. The Contractor shall then submit a request for another inspection by the Architect and Developer to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner, the Developer and the 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 which shall identify all non-conforming, defective and incomplete Work. 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 or as provided in subparagraph 14.2.2. The Certificate of Substantial Completion shall be submitted to the Developer and the Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Acceptance of the punchlist by the Developer shall not be unreasonably withheld.

11.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect and Developer, as provided in Paragraphs 11.3, 11.4 and 11.5, the Developer shall arrange to have the Owner make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents to the Contractor, as applicable. Contractor agrees that the Developer shall have the

Owner hold back one-hundred fifty percent (150%) of the cost of the punch list items as determined by the Architect as retainage for performance of such punch list work.

11.9 PARTIAL OCCUPANCY OR USE

11.9.1 The Developer may allow the Owner to occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement between the Developer and the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 13.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner, Developer 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 and the Developer as provided under Subparagraph 11.8.2. 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 Developer and Contractor or, if no agreement is reached, by decision of the Developer.

11.9.2 Immediately prior to such partial occupancy or use, the Developer, 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.

11.9.3 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.

11.10 FINAL COMPLETION AND FINAL PAYMENT

11.10.1 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 and Developer will promptly make such inspection and, when the Architect and Developer find the Work acceptable under the Contract Documents and the Contractor's Work 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 observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Developer shall have the right to approve such Certificate for Payment. The Architect's final

Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 11.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Developer as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect or approved by the Developer until all warranties and guarantees have been received and accepted by the Developer.

11.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Developer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner, the Developer or the Owner's property might be responsible or encumbered (less amounts withheld by Owner or the Developer) 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 thirty (30) days' prior written notice has been given to the Developer, (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 Developer, 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 Developer. If a Subcontractor refuses to furnish a release or waiver required by the Developer, the Contractor may furnish a bond satisfactory to the Developer to indemnify the Developer and the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Developer all money that the Developer may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. The Developer shall have the right to instruct the Owner to hold back one hundred fifty percent (150%) of the cost of completing any punch list items outstanding as of the final Certificate of Payment.

11.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no default of the Contractor or by issuance of Change Orders affecting final completion, and the Developer so confirms, the Developer shall cause the Owner, through the Developer or the Escrow Agent and upon application by the Contractor and certification by the Architect and Developer, 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 of the 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 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.

11.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of all Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 6.2.5.

ARTICLE 12

PROTECTION OF PERSONS AND PROPERTY

12.1 SAFETY PRECAUTIONS AND PROGRAMS

12.1.1 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

12.1.2 For purposes of this Paragraph 12.1, "Hazardous Substance" means any element, compound, mixture, solution, particle or substance which is or may become dangerous, or harmful to the health and welfare of life or the physical environment if not used, stored or disposed of in accordance with applicable law, such as, but not limited to, explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances and related materials, and including without limitation: (1) any substance or material included within the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "hazardous pollutants" or "toxic pollutants" in any of the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Air Act and/or the Clean Water Act, as the foregoing may be amended from time to time, or any regulations promulgated thereunder, and any analogous state, provincial or other governmental Laws; (2) any "PCBs" or "PCB items," as defined in 40 CFR § 761.3; and (3) any "asbestos," as defined in 40 CFR § 763.63.

12.1.3 In the event the Contractor encounters on the site material reasonably believed to be Hazardous Substances which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Developer and the Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Developer and Contractor, if in fact the material is a Hazardous Substance and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of a Hazardous Substance, or when it has been rendered harmless, by written agreement of Developer and Contractor.

12.1.4 The Developer shall indemnify and hold harmless the Contractor, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is a Hazardous Substance and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 12.1.4.

12.2 SAFETY OF PERSONS AND PROPERTY

12.2.1 The Contractor shall be solely responsible for taking all reasonable precautions for safety of and shall solely provide all necessary protection to prevent damage, injury or loss to:

- .1** employees on the Contractor's Work and other persons who may be affected thereby;
- .2** the Contractor's 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 placement in the course of construction.

12.2.2 The Contractor shall give notices and comply with all 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.

12.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Construction Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notify owners and users of adjacent sites and utilities. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements due to the Contractor's failure to comply with this Paragraph 12.2.3 shall be promptly repaired by the Contractor at its sole cost and expense, except to the extent Contractor is entitled to be

compensated by insurance required to be provided by the Developer or otherwise available to the Contractor.

12.2.4 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. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Developer and the Architect reasonable advance notice in writing.

12.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 12.2.1.2 and 12.2.1.3 and Subparagraph 12.2.3 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 Clauses 12.2.1.2 and 12.2.1.3, and Subparagraph 12.2.3, except damage or loss attributable to acts or omissions of the Owner, Developer, 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 Paragraph 4.18.

12.2.6 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 in accordance with the provisions of Subparagraph 4.9.1.

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

12.2.8 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury or damage by any cause.

12.2.9 The Contractor shall promptly report in writing to the Developer and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Developer and the Architect.

12.3 EMERGENCIES

12.3.1 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 Paragraph 6.2 and Article 9. As soon as practicable after taking such action, the Contractor shall give notice thereof to the Developer in writing.

ARTICLE 13

INSURANCE

13.1 CONTRACTOR'S LIABILITY INSURANCE

13.1.1 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 Construction Agreement 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' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2** claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3** claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4** claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- .5** claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 4.18; and
- .8 The Contractor's liability insurance shall be written on a Commercial General Liability basis with coverage at least as broad as an ISO standard form CG0001 (12/92) or later revised version, and such coverage shall specifically include, but shall not be limited to:
 1. Premises/Operations;
 2. Independent Contractors' Protective;
 3. Products and Completed Operations;
 4. Personal Injury Liability with Employment Exclusion deleted;
 5. Contractual, including coverage for Contractor's obligations under Paragraph 4.18;
 6. Owned, non-owned and hired motor vehicles; and
 7. Broad Form Property Damage including Completed Operations.

13.1.2 The Contractor shall, for the protection and benefit of the Contractor's Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Paragraph 13.1.1, procure, pay for and maintain in full force and effect, at all times during the performance of the Contractor's Work until final acceptance of the Contractor's Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Developer, and in form and substance reasonably satisfactory to the Developer, which afford the coverages set forth in the Schedule of Insurance, attached hereto as Exhibit 1, and made a part hereof. All such insurance shall be written on an occurrence basis.

13.1.3 The Contractor hereby agrees to deliver to the Developer, within ten (10) days of the date of the Construction Agreement and prior to any equipment or personnel being brought onto the site of the Work or the Project site, certified copies of all insurance policies procured by the Contractor under or pursuant to this Paragraph 13.1 or, with consent of the Developer, Certificates of Insurance in form and substance satisfactory to the Developer evidencing the required coverages with limits not less than those specified in Exhibit 1 hereto. Contractor's Indemnitees

shall be included as additional insureds on Contractor's Commercial General Liability Policy. The coverage afforded under the Commercial General Liability Policy obtained under or pursuant to this Paragraph 13.1 shall be primary to any valid and collectible insurance carried separately by any of the Contractor's Indemnitees. Further, all policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days' prior written notice shall be given the Developer in the event of material alteration, cancellation, non-renewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance.

13.1.4 In no event shall any failure of the Developer to receive certified copies or certificates of policies required under this Paragraph 13.1 or to demand receipt of such certified copies or certificates prior to the Contractor commencing the Work be construed as a waiver by the Developer or the Architect of the Contractor's obligations to obtain insurance pursuant to this Article 13. The obligation to procure and maintain any insurance required by this Article 13 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

13.1.5 If the Contractor fails to purchase and maintain any insurance required under this Paragraph 13.1, the Developer may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

13.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Developer with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required in this Subparagraph 13.1. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Developer with a certified copy of the renewal or replacement policy unless the Developer provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Developer and written by carriers acceptable to the Developer.

13.1.7 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to this Project separately.

13.1.8 The Contractor shall cause each Subcontractor to (1) procure insurance reasonably satisfactory to the Developer, and (2) name the Contractor and the Contractor's Indemnitees as additional insureds under the Subcontractor's

comprehensive general liability policy. The additional insured endorsement included on the Subcontractor's comprehensive general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Subcontractor. If the additional insureds have other insurance which is applicable to the Project, such other insurance shall be, for the purposes hereof, on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

13.2 DEVELOPER'S LIABILITY INSURANCE

13.2.1 The Developer shall be responsible for purchasing and maintaining the Owner's usual liability insurance in the coverages and amounts set forth on Exhibit 2 attached hereto and made a part hereof, which shall include coverage for Developer's obligations under Paragraph 2.2 hereof.

13.3 PROPERTY INSURANCE

13.3.1 The Developer represents that the Owner has purchased and is required to maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance and/or builder's risk insurance in the amount of the initial Construction GMP as well as subsequent modifications thereto for the entire Work at the site or portions thereof and materials stored off the site or being shipped to the site, on a replacement cost basis with only the following deductibles which shall be paid by the Owner: (i) \$10,000 general deductible; (ii) \$25,000 flood deductible; and (iii) \$50,000 earth movement deductible. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 11.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 13.3 to be covered, whichever is earlier. This insurance shall include all interests of the Owner and the Developer, the Architect, the Contractor, Subcontractors and Sub-subcontractors in the Work.

13.3.1.1 Property insurance shall be on an all risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Developer's and the Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents. Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, hoists, or temporary scaffolding, forms, staging, or shoring that do not form a permanent part of the Work, and other similar items commonly referred to as

construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this Paragraph 13.3.1 shall include waiver of subrogation in accordance with the requirements of Paragraph 13.3.7.

13.3.1.2 If the Developer does not require the Owner to provide and the Developer does not then provide such property insurance required by these General Conditions of the Contracts for Design and Construction and with all of the coverages in the amount described above, the Developer 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 Developer, the Architect, the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Developer. If the Architect or the Contractor is damaged by the failure or neglect of the Owner or Developer to purchase or maintain insurance as described above, without so notifying the Contractor, then the Developer shall bear all costs attributable thereto.

13.3.1.3 If the property insurance requires minimum deductibles, the Developer shall promptly pay costs not covered because of such deductibles, with such payment being made upon presentation to the Developer of evidence of the loss and certified by the Contractor. If the Developer or insurer increases the required minimum deductibles above the amounts so identified, the Developer shall be responsible for payment of the additional costs not covered because of such increased. Any costs not covered because of deductibles shall be paid to Contractor by the Developer separate and apart from the Construction GMP.

13.3.2 Boiler and Machinery Insurance. The Developer shall cause the Owner to purchase and maintain boiler and machinery insurance, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, the Developer, the Architect and the Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner, the Developer, the Architect and Contractor shall be named insureds.

13.3.3 Loss of Use Insurance. The Owner or the Developer, at their option, may purchase and maintain such insurance as will insure the Owner and the Developer against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner and the Developer hereby waive all rights of action against the Architect and Contractor for loss of use of the Owner's or the Developer's property, including consequential losses due to fire or other hazards however caused.

13.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property

insurance policy, the Developer shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

13.3.5 If during the Project construction period the Owner or the Developer insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from or as part of those insuring the Project, or if after final payment property insurance is to be provided on the completed Project, the Owner and the Developer shall waive all rights in accordance with the terms of Subparagraph 13.3.7 for damages caused by fire or other perils covered by this separate property insurance. All policies shall provide this waiver of subrogation by endorsement or otherwise.

13.3.6 Prior to commencement of the Work, the Developer shall file with the Contractor certificates of insurance evidencing such insurance coverages required by this Paragraph 13.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project and as provided herein (including, but not limited to Subparagraph 13.3.7). Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Contractor. Developer shall promptly provide to Contractor copies of all certificates of insurance required by this Paragraph 13.3

13.3.7 Waivers of Subrogation. The Developer, Architect and Contractor hereby waive (and the Developer shall cause the Owner to waive) all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 13.3 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 Developer agrees to require of the Owner, Architect, Developer and Contractor, and their consultants, separate contractors described in Article 8, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate written agreement, to include similar waivers of subrogation each in favor of other parties enumerated herein. All insurance policies required in the Contract Documents 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. The Developer, Architect and Contractor agree to provide to each other, prior to the commencement of the Work, evidence that all of the insurance policies required herein contain appropriate endorsements as provided in this Subparagraph 13.3.7.

13.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the

insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of Subparagraph 13.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Developer agrees that any and all repair work shall not commence until the Developer and the Contractor have entered into a written agreement with the Owner and the Owner's insurer regarding payment of all applicable insurance proceeds.

13.3.9 If required in writing by a party in interest, the Developer shall cause the Owner as fiduciary, upon occurrence of an insured loss, to give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Developer shall cause the Owner to 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. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

13.3.10 Subject to the last sentence of Subparagraph 13.3.8, the Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the Owner's exercise of this power. If such objection be made, the Owner shall not make any settlement with respect to such loss until a resolution has been reached by agreement between such parties in interest and the insurers by arbitration as provided for herein, or by a court of competent jurisdiction.

13.3.11 Partial occupancy or use in accordance with Paragraph 11.9 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 Developer and the Contractor shall take reasonable steps (and the Developer shall cause the Owner to 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 of reduction of insurance.

13.4 ARCHITECT'S INSURANCE

13.4.1 Architect shall maintain throughout the period of this Project and for a period of three (3) years thereafter, a standard form of errors and omissions insurance with an insurance company satisfactory to the Developer. Architect shall also maintain insurance coverage for comprehensive general liability, automobile liability and workers' compensation in forms and amounts satisfactory to Developer, and such policy shall name the Owner and the Developer as named insured parties. Architect shall assure that any and all consultants engaged or

employed by Architect carry and maintain similar insurance with reasonably prudent limits and coverages in light of the services to be rendered by such consultants. Architect shall submit to Developer certificates of such coverages prior to the commencement of the Architect's Work, and the Architect shall submit certified copies of such policies to the Developer within thirty (30) days after the Commencement of the Architect's Work. The maintenance in full current force and effect of such form and amount of insurance, in such amount as Developer shall have accepted, shall be a condition precedent to the Architect's exercise or enforcement of any rights under the Contract Documents. The insurance policies shall incorporate a provision requiring written notice to the Developer at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies. The applicable coverages and limits for the Architect's insurance are set forth on Exhibit 3 attached hereto and made a part hereof.

13.5 GENERAL REQUIREMENTS

13.5.1 All insurance coverages required under this Article 13 shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "XII" in the Best's Insurance Guide, latest edition in effect as of the date of the respective contracts contemplated hereunder, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

13.5.2 If the Developer or the Contractor is damaged by the failure of any other party to purchase or maintain insurance required under this Article 13, then the party who failed to purchase or maintain the insurance shall bear all costs (including attorneys' fees and court and settlement expenses) attributable thereto.

ARTICLE 14

UNCOVERING AND CORRECTION OF WORK

14.1 UNCOVERING OF WORK

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

14.1.2 If a portion of the Contractor's Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect or Developer 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 reimbursed to the Contractor by the Architect. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs.

14.2 CORRECTION OF WORK

14.2.1 The Contractor shall promptly correct Contractor's Work rejected by the Architect or the Developer for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's or the Developer's services and expenses made necessary thereby. If prior to the date of Substantial Completion, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Contractor's Work, including, without limitation, mechanical electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition.

14.2.2 If, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 11.9.1, 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 Developer to do so unless the Developer has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 14.2.2 shall survive acceptance of the Contractor's Work under the Construction Agreement and termination of the Construction Agreement. The Developer shall give such notice promptly after discovery of the condition.

14.2.3 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 Developer.

14.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Developer may correct it in accordance with Paragraph 15.4.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Developer, the Developer may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within

ten (10) days after written notice, the Developer may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's and the Developer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Construction GMP shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Developer.

14.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner, the Developer 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.

14.2.6 Nothing contained in this Paragraph 14.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents or otherwise. Establishment of the time period of one (1) year as described in Subparagraph 14.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation of the Contractor 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.

14.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

15.1.1 The Construction Agreement, Design Services Agreement and the Common Contract Documents shall be governed by the laws of the State of Michigan.

15.1.2 Historical lack of enforcement of any local law shall not constitute a waiver of the Architect's or the Contractor's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Architect or Contractor has received written consent for the waiver of such compliance from the Developer and the agency responsible for the local law enforcement.

15.2 SUCCESSORS AND ASSIGNS

15.2.1 The Architect, Developer and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other parties 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. The Architect, Developer, and the Contractor may not assign their rights or obligations under the Common Contract Documents. Owner may assign its rights and obligations hereunder to its lender, if any, and the Developer, the Architect and the Contractor agree to enter into agreements with such lender pursuant to which, at such lender's request, the Developer, the Architect and the Contractor will complete the Work upon appropriate provision for payment of the balance of the payments due the Developer, the Architect and the Contractor. Any entity which shall succeed to the rights of the Owner shall be entitled to enforce its rights hereunder.

15.3 WRITTEN NOTICE

15.3.1 Written notice shall be deemed to have been duly served if personally delivered to an authorized representative of any party hereto for which it was intended, or shall be deemed to be served upon receipt at the notice address of any authorized representative of any party hereto if such notice is sent via a nationally recognized overnight courier, or shall be deemed to be served within three (3) days after such notice was actually deposited in the United States' Mail if sent by registered or certified mail to the business address set forth on Exhibit 4 hereto and made a part hereof, or to any other address identified in writing by any party hereto. A notice sent by facsimile transmission to any party hereto shall not be deemed to be delivered to any party unless the notice is thereafter personally delivered or mailed as provided herein, and all periods of time shall be deemed to have commenced on the date the notice was personally delivered or three (3) days after the same has been deposited in the United States' mail if sent by registered or certified mail.

15.4 RIGHTS AND REMEDIES

15.4.1 Except as expressly provided herein, 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.

15.4.2 No action or failure to act by the Developer, 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.

15.4.3 If the Contractor fails to correct Contractor's Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 14.2 or fails to carry out Work in accordance with the Contract Documents, the Developer, by written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Developer to stop the Work shall not give rise to a duty on the part of the Developer to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 8.1.3. This right shall be in addition to the rights under Paragraph 14.2 and Paragraph 16.3.

15.4.4 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 Developer to commence and continue correction of such default or neglect with diligence and promptness, the Developer may, without prejudice to other remedies the Developer may have, commence and continue to carry out the Work. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation any additional services and expenses made necessary by such default, neglect or failure. The right of the Developer to stop the Work pursuant to this Subparagraph 15.4.4 shall not give rise to any duty on the part of the Developer to exercise this right for the benefit of the Contractor or any other person or entity.

15.5 TESTS AND INSPECTIONS

15.5.1 Tests, inspections and approvals of portions of the Contractor's 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 designated by the Developer, or with the appropriate public authority, and the Developer shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Developer and Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

15.5.2 If the Architect, Developer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 15.5.1, the Architect will, upon written authorization from the Developer and the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity designated by the Developer, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner and Developer shall bear such costs except as provided in Subparagraph 15.5.3.

15.5.3 If such procedures for testing, inspection or approval under Subparagraphs 15.5.1 and 15.5.2 reveal failure of the portions of the work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's and Developer's services and expenses. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

15.5.4 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.

15.5.5 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.

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

15.6 GENERAL PROVISIONS

15.6.1 All personal pronouns used herein, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs, and subparagraphs are for convenience only, and neither limit nor amplify the provisions hereof. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

15.6.2 Whenever possible, each provision of the Common Contract Documents, the Construction Agreement and the Design Services Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of the Common Contract Documents, the Construction Agreement and the Design Services Agreement or valid portions of such provision, which are hereby deemed severable.

15.6.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

15.6.4 Any specific requirement in the Common Contract Documents or the Construction Agreement that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

15.6.5 Any specific requirement in the Common Contract Documents or the Design Services Agreement that the responsibilities or obligations of the Architect also apply to a consultant or subcontractor of the Architect is added for emphasis and are also hereby deemed to include a consultant or subcontractor of the Architect of any tier. The omission of a reference to a consultant or subcontractor of the Architect in connection with any of the Architect's responsibilities or obligations

shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a consultant or subcontractor of the Architect of any tier under the Contract Documents or any the applicable subcontract.

15.6.6 Attorneys' Fees and Costs. If any legal action, litigation or other proceeding (including arbitration) is brought for the enforcement of the Construction Agreement, the Design Services Agreement or the Common Contract Documents and/or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of the Construction Agreement, the Design Services Agreement or the Common Contract Documents , the prevailing party shall be entitled to recover, in addition to all other amounts awarded, reasonable attorneys' fees, all reasonable costs and fees associated with paralegal, experts, consultants, or others engaged for the purposes of the litigation or proceeding, in addition to court costs, the expenses of arbitration, and other reasonable costs of bringing or defending the action, and, in addition, any other relief to which it may be entitled.

ARTICLE 16

TERMINATION OR SUSPENSION OF THE CONTRACT

16.1 TERMINATION BY THE CONTRACTOR

16.1.1 The Contractor may terminate the Construction Agreement if the Work is stopped for a period of thirty (30) days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Contractor's Work under the Construction Agreement, for any of the following reasons:

- .1** 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 Subparagraph 11.4.1, or because the Developer has withheld payment on a properly submitted Certificate for Payment within the time stated in the Contract Documents; or
- .2** if repeated suspensions, delays, or interruptions of the Contractor's Work by the Developer constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred (120) days in any 365-day period, whichever is less.

If one of the above reasons exists, the Contractor shall give ten (10) days' written notice to the Developer and the Architect, and, within such period, the Developer

and the Architect shall have the right to cure or commence a cure. If the reason has not been cured, or a reasonable cure has not been commenced within such ten (10) days, the Contractor shall have the right to terminate the Construction Agreement, and recover payment for Work executed to the date of termination (including reasonable profit and overhead on such executed Work) plus actual de-mobilization costs incurred in a reasonable and prudent business manner and proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable profit, overhead and damages.

16.1.2 The Contractor may terminate the Construction Agreement if the Work is stopped for a period of ninety (90) days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Contractor's Work under the Construction Agreement, for any of the following reasons:

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

If one of the above reasons exists, the Contractor shall give ten (10) days' written notice to the Developer and Architect, within such period the Developer and the Architect shall have the right to cure or commence a cure. If the reason has not been cured, or a reasonable cure has not been commenced within such ten (10) days, the Contractor shall have the right to terminate the Construction Agreement, and recover payment for Work executed to the date of termination (including reasonable profit and overhead on such executed Work) plus actual de-mobilization costs incurred in a reasonable and prudent business manner.

16.1.3 If the Work is stopped for a period of sixty (60) days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, because the Developer has persistently failed to fulfill the Developer's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ten (10) days' written notice to the Developer, the Owner and the Architect, terminate the Construction Agreement and recover from the Developer as provided in Subparagraph 16.1.1; provided, however, in the event the Developer cures, or commences a reasonable cure to, the Owner's persistent failure to fulfill the Developer's obligations under the Contract Documents within such ten (10) day period, the Contractor's notice to terminate shall be deemed rescinded.

16.2 TERMINATION OF THE CONTRACTOR FOR CAUSE

16.2.1 The Developer may terminate the Construction Agreement 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;
- .4** otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5** breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6** fails to furnish the Developer with assurances reasonably satisfactory to the Developer evidencing the Contractor's ability to complete the Contractor's Work in compliance with all the requirements of the Contract Documents; or
- .7** fails after commencement of the Work to proceed continuously with the construction and completion of the Contractor's Work for more than ten (10) days, except as permitted under the Contract Documents.

16.2.2 When any of the reasons in Subparagraph 16.2.1 exist, the Developer may without prejudice to any other rights or remedies of the Developer and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1** take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2** accept assignment of subcontracts pursuant to Paragraph 7.4; and
- .3** finish the Work by whatever reasonable method the Developer may deem expedient;

provided, however, in the event such matters are cured by the Contractor within said seven (7) days to the satisfaction of the Developer such termination notice shall, upon written notice from Developer, be rescinded.

16.2.3 When the Developer terminates the Construction Agreement for one of the reasons stated in Subparagraph 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

16.2.4 If the unpaid balance of the Construction GMP exceeds costs of finishing the Contractor's Work, such excess shall be paid to the Contractor only upon final completion and final payment to any contractor who completed the Work. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Developer, including compensation for the Architect's and the Developer's services and expenses made necessary thereby. The amount to be paid to the Contractor or the Developer, as the case may be, shall be certified by the Architect, upon application, and approved by the Developer and this obligation for payment shall survive termination of the Contract.

16.3 TERMINATION OF THE ARCHITECT FOR CAUSE

16.3.1 The Developer may, upon seven (7) days written notice, terminate the Design Services Agreement if the Architect:

- .1** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .2** otherwise is guilty of a substantial breach of a provision of the Contract Documents;

provided, however, in the event such matters are cured by the Architect within said seven (7) days to the complete satisfaction of the Developer, in the Developer's sole discretion, such termination notice shall, upon written notice from Developer, be rescinded.

16.3.2 When the Developer terminates the Design Services Agreement for one of the reasons stated in Subparagraph 16.3.1, the Architect shall not be entitled to any further payment. The Architect consents to the Developer's selection of another architect to assist the Developer in completing the Project, and Architect agrees to cooperate and provide any information requested by the Developer in connection with the completion of the Project.

16.4 TERMINATION OF CONTRACTOR AND ARCHITECT FOR CONVENIENCE

16.4.1 The Project and the Design Services Agreement and Construction Agreement may be terminated at any time by the Owner upon one (1) day prior written notice to the Developer, provided the Developer then notifies the Contractor and Architect. In such event, the Contractor and Architect shall be entitled to recover payment from the Developer for Work actually executed (including reasonable profit and overhead on such executed Work), close-out costs and actual de-mobilization costs incurred in a reasonable and prudent business manner.

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EXHIBIT 1

CONTRACTOR'S INSURANCE COVERAGES AND LIMITS

[see attached]

EXHIBIT 2

DEVELOPER'S INSURANCE COVERAGES AND LIMITS

[see attached]

EXHIBIT 3

ARCHITECT'S INSURANCE COVERAGES AND LIMITS

[see attached]

EXHIBIT 4

NOTICE ADDRESSES

TO OWNER:

TO DEVELOPER:

TO CONTRACTOR:

TO ARCHITECT: