

EXHIBIT B:

**General Conditions of the Contracts for
Design and Construction**

**GENERAL CONDITIONS
OF THE CONTRACTS
FOR DESIGN AND CONSTRUCTION**

For the Development of

_____, Michigan

**GENERAL CONDITIONS OF THE CONTRACTS
FOR DESIGN AND CONSTRUCTION
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**GENERAL CONDITIONS OF THE CONTRACTS
FOR DESIGN AND CONSTRUCTION**

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents. The Contract Documents shall consist of the following documents, as the case may be:

1.1.1.1 Developer/Architect Relationship. For the purpose of the relationship between the Developer and the Architect, the Contract Documents shall consist of the Agreement between the Developer and the Architect (hereinafter the "Design Services Agreement"), Modifications issued after execution of the Design Services Agreement and those items set forth in Subparagraph 1.1.1.4 below.

1.1.1.2 Developer/Contractor Relationship. For the purpose of the relationship between the Developer and the Contractor, the Contract Documents shall consist of the Agreements between the Developer and the Contractor (the "Pre-Construction Agreement" and the "Construction Agreement" as applicable), Modifications issued after execution of the Construction Agreement and those items set forth in Subparagraph 1.1.1.4 below.

1.1.1.3 Architect/Contractor Relationship. Except as expressly provided in Paragraph 4.18 and Paragraph 5.1.4 hereof, the use of such joint General Conditions shall not construe any contract between the Architect and the Contractor nor shall these General Conditions imply any obligation, responsibility, or liability of one party to the other. The Architect shall not be responsible for any aspect of the Contractor's Work and the Contractor shall not be responsible for any aspect of the Architect's Work.

1.1.1.4 Common Contract Documents. With respect to the overall Project relationship between the Developer, the Architect and the Contractor, the Contract Documents shall also specifically include these General Conditions of the Contracts for Design and Construction, Drawings, Specifications, the Construction Schedule prepared and approved in accordance with Paragraph 4.10 hereof and other required submittals, all of which shall herein be referred to as the "Common Contract Documents".

1.1.1.5 Modification. A Modification is (1) a written amendment to the Design Services Agreement or to the Construction Agreement signed by the respective parties to such agreement, (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.

1.1.2 The Work. The term "Work" means all services required if the respective parties hereto under the Contract Documents, whether completed or partially completed, and to do all that is necessary under or reasonably inferable from the Contract Documents to construct a fully functioning and operational facility, and includes all other labor, materials, equipment and services provided or to be provided by the Developer, Contractor and Architect to fulfill their respective obligations under their respective agreements.

1.1.2.1 The "Contractor's Work" means the portion of the Work to be provided by the Contractor under the Construction Agreement.

1.1.2.2 The "Architect's Work" means the portion of the Work to be provided by the Architect under the Design Services Agreement.

1.1.3 The Project. The Project is the design and development of an office building to be used by _____, consisting of _____ square feet, together with all necessary furnishings, parking improvements and other appurtenances to complete a fully developed and integrated facility all of which is located at _____ Michigan.

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

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

1.1.6 The Project Manual. The Project Manual is a volume assembled for the Work that includes, but is not limited to, the Common Contract Documents and Specifications.

1.1.7 Approved. When the words "approved," "satisfactory," "proper" or "as directed" are used, approval by the Developer or the Owner, as the case may be, shall be understood.

1.1.8 Provide. When the word "provide," including derivatives thereof, is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

1.1.9 Addenda. Addenda are written or graphic instruments issued prior to the execution of the Construction Agreement which modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications or corrections.

1.1.10 Bulletins. Bulletins are written or graphic instruments issued by the Architect after the execution of the Construction Agreement which request a proposal from the Contractor that, if approved by the Developer, will cause the execution of a Change Order to modify the Contract Documents.

1.1.11 Knowledge. The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Architect or Contractor, shall be interpreted to mean that which the Contractor or Architect knows, recognizes and discovers. The expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor or Architect familiar with the Project and exercising the care, skill and diligence required of the Contractor or Architect by the Contract Documents.

1.1.12 Persistently. The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor or the Architect, shall be interpreted to mean any combination of acts and omissions, which causes the Developer reasonably to conclude that (1) the Contractor will not complete the Contractor's Work within the Contract Time, for the Construction GMP or in substantial compliance with the requirements of the Contract Documents or (2) the Architect will not complete the Architect's Work within the Contract Time and in substantial compliance with the requirements of the Contract Documents.

1.1.13 Contractor's Indemnitees. The term "Contractor's Indemnitees" means the Owner, Developer and Architect and their respective officers, agents, employees, successors and assigns.

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

1.1.15 Other Defined Terms. Other terms used herein which are not otherwise defined herein shall have the meaning ascribed to them in the AIA Glossary of

Construction Industry Terms, 1991 edition, published by the American Institute of Architects, as may be updated or amended from time to time.

1.1.16 Construction GMP. The term "Construction GMP" shall mean the total amount to be paid to the Contractor under the Construction Agreement for the Contractor's Work and as further defined in Article 11.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the respective parties thereto as provided in the respective agreements.

1.2.2 Execution of the Construction Agreement by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location and layout of the Project site and the access thereto, (2) generally prevailing climatic conditions during the period the Contractor's Work is to be performed, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools and equipment. Except as expressly set forth in Paragraphs 8.1 and 12.1, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Developer shall not be required to make any adjustment in either the Construction GMP or Contract Time in connection with any failure by the Contractor to comply with the requirements of this Subparagraph 1.2.2.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Architect, the Developer and 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 Architect, the Developer and the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Architect and Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or both in accordance with the Developer's reasonable interpretation. The terms and conditions of this Subparagraph 1.2.3, however, shall not relieve the Architect and the Contractor of any of the obligations set forth in Paragraphs 4.2 and 4.7.

- .1** On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings.

- .2 Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the Architect for interpretation before proceeding with the Work, otherwise there shall be no claim for an increase in the Construction GMP.
- .3 If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall so advise the Architect who shall issue detailed drawings of such before making the change.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

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

- .1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other association standard, the Contractor shall present an affidavit from the manufacturer, when requested by the Architect or required in the Specifications, certifying that the product complies with the particular standard or Specification. When requested by the Architect or when specified, support test data shall be submitted to substantiate compliance.
- .2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Construction Agreement or if accepted as a change in the Work in accordance with Subparagraphs 4.4.4-4.4.6. When two (2) or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

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

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described, and are the property of the Owner. The Architect, the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyright. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Architect, Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and the Developer. The Owner shall have the right to use the Drawings, Specifications and other documents for other purposes than the Project, or in the event of the termination of the Design Services Agreement, for the purposes of this Project, provided the Owner indemnifies the Architect regarding such use. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. 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 Owner's copyright or other reserved rights.

1.3.2 Subject in all respects to the indemnification contained in Subparagraph 1.3.1:

- .1** Architect shall and does hereby assign to Owner all right, title and interest in and to the designs of the Project (the "Designs") as embodied in any medium, including, but not limited to, the Project, architectural plans created during the conception, design or construction of the Project (the "Architectural Plans") or drawings created during the conception, design or construction of the Project (the "Drawings"). The Designs include the overall form as well as the arrangement and composition of spaces and elements in the Designs; and
- .2** Architect shall and does hereby assign to Owner all right title and interest in and to all Architectural Plans and Drawings.

Nothing in the Contract Documents shall be construed to grant the Architect any rights in the Designs of the Project, the Architectural Plans or the Drawings. However, Architect may use and copy the Designs, Architectural Plans and Drawings for the sole purpose of performing the Work. Architect shall execute all documents and papers required to perfect Owner's right, title and interest in the Designs, Architectural Plans and Drawings. The Architect shall obtain written permission of the Developer and the Owner to use photographs, models, renderings, and similar representations of this Project in connection with publications, awards, competitions, press releases, brochures or any other similar purpose.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined and (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document.

1.5 INTERPRETATION

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

1.6 CONFIDENTIALITY

The Architect and Contractor hereby warrant, represent and agree that financial information generated for this Project for the construction cost per square foot, as well as the information contained in the Schedule of Values and the Construction GMP shall be treated by the Architect and the Contractor as confidential and may not be disclosed to third persons except as necessary to complete the Work or to comply with other obligations which are imposed on the Architect and Contractor by governmental authorities. Architect and Contractor may take, at their expense, pictures of the Project which may be used by Architect and Contractor for subsequent display and sales-related purposes with third persons and may generally disclose cost per foot for specific categories of Work provided that those costs in no way reveal the Owner or this specific Project. The Contractor shall specifically cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Paragraph 1.6. The Architect shall specifically cause all of its subcontractors or any other person or entity performing any services for the Work to warrant and represent all items set forth in this Paragraph 1.6. The representations and warranties contained in this Paragraph 1.6 shall survive the complete performance of the Work or earlier termination of the Design Services Agreement or the Construction Agreement.