

ARTICLE 2

DEVELOPER

2.1 DEFINITION. The Developer is _____, and is referred to throughout the Contract Documents as if singular in number. The term "Developer" means the Developer or the Developer's authorized representative. The Developer hereby designates _____ as its representative, authorized to act on its behalf with respect to the Project. The Owner has contracted with the Developer to develop the Project pursuant to the Development Agreement.

2.2 INDEMNIFICATION BY DEVELOPER. To the fullest extent permitted by law, but subject to other specific provisions to the contrary in the Contract Documents, the Developer shall indemnify, appear and defend 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 any Work by the Developer hereunder, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself, including loss of use resulting therefrom), but only to the extent caused in whole or in part by negligent acts or omissions or the willful misconduct of the Developer or anyone directly employed by Developer or anyone for whose acts Developer may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set forth in the Contract Documents. Developer agrees to cause the insurance policies Developer is required to carry under Paragraph 13.6 hereof to specifically include the foregoing indemnity obligations as insured contractual obligations.

In claims against any person or entity indemnified under this Paragraph 2.2 by an employee of the Developer, or anyone directly or indirectly employed by the Developer for whose acts the Developer may be liable, the indemnification obligation under this Paragraph 2.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Developer under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Developer under this Subparagraph 2.2 shall not extend to the liability of the Contractor, any Subcontractor, the Architect, the Architect's consultants, and subcontractors, agents and employees of any of them, arising out of their (1) negligence or willful misconduct; (2) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or

specifications, except those required of the Developer by the Contract Documents; or (3) the giving of or the failure to give directions or instructions by the Architect or the Contractor, and their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

2.3 INFORMATION AND SERVICES DEVELOPER TO OBTAIN FROM THE OWNER

2.3.1 Developer represents that the Owner has agreed to furnish to Developer surveys required for the execution of the Work and other information as to the physical characteristics of, legal limitations of or utility locations for the Project site, and Developer shall, upon receipt of same, furnish or cause to be furnished to the Architect and the Contractor a legal description of the Project site. The survey to be provided by the Owner prior to the commencement of the Work shall provide grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, elevations and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available services and utility lines, both public and private, above and below grade, including inverts and depths. Contractor shall excavate and dispose of each on-site utility and shall cap each off-site utility as required by the Work and as may be included in the Specifications. The Developer shall furnish services of geotechnical engineers and other consultants. The services of such geotechnical engineers and other consultants shall include, as required, applicable test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, and other necessary operations for determining subsoil, air and water conditions, with reports and professional recommendations. Developer shall provide to the Architect and Contractor, and the Architect and Contractor shall study the result of such test borings and information provided by the Developer. Developer does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of borings made or to be made, or of other investigations, or of the interpretations made thereof, and there is no warranty or guaranty, express or implied, that the conditions indicated by such investigations, borings, logs or information are representative of those existing throughout the Project site, or any part thereof, or that unforeseen developments may not occur.

2.3.2 Except for approvals, licenses, inspections, permits and fees which are the responsibility of the Contractor under the Contract Documents, the Developer shall, or where appropriate shall use reasonable efforts to cause the Owner to secure and pay for necessary approvals, permits, licenses, inspections, easements, assessments and charges, required for development of the Project.

2.3.3 The Developer shall on the Owner's behalf (or the Developer shall cause the Owner to) furnish structural, mechanical, chemical, geotechnical and

other laboratory or on-site tests, inspections or reports as required by law or as reasonably required by the Contract Documents.

2.3.4 The Developer shall, upon reasonable written request from the Contractor and/or the Architect, use all reasonable efforts to furnish to the Architect and the Contractor, in writing, information which is reasonably necessary and relevant for the Architect or the Contractor to evaluate, give notice of or enforce mechanic's lien rights under applicable Michigan law.

2.4 EXTENT OF DEVELOPER'S RIGHTS

2.4.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Developer (1) granted in the Contract Documents, (2) at law or (3) in equity.

2.4.2 The Architect shall be responsible for design, inspection or administration services, which shall be provided by the Architect under the Design Services Agreement. The Contractor shall be responsible for construction means, methods, techniques, sequences and procedures, which shall be carried out by the Contractor under the Construction Agreement. In no event shall the Owner or the Developer have any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Developer or the Owner in the Contract Documents.

2.5 DIRECT PURCHASES

2.5.1 The Contractor acknowledges that the Owner reserves the right to purchase directly any equipment and materials for the Work. For any item directly purchased by the Owner, the line item amount of such item in the Construction GMP, plus the sales or use tax that would have been applicable to such item if not purchased by the Owner, shall be deducted from the Construction GMP by deductive Change Order. Any discounts, savings or rebates on purchases by the Owner of equipment and materials shall belong to the Owner (and the Developer on the Owner's behalf).

2.5.2 Upon delivery to the Project site of Owner purchased materials an equipment, or upon deliver of same to such place as is designated by the Contractor, the Contractor shall be responsible for inspecting such equipment and materials to assure Developer that they are acceptable and in conformance with the Contract Documents. Any defect or deficiency shall be called to the attention of the Developer immediately upon delivery in order that the Developer may make necessary arrangements for the adjustment or replacement of such equipment and materials. Upon acceptance of such equipment and materials, the Contractor is

responsible for the installation and incorporation if such equipment and materials into the Work in accordance with the Contract Documents.

2.5.3 Owner shall at all times have and possess legal title to equipment and materials purchased by it, but the foregoing shall not be construed to reduce, abrogate or modify the obligations of the Contractor under Article 12 hereof.

2.5.4 The Developer and the Contractor each acknowledge that the Owner shall be responsible for any and all state sales or use tax imposed on any direct purchases of materials or supplies made by the Owner, however the Owner has represented that it has a sales tax exemption through the State of Michigan which may be used by the Developer, Contractor and all subcontractors and material suppliers for all materials and equipment acquired in relation to the prosecution of or incorporated into the Work. For purchases made by the Owner, the Owner has agreed to indemnify, defend, and hold the Developer harmless from any and all state sales and use tax imposed or assessed against the Developer, or its subcontractors, suppliers, or vendors, including all losses, expenses, interest, fines, costs and reasonable attorney's fees incurred in any action, suit or proceeding related to, in connection with, or arising out of any assessment of sales taxes for direct purchases made by the Owner. Accordingly, the Developer hereby agrees to indemnify, defend, and hold the Contractor harmless from any and all state sales and use tax imposed or assessed against the Contractor, or its Subcontractors, suppliers, or vendors, including all losses, expenses, interest, fines, costs and reasonable attorney's fees incurred in any action, suit or proceeding related to, in connection with, or arising out of any assessment of sales taxes for direct purchases made by the Owner. The Developer or the Contractor shall promptly notify the Owner of any assessment or proposed assessment. The indemnification contained in this Subparagraph 2.5.4 shall survive beyond the completion of Work under the Contract Documents.

ARTICLE 3

OWNER

3.1 **DEFINITION.** The Owner is _____ and is referred to throughout the Contract Documents as if singular in number. The Owner has contracted with the Developer to develop the Project pursuant to the Development Agreement.

3.2 **DIRECT PURCHASES BY OWNER**

3.2.1 The Contractor acknowledges that the Owner reserves the right to purchase directly any equipment and materials for the Work. For any item directly purchased by the Owner, the line item amount of such item in the Construction

GMP, plus the sales or use tax that would have been applicable to such item if not purchased by the Owner, shall be deducted from the Construction GMP by deductive Change Order. Any discounts, savings or rebates on purchases by Owner of equipment and materials shall belong to the Owner (or the Developer on the Owner's behalf).

3.2.2 The Owner shall receive, store and protect all equipment and materials which it purchases until they are provided to the Developer and/or the Contractor at the Project site or delivered to such place as designated by the Contractor. Owner or Developer may order the supplier to deliver such equipment and materials directly to the Project site. Upon delivery to the Project site of Owner purchased materials an equipment, or upon deliver of same to such place as is designated by the Contractor, the Contractor shall be responsible for inspecting such equipment and materials to assure Developer that they are acceptable and in conformance with the Contract Documents. Any defect or deficiency shall be called to the attention of the Developer immediately upon delivery in order that the Developer may make necessary arrangements with the Owner for the adjustment or replacement of such equipment and materials. Upon acceptance of such equipment and materials, the Contractor is responsible for the installation and incorporation if such equipment and materials into the Work in accordance with the Contract Documents.

3.2.3 Owner shall at all times have and possess legal title to equipment and materials purchased by it, but the foregoing shall not be construed to reduce, abrogate or modify the obligations of the Contractor under Article 12 hereof.

3.1.3 Prior to execution of the Construction Agreement and on a quarterly basis thereafter, the Owner has agreed in the Development Agreement to furnish to the Developer reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract, and Developer shall provide such information to Contractor before the commencement of Contractor's Work and at such other reasonable times thereafter.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is _____ and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

4.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner or the Developer pursuant to Subparagraph 2.3 and shall at once report to the Developer and Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Developer or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to promptly report it to the Developer or Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Developer or Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

4.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Developer and Architect at once. In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations, dimensions, field measurements or field conditions shall be promptly rectified by the Contractor.

4.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 4.12.

4.2.4 Except as to any reported errors, inconsistencies or omissions, concealed or unknown conditions defined in Subparagraph 6.2.6, and Changes to the Work as contemplated by Paragraph 9.2, by executing the Construction Agreement, the Contractor represents the following:

- .1** The Contract Documents are sufficiently complete and detailed for the Contractor to (i) perform the Work required to produce the results intended by the Contract Documents, and (ii) comply with all the requirements of the Contract Documents.
- .2** The Contractor's Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the Work are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; and (3) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

4.2.5 The Contractor shall make available to the Developer and the Architect the results of any site investigation, test borings, analyses, studies or other tests conducted by or in possession of the Contractor. The Contractor represents that it is familiar with the Project site and has reviewed all information provided by the Owner, Developer and Architect concerning the conditions of the Project site. The Contractor agrees and acknowledges (i) that the Construction GMP is just and reasonable compensation for all the Contractor's Work, and (ii) that the Contract Time is adequate for the performance of the Work, except as provided in Article 10 hereof. The Contractor shall have no claims for surface or subsurface conditions encountered, except as provided in Subparagraph 6.2.6. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements and easements.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Contractor's Work, using the best skill and attention. The Contractor shall be solely responsible for all and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Construction Agreement, including coordination of the duties of all trades, unless the Contract Documents give other specific instructions concerning these matters.

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

4.3.3 The Contractor shall not be relieved of obligations to perform the Contractor's Work in accordance with the Contract Documents by activities or duties of the Architect in the Architect's administration of the Work under the Common Contract Documents, by activities or duties of the Developer, or by tests, inspections or approvals required or performed by persons other than the Contractor.

4.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under the Construction Agreement to determine that such portions are in proper condition to receive subsequent Work.

4.3.5 If any of the Work is required to be inspected or approved by any public authority, the Contractor shall cause such inspection or approval to be performed and shall cooperate to the fullest extent necessary to obtain approval. If any of the Work is required to be inspected or approved by any private regulatory or accrediting agency, the Contractor shall use all practical efforts to cause such inspection or approval to be performed and shall cooperate to the fullest extent

necessary to obtain such approvals. No inspection performed or failed to be performed by the Owner or Developer hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall check all materials and labor entering into the Work and shall keep full detailed accounts thereof.

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

4.4.3 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

- .1** If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the Work of any particular trade.
- .2** In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Developer may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

4.4.4 If, after execution of the Construction Agreement and prior to submittal of applicable shop drawings, the Contractor desires to submit an alternate product in lieu of what has been specified or shown in the Contract Documents, the Contractor shall do so in writing to the Architect and the Developer and shall set forth the following:

- .1 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- .2 Reasons the substitution is advantageous and necessary, including the benefits to the Project and the Work in the event the substitution is acceptable.
- .3 The adjustment, if any, in the Construction GMP, in the event the substitution is acceptable.
- .4 The adjustment, if any, in the time of completion of the Contractor's Work and the construction schedule in the event the substitution is acceptable.
- .5 An affidavit stating that (1) the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect or Developer.

Proposals for substitutions shall be submitted in triplicate to the Architect and Developer in sufficient time to allow the Architect and the Developer no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

4.4.5 Substitutions and alternates may be rejected by the Architect and/or the Developer and will be considered only under one or more of the following conditions:

- .1 Required for compliance with interpretation of code requirements or insurance regulations then existing.
- .2 Unavailability of specified products, through no fault of the Contractor.
- .3 Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- .4 Manufacturer/fabricator refuses to certify or guarantee performance or specified product as required.

.5 When in the judgment of the Developer or the Architect, that a substitution would be substantially to the Owner's best interests, in terms of cost, time or other considerations.

4.4.6 Whether or not any proposed substitution is accepted by the Developer or the Architect, the Contractor shall reimburse the Developer for any reasonable fees charged by the Architect, Developer or other consultants for evaluating each proposed substitute.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner, the Developer and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed or authorized by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect or the Developer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE AFORESAID WARRANTIES, AND ANY OTHER EXPRESS WARRANTIES REQUIRED UNDER THE SPECIFICATIONS, ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

4.5.2 The Contractor agrees to assign to the Developer (or the Owner upon the Developer's request) at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Contractor hereby agrees that such warranties shall be in full force and effect as of the date of Substantial Completion, and the warranty periods shall commence as of the date of Substantial Completion.

4.6 TAXES

4.6.1 Except for direct purchases made by the Owner pursuant to Paragraph 3.2, the Contractor shall pay appropriate sales, consumer, use and similar taxes for Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

4.6.2 Contractor, Developer and all subcontractors and material suppliers shall be required to use the Owner's sales tax exemption number for all materials and equipment acquired in relation to the prosecution of or incorporated into the Work. Failure to use said exemption shall result in a Cost of Construction Service not to be paid to the responsible party.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents and except for building permit fees, sewer and water access charges and the cost of permanent electrical service to the Project, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Developer with copies or certificates of all permits and fees, licenses and inspections necessary for the proper execution and completion of the Contractor's Work, including, without limitation, all building permits and licenses, and approvals from the City of Detroit as required by the specifications. All fees for permits and licenses and all connection charges, assessments or inspection fees as may be imposed by any municipal agency or utility company identified are included in the Construction GMP and shall be the Contractor's responsibility.

4.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities bearing on performance of the Work. The Contractor shall procure and obtain all bonds required of the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closing, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work, all of which costs and charges are included in the Construction GMP.

4.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes and rules and regulations (with such responsibility being the Architect's under the Design Services Agreement). The Contractor shall not knowingly violate any zoning, setback or other locational requirements of applicable laws, codes and ordinances, or of any recorded covenants of which the Contractor has knowledge. If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules or regulations, the Contractor promptly shall notify the Developer and Architect in writing, and necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice

to the Architect and the Developer, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

4.8 ALLOWANCES

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

4.8.2 Unless otherwise provided in the Contract Documents:

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

4.9 FIELD PERSONNEL

4.9.1 The Contractor shall employ a competent superintendent and project manager, and as necessary, a competent field engineer and assistants who shall be in attendance at the Project site during performance of the Work. The project manager shall represent the Contractor, and communications given to the project manager shall be as binding as if given to the Contractor. Important communications shall be similarly confirmed on written request in each case. The superintendent, project manager and field engineer shall be satisfactory to the Developer in all respects, and the Developer shall have the right to require Contractor to dismiss from the Project any superintendent, project manager or field engineer whose performance is not reasonably satisfactory to the Developer, and to replace such superintendent, project manager and field engineer with a superintendent, project manager or field manager reasonably satisfactory to the Developer. The Contractor shall not replace the superintendent, project manager or field manager without the written consent of the Developer.

4.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

4.10.1 The Contractor shall prepare in consultation with the Developer and Architect and submit for the Developer's approval a Contractor's Construction Schedule for the Work, in accordance with Subparagraph 4.10.4. The Construction Schedule shall not exceed time limits current under the Contract Documents, shall be updated and revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, shall provide for expeditious and practicable execution of the Work and shall not be modified or extended without the prior approval of the Developer in each instance. The Construction Schedule shall include, but shall not be limited to, a schedule of the delivery of or installation of critical materials or components, the failure of timely delivery of which will adversely impact the Project's completion as provided in the Contract Documents.

4.10.2 The Contractor shall prepare a monthly progress report in a form, in sufficient detail, and of a character approved by the Developer. The progress report shall specify, among other things, an estimated percentage of completion, whether the Project is in compliance with the Construction Schedule, and if not, the reasons therefor and the proposed new Construction Schedule, as well as the number of man-days worked for each category of labor and the projected Work to be completed in the next succeeding month. Accompanying the progress report shall be an updated current Project Construction Schedule subject to the approval of the Developer, and a listing and the status of all Change Orders, Modifications, bulletins and other relevant documents.

The Contractor shall prepare such additional reports as the Developer may reasonably request. The Contractor shall hold weekly progress meetings at the

Project site, or at such other time and frequency as the Developer requests. Progress of the Work shall be reported in detail with reference to the Construction Schedule. Each appropriate Subcontractor shall have present a competent representative to report the condition of its work and to receive information.

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

4.10.3 The Contractor shall conform to the most recent Construction Schedule, provided the Contract Time, as adjusted pursuant to these General Conditions, is not exceeded.

4.10.4 The Construction Schedule shall be in a detailed format satisfactory to the Developer which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in insuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Developer of the Milestone Dates, the Construction Schedule shall be deemed part of the Contract Documents and shall be incorporated in the Contract Documents. If not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Developer and the Architect and re-submitted for acceptance by the Developer. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Developer of any delays or potential delays. The accepted Construction Schedule shall be updated to reflect actual conditions (sometimes referred to in these General Conditions as progress reports) as set forth in Subparagraphs 4.10.1 and 4.10.2. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date or the Construction GMP unless any such adjustment is agreed to by the Developer and authorized pursuant to Change Order.

4.10.5 In the event the Developer determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, solely due to the Contractor and not due to the Owner, Developer, Architect and/or any other event beyond the control of Contractor, the Developer shall have the right, but not the obligation, to order the Contractor to take corrective measures necessary to expedite the progress of construction.

- .1 Subject to the provisions of Subparagraph 10.3.1, the Contractor shall not be entitled to an adjustment in the Construction GMP in connection with the exercise by the Developer of its rights under or pursuant to this Subparagraph 4.10.5.
- .2 The Developer may exercise the rights under or pursuant to this Subparagraph 4.10.5 as frequently as the Developer deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

4.10.6 The Developer shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Developer's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Subparagraph 4.10.6 shall be grounds for an extension of the Contract Time under Subparagraph 10.3.1, and an equitable adjustment in the Construction GMP.

4.11 DOCUMENTS AND SAMPLES AT THE SITE

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

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

4.12.4 Product Data, Samples and similar submittals other than Shop Drawings are not Contract Documents. The purpose of the submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

4.12.5 The Contractor shall review, approve and submit to the Architect and Developer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness, but in no event less than ten (10) days after receipt of same, and in such sequence as to cause no delay in the Work or in the activities of the Owner, Developer or of separate contractors.

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

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

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

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

4.12.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

4.12.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the specified performance requirements of the materials, systems, or equipment. The certification shall be based on performance under the operating conditions

identified in the Specifications. The Architect and Developer shall be entitled to rely upon the accuracy and completeness of such certificates.

4.12.12 All Shop Drawings for any architectural, structural, mechanical or electrical work must be submitted to, and approved by, the Architect. The Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Contract Documents or applicable law, by a licensed engineer.

4.13 USE OF SITE

4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents or as reasonably determined by the Developer, and shall not unreasonably encumber the site with materials or equipment.

4.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment which are part of or required for the Contractor's Work and stored at the Project site, is solely the responsibility of the Contractor.

4.13.3 The Contractor and any entity for whom the Contractor is responsible may erect or locate reasonable signage on the Project site with the prior written consent of the Developer.

4.13.4 Contractor shall ensure that the Contractor's Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the building in the event of partial occupancy, as more specifically described in Paragraph 11.9.

4.13.5 Without prior approval of the Developer, the Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Developer. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Developer in connection with the use and

occupancy of the Project site and the building, as amended from time to time. The Contractor shall immediately notify the Developer in writing if during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the building which the Contractor is advised of in writing on the earlier of the establishment of the Construction GMP or the execution of the Construction Agreement.

4.14 CUTTING AND PATCHING

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

4.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Developer or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner, Developer or a separate contractor except with written consent of the Developer and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Developer or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

4.15 CLEANING UP

4.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations of the Contractor in performing the Contractor's Work, and the Contractor shall be responsible for the removal from the Project site of and the subsequent proper disposal of all such waste materials or rubbish caused by operations of the Contractor in performing the Contractor's Work. At completion of the Work the Contractor shall remove from and about the Project and shall properly dispose of all waste materials, rubbish, the Contractor's tools, construction equipment, machinery, surplus materials, and any excess mud, gravel or earth from and around the Project and the surrounding rights of way.

4.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Developer may, but shall not be obligated to, do so and the cost thereof shall be charged to the Contractor.

4.15.3 All disposal of waste materials, rubbish, mud, gravel or earth resulting from the Contractor's Work shall be in accordance with all applicable laws, statutes, rules and regulations.

4.16 ACCESS TO WORK

4.16.1 The Contractor shall provide the Owner, the Developer and Architect access to the Work in preparation and progress wherever located.

4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner, the Developer and the Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect and Developer.

4.18 INDEMNIFICATION BY CONTRACTOR

4.18.1 To the fullest extent permitted by law but subject to other specific provisions to the contrary in the Contract Documents, the Contractor shall indemnify, appear and defend and hold harmless the Owner, Developer, 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 Contractor's Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or the injury to or destruction of tangible personal property (other than the Work itself, including loss of use resulting therefrom), but only to the extent caused in whole or in part by negligent acts or omissions or the willful misconduct of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set forth in the Contract Documents.

4.18.2 In claims against any person or entity indemnified under this Paragraph 4.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 The obligations of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Owner, the Developer, the Architect, the Architect's consultants, and subcontractors, agents and employees of any of them arising out of (1) their negligence or willful misconduct; (2) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, except those required by the Contractor by the Contract Documents; or (3) the giving of or the failure to give directions or instructions by the Architect, the Owner or the Developer, and their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

4.19 WARRANTIES AND REPRESENTATIONS. The Contractor represents and warrants the following to the Developer (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the Developer to execute the Construction Agreement, which representations and warranties shall survive the execution and delivery of the Contract Documents, any termination of the Construction Agreement and the final completion of the Work:

- .1** that it is financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Contractor's Work and perform all obligations hereunder;
- .2** that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder;
- .3** that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Contractor's Work;
- .4** that its execution of the Construction Agreement and its performance thereof is within its duly authorized powers;
- .5** that its duly authorized representative has visited the site of the Project, is familiar with the local conditions under which the Contractor's Work is to be performed and has correlated on site observations with the requirements of the Contract Documents; and
- .6** that it possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project, and that it will perform the Contractor's Work with the care, skill and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor's liability hereunder shall survive the final acceptance of and payment for the Work. All representations and warranties set forth in the Construction Agreement and these Conditions, including, without limitation, this Paragraph 4.19, shall survive the final completion of the Contractor's Work or the earlier termination of the Construction Agreement. The Contractor acknowledges that the Developer is relying upon the Contractor's skill and experience in connection with the Work described herein.

4.20 CONTRACTOR SELF PERFORMED WORK

4.20.1 Contractor shall have the right to self-perform Work on the Project which the Contractor demonstrates to the satisfaction of the Developer that the Contractor regularly performs with his own forces, and that the Contractor's performance under the Contract Documents, including the Contract Time, is not adversely affected due to the Contractor self-performing such portions of the Work.

4.21 PROGRESS MEETINGS; REPORTS

4.21.1 The Contractor shall schedule and conduct periodic meetings, at intervals appropriate for the stage of construction, at which the Developer, the Architect, the Contractor and appropriate Subcontractors may discuss the status of the Work. The Contractor shall prepare and promptly distribute detailed meeting minutes to the Developer and the Architect.

4.21.2 The Contractor shall provide monthly written reports to the Developer and the Architect on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the Project, number of workers, Work accomplished, problems encountered and other similar relevant data as the Architect may reasonably require. The log shall be available at all times to the Developer or the Architect.

ARTICLE 5

ARCHITECT

5.1 ARCHITECT

5.1.1 The Architect is _____, a Michigan corporation lawfully practicing architecture identified as such in the Design Services Agreement and is referred to throughout the Contract Documents as if singular in

number. The term "Architect" means the Architect or the Architect's authorized representative.

5.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Developer.

5.1.3 Architect's Representations and Warranties. Architect hereby represents and promises to the Developer that the Architect is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder; that Architect possesses experience regarding and has expertise in the design and construction of health care facilities similar to the Project; that Architect has visited the site for the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and the Architect shall correlate its observations of same with all of the requirements of this Agreement and of the Contract Documents.

5.1.4 Indemnification by Architect. To the fullest extent permitted by law but subject to other specific provisions to the contrary in the Contract Documents, the Architect shall indemnify, appear and defend and hold harmless the Owner, Developer, Contractor, 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 Architect's Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself, including loss of use resulting therefrom), but only to the extent caused in whole or in part by negligent acts or omissions or the willful misconduct of the Architect, anyone directly or indirectly employed by Architect or anyone for whose acts Architect may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set forth in the Contract Documents.

In claims against any person or entity indemnified under this Subparagraph 5.1.4 by an employee of the Architect, anyone directly or indirectly employed by Architect or anyone for whose acts Architect may be liable, the indemnification obligation under this Paragraph 5.1.4 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Architect under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Architect under this Subparagraph 5.1.4 shall not extend to the liability of the Owner, the Developer, the Contractor, any Subcontractors, and subcontractors, agents and employees of any of them arising out of their (1) negligence or willful misconduct; (2) the preparation or approval of maps,

drawings, opinions, reports, surveys, change orders, designs or specifications, except those required of the Architect by the Contract Documents; or (3) the giving or failure to give directions or instructions by the Developer, the Contractor or the Owner, and their consultants and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 6

ADMINISTRATION OF THE CONTRACT

6.1 ADMINISTRATION OF THE CONTRACT

6.1.1 As provided in the Design Services Agreement, the Architect will provide administration of the responsibilities of the parties under the Contract Documents.

6.1.2 Nothing contained in these General Conditions shall be construed to reduce, abrogate or modify the obligations of the Architect under the Design Services Agreement.

6.1.3 Communications Facilitating Contract Administration. Developer and Contractor may communicate with each other directly or through the Architect. Communications by the Architect by and with Subcontractors, Sub-subcontractors and material suppliers shall be through the Contractor. Communications by and with the Owner or separate contractors shall be through the Developer.

6.1.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts.

6.1.5 The Architect shall reject Work which the Architect discovers does not conform to the Contract Documents. However, the Architect shall not have the authority to stop the Work on the site. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 15.5.2 and 15.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

6.1.6 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of: (1) assuring compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations; and (2) assuring that the Work affected by and represented by such submittals is in compliance with the requirements of the Contract Documents. Architect shall be responsible for determining what aspects of the Work shall be the subject of Shop Drawings and submittals. Architect shall not knowingly permit such aspects of the Work to proceed in the absence of approved Shop Drawings and submittals. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Developer, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 4.3, 4.5 and 4.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.1.7 The Architect will prepare Change Orders and Construction Change Directives, subject to the approval of the Developer, and may authorize minor changes in the Work as provided in Paragraph 9.4.

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

6.1.9 If the Developer agrees, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit incorporated in the Contract Documents. Once agreed to by the Developer, the Architect shall not remove or replace the appointed representatives without the Developer's prior written consent.

6.1.10 Upon request of the Developer, claims, disputes and other matters in question relating to the execution or progress of the Work or the interpretation of

the Contract Documents may be referred to the Architect for initial recommendation, which the Architect shall render in writing within a reasonable time, not to exceed fifteen (15) days after the date on which such request is made.

6.1.11 Interpretations and recommendations of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and recommendations, the Architect will endeavor to secure faithful performance by Developer and Contractor, will not show partiality to any of them and will not be liable for results of interpretations or recommendations so rendered in good faith.

6.1.12 Architect warrants and agrees that all of Architect's Work shall comply with all applicable laws, ordinances, building codes, rules and regulations of any governing authority or agency having jurisdiction.

6.1.13 Upon the Developer's request at any time during the design or construction phases of this Agreement and as often as so requested, Architect shall promptly provide the Developer with progress prints. The Developer shall at all times have reasonable access to the files and personnel of Architect relating to the Project in order to answer any reasonable questions the Developer may have related to the Architect's performance on the Project.

6.1.14 Before requesting any payment under the Design Services Agreement, and as a condition precedent to any enforceability of the Design Services Agreement by Architect, Architect shall have submitted to Developer and Developer shall have accepted in writing a proposed schedule setting out the dates on which Architect plans to complete schematic design phase, design development phase, construction document phase, and bidding or negotiation phase. This schedule shall also set out the dates by which any actions, decisions, or information are required from the Developer in order to permit the Architect to perform according to this schedule.

6.1.15 All services provided by the Architect hereunder shall be performed in a reasonably prompt manner and shall be in accordance with the standards of professional skill and care prevailing in the industry applicable to such services on the type of Project contemplated by this Agreement, and Architect shall be responsible for all services provided hereunder whether such services are provided directly by Architect or by any consultants hired by Architect. The Architect will perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay and will give this Project such priority in his office as is necessary to cause the Architect's services hereunder to be timely and properly performed.

6.1.16 Architect shall submit for Developer's approval prior to entering into this Agreement a project organization chart setting out Architect's personnel, and

their responsibilities in connection with this Project, which Architect proposes to use for this Project, together with an identification of any consultants or outside firms which Architect proposes to use in connection with the performance of its services on this Project. If at any time after entering into this Agreement, the Developer has any objection to any such person or entity, Architect shall promptly propose substitutes to whom the Developer has no objection.

6.1.17 The Architect shall not be responsible for, nor have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, and shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents, provided such failure of the Contractor is not caused by the negligent or willful act of the Architect. The Architect shall not be responsible for, nor have control over, the acts or omissions of the Contractor, Subcontractors, and any of their agents or employees, or any other persons performing any of the Contractor's Work.

6.2 CLAIMS AND DISPUTES

6.2.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of terms, payment of money, extension of time or other relief with respect to the terms of the Common Contract Documents. The term "Claim" also includes other disputes and matters in question between the Owner and the Developer, the Developer and the Contractor, and the Developer and the Architect arising out of or relating to the Project.

6.2.2 Procedure for Making Claims and Burden of Proof. Claims must be made by written notice to the other parties hereto. The responsibility to substantiate Claims shall rest with the party making the Claim.

6.2.3 Time Limits on Claims. Except as provided in Subparagraph 6.2.6 below, Claims by any party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the claimant shall use its best efforts to furnish the Developer and the other parties, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Developer and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. Any additional Claim related to the initial Claim which is made after the initial Claim has been implemented by Change Order will not be considered. Claims may also be reserved in writing within the time limits set forth in this Subparagraph 6.2.3. If a Claim is reserved,

the Resolution of Claims and Disputes procedures described in Paragraph 6.3 and Paragraph 6.4 shall not commence until a written notice from the claimant is received by the Developer and other parties. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

6.2.4 Continuing Contract Performance. Pending final resolution of a Claim, unless otherwise agreed in writing, the Architect and Contractor shall proceed diligently with performance of the Architect's Work and the Contractor's Work respectively, and the Developer shall continue to make payments in accordance with the Contract Documents.

6.2.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Developer except those arising from:

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

6.2.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface physical conditions, including adverse environmental conditions, which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist in the general surrounding area, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Developer (with the assistance of the Architect) shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Construction GMP or Contract Time, or both. Such recommendation shall include (i) the nature of the unknown or unforeseen condition, (ii) the proposed increase in the Construction GMP, and (iii) any adjustments to the Contract Time. If the Developer (with the assistance of the Architect) determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Common Contract Documents is justified, the Developer shall so notify the Contractor in writing, stating the reasons. If the Developer and Contractor cannot agree to an adjustment in the Construction GMP or Contract Time, the adjustment shall be subject to further proceedings pursuant to Paragraph 6.4. Contractor and Architect agree that

the Owner has retained the right to terminate the Development Agreement in the event of an unforeseen condition which results in an increased cost to the Owner or which is likely to delay the completion of the Project, as determined by the Owner. In the event the Owner so terminates the Development Agreement, the Developer shall have the right to terminate the Construction Agreement and the Design Services Agreement in accordance with Paragraph 16.4 hereof.

6.2.7 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Construction GMP, written notice to Developer as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 12.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) written interpretation from the Architect, (2) an order by the Developer to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner or Developer, (5) termination of the Construction Agreement by the Developer, (6) Developer's suspension of the Project or (7) other reasonable grounds, the Claim shall be filed in accordance with the procedure established herein.

6.2.8. Claims for Additional Time

6.2.8.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given within the time period specified in Subparagraph 6.2.3. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

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

6.2.9 Injury or Damage to Person or Property. If any party to any of the Common Contract Documents suffers injury or damage to person or property because of an act or omission of any other party, of any of such other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 6.2.7 or 6.2.8.

6.3 NEGOTIATION; MEDIATION

6.3.1 Negotiation. Prior to submitting a Claim to mediation or arbitration, the parties to such Claim shall diligently attempt, in good faith, to settle any disputes by negotiation between the parties to such Claim. If the parties are unable to reach a negotiated settlement with respect to such Claim within sixty (60) days after the commencement of negotiations, the parties may continue to diligently negotiate in good faith with respect to such Claim, or, at the option of any party to the Claim, the Claim may be submitted to mediation by written demand for mediation delivered to the other parties to such Claim. Such mediation shall be held pursuant Subparagraph 6.3.2 hereof.

6.3.2 Mediation. If the parties to a Claim are unable to reach a negotiated settlement with respect to any Claim pursuant to Subparagraph 6.3.1, the Claim shall be submitted to mediation upon the delivery of a written demand therefore from one party to the Claim to all the other parties to the Claim. Any mediation pursuant to the terms of the Contract Documents shall be conducted by a proprietary mediation service reasonably acceptable to the parties to the Claim. In the event the parties to the Claim are unable, within sixty (60) days after a written demand for mediation, to agree on a mutually acceptable mediation service, any party to the Claim may demand arbitration pursuant to Paragraph 6.4 hereof. Upon selection of the mediation service by the parties to the Claim, the parties shall diligently attempt, in good faith, to settle any disputes by mediation. If the parties are unable to reach a mediated settlement with respect to such Claim within sixty (60) days after the commencement of mediation, the parties may continue to diligently mediate in good faith with respect to such Claim, or, at the option of any party to the Claim, the Claim may be submitted to arbitration by written demand therefore delivered to the other parties to such Claim. Arbitration shall be held pursuant Paragraph 6.4 hereof.

6.4 DISPUTE RESOLUTION

6.4.1 All Controversies and Claims Subject to Arbitration. The parties agree that the sole method of resolving disputes will be by negotiation, mediation and arbitration as provided in Paragraphs 6.3 and 6.4 herein. Any controversy or Claim arising out of or related to any agreement between the Owner, the Developer, the Contractor and the Architect or any of them, shall be settled by negotiation, mediation and arbitration in accordance with this Article 6.

6.4.2 Commencement of Arbitration. Any party to a Claim that remains unresolved after negotiation and mediation pursuant to Paragraph 6.3 may commence arbitration by written demand therefore delivered to the other parties to such Claim. However, no arbitration hearing may be convened until after Substantial Completion of the Project, except by written agreement between all of the parties to the subject Claim. No Claim may be heard in arbitration if a Notice of

Claim was not timely filed pursuant to Subparagraph 6.2.3, or if the Claim would otherwise be barred by an applicable statute of limitations.

6.4.3 Arbitration Procedures. Except as otherwise expressly provided herein, arbitration shall be held in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect from time to time.

6.4.4 Number and Selection of Arbitrators. Arbitration panels shall consist of the following numbers of arbitrators, as the case may be:

- .1 in the event the Claim or Claims subject to arbitration are less than or equal to an aggregate of \$200,000.00, the arbitrator shall consist of one (1) person reasonably acceptable to all parties to the Claim or Claims; or
- .2 in the event the Claim or Claims subject to arbitration are more than \$200,000.00 in the aggregate, the arbitration panel shall consist of three (3) persons reasonably acceptable to all of the parties to the Claim or Claims.

In the event the parties to a Claim or Claims cannot, after thirty (30) days, agree upon on the arbitrator or arbitrators, the selection of the arbitrator or arbitrators shall be submitted to the American Arbitration Association, who shall be instructed to appoint the arbitrator or arbitrators from the American Arbitration Association's Large Complex Panel.

6.4.5 No Authority to Award Punitive Damages. The arbitrator or arbitrators shall have no authority to award punitive damages nor make any ruling, finding or award that does not conform to the terms and conditions of this Article 6 or the Contract Documents.

6.4.6 Award of Attorneys Fees and Costs. The arbitrator or arbitrators are authorized to, but shall not be obligated to, award all or a part of the costs and fees, incurred by a party, including arbitration fees, administrative expenses, witness fees and reasonable attorneys fees as the arbitrator or arbitrators shall deem to be just and equitable.

6.4.7 Non-Disclosure. Neither party nor the arbitrator or arbitrators may disclose the results of any arbitration hereunder, without the prior written consent of all of the parties, except as required by law or as may be required to conform to the Contract Documents.

6.4.8 Site and Timing of Hearings. Unless otherwise agreed to in writing by all of the parties to a Claim, all hearings will be held at the Owner's office,

located at Bloomfield Hills, Michigan. Except by written agreement between all of the parties to a Claim, no arbitration hearing may be convened until after Substantial Completion of the Project.

6.4.9 Pre-Hearing Procedures. The arbitrator or arbitrators shall order a pre-hearing exchange of information by the parties, which may include production of requested documents reasonably required by the parties, exchange of summaries of testimony of proposed witnesses, the deposition of any experts and limited depositions of the parties. All issues regarding conformation with discovery requests shall be decided by the arbitrator or arbitrators. The arbitrator or arbitrators shall require a pre-hearing meeting between the parties at which each party shall present a memorandum disclosing the factual basis of its Claim and defenses and disclosing all legal issues to be raised. It shall also disclose the names of any expert a party may present as a witness in the proceedings. Failure to disclose such experts shall bar their testimony at the arbitration. Any reports, calculations and other data used by an expert in reaching his opinion and who is called as a witness shall be provided at least 10 days prior to such expert's scheduled deposition. If such reports, calculations and other data are not so presented, such reports, calculations and other data shall be precluded from being used at any arbitration.

6.4.10 Compensation of the Arbitrators. Payment for services of the arbitrator or arbitrators will be at the rates agreed to between the arbitrator or arbitrators, the Owner, the Developer, the Architect and the Contractor, and shall include study time, panel conferences and actual hearing time. Direct expenses incurred by the arbitrator or arbitrators will be reimbursed at the actual cost incurred, and may include, but are not limited to automobile mileage, at the standard IRS rate in effect at the time the mileage is incurred, parking, travel expenses from the members point of departure to the point of arrival, automobile rental, food and lodging, extraordinary telephone and postage and courier delivery. Billing for such expenses shall be submitted within thirty (30) days of the conclusion of an arbitration and shall include an itemized listing supported by copies of the original bills, invoices and other relevant supporting data. Unless otherwise awarded by the arbitrator or arbitrators pursuant to Subparagraph 6.4.6 hereof, each party to or included in any Claim submitted to arbitration shall bear an equal share of the costs incurred by the arbitrator or arbitrators with respect to the subject Claim.

6.4.11 Legal Relations. The parties hereto agree that the arbitrator or arbitrators, in the performance of their duties, are acting in the capacity of an independent contractor and are not employees or agents of any party hereto.

6.4.12 Joinder or Consolidation. Any arbitration hearing shall include by way of joinder or consolidation, the Owner, Contractor, Developer, Architect, Subcontractors, and separate contractors as described in Article 8, and any other

persons substantially or materially involved in a common question of fact or law if the presence of any such person is required in order that complete relief may be accorded in arbitration. The agreement to arbitrate and this agreement of joinder shall be specifically enforceable under Michigan State law and venue therefore shall be in any court having jurisdiction thereover and sitting in Macomb County, Michigan.

6.4.13 Finality of Award. The Award rendered by the arbitrator or arbitrators shall be final and binding upon the parties and judgment may be entered as provided in Subparagraph 6.4.15 hereof.

6.4.14 Governing Law. This contract shall be governed in accordance with the laws of the State of Michigan and venue for any court proceedings relating to the enforcement or appeal of any Award hereunder shall be brought in any court having jurisdiction thereover and sitting in Macomb County, Michigan.

6.4.15 Written Opinion. The award of the arbitrator or arbitrators shall be accompanied by a written, reasoned opinion and shall be rendered no later than thirty (30) days from the date the subject arbitration is formally closed.

6.4.16 Continuance of Work During Dispute. At all times during the dispute resolution process the Developer, Contractor, Architect and Subcontractors shall continue with the Work in a proper and diligent manner in accordance with the terms of their respective contracts and the Contract Documents. Except for those amounts which are the subject of a Claim or are otherwise properly withheld pursuant to the Contract Documents, the Owner shall be obligated to continue payments to the Developer, Contractor, Architect and Subcontractor, in accordance with their respective contracts and the Contract Documents.

ARTICLE 7

SUBCONTRACTORS

7.1 DEFINITIONS

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

7.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if

singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

7.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

7.2.1 In accordance with the Construction Schedule, the Contractor shall furnish the Developer and the Architect, in writing, with (1) the name, trade and subcontract amount for each Subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. The Developer will promptly reply to the Contractor in writing stating whether or not the Developer, or the Owner or the Architect through the Developer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Architect to reply promptly to the Developer shall constitute notice of no reasonable objection.

7.2.2 The Contractor shall not contract with a proposed person or entity to whom the Developer, or the Architect through the Developer, has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

7.2.3 If the Developer, or the Architect through the Developer, has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Developer or Architect has no reasonable objection. The Construction GMP shall be increased by the difference between the subcontract amount proposed by the person or entity recommended by the Contractor and the subcontract amount proposed by the person or entity accepted or designated by the Developer or the Architect.

7.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Developer or the Architect through the Developer, make reasonable objections to such change.

7.3 SUBCONTRACTUAL RELATIONS

7.3.1 By written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by all of the terms of Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the Owner, Developer and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Developer and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice

such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

7.3.2 All subcontracts shall be in writing and shall specifically provide that the Developer is an intended third party beneficiary of such subcontracts.

7.3.3 Any payments made by the Contractor to the Subcontractors for labor and materials furnished shall be held in trust for the benefit of such labor or material suppliers until paid by such Subcontractors.

7.4 CONDITIONAL ASSIGNMENT OF SUBCONTRACTS

7.4.1 Each subcontract agreement for a portion of the Work is hereby conditionally assigned by the Contractor to the Developer provided that:

- .1** such assignment is effective only after termination of the Construction Agreement by the Developer for cause pursuant to Paragraph 16.2 or stoppage of Work by Developer as provided in the Contract Documents;
- .2** such assignment is effective only for such subcontract agreements as the Developer assumes in writing; and
- .3** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the subcontracts.

7.4.2 In the event of a termination of the Construction Agreement for cause pursuant to Subparagraph 16.2, the Developer agrees to use reasonable and prudent business judgment and to act in good faith in determining whether to assume the Contractor's obligations under the subcontracts or sub-subcontracts entered under them. However, nothing shall obligate the Developer to assume such conditional assignments.

7.4.3 In the event of the Developer's assumption of any subcontract or sub-subcontract under this Paragraph 7.4, the Developer shall be responsible for those obligations of the Developer that accrue subsequent to the Developer's exercise of

any rights under this conditional assignment. The foregoing shall not limit the liability of the Contractor to the Developer for damages which the Developer may suffer prior to the Developer's exercise of any rights under this conditional assignment.

7.4.4 The Contractor agrees that each Subcontract shall specifically include an agreement by the Subcontractors that, in the event the Developer assumes any Subcontract under this Paragraph 7.5, such Subcontractor shall agree to be bound by all of the terms and conditions contained in Article 6 hereof.

7.5 PAYMENT BOND AND PERFORMANCE BOND

7.5.1 At the Developer's option, prior to the commencement of any of the Work by a subcontractor under a subcontract that represents at a minimum of \$100,000.00 or more of the Construction GMP, the Contractor shall require the subcontractor to furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Michigan, and on form AIA A311 and A312, and complying with the following specific requirements:

- .1** Bonds shall be executed by a responsible surety licensed in the State of Michigan and listed in the most recent edition of the U.S. Department of the Treasury circular 570;
- .2** The Performance Bond and the Labor and Material Payment Bond if required shall each be in an amount equal to the amount of the subcontract;
- .3** The subcontractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his/her power of attorney indicating the monetary limit of such power;
- .4** Every Bond under this Subparagraph 7.5.1 must display the Surety's Bond Number; and
- .5** The costs of all bonds required under this Paragraph 7.5 shall be paid by the Subcontractor and included in the subcontract price.

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

7.5.3 The subcontractor shall keep the surety informed of the progress of the Work subject to the subcontract, and, where necessary, obtain the surety's consent

to, or waiver of: (1) notice of changes in the Work subject to the subcontract; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material required by the surety.

7.5.4 Upon the Developer's prior written approval, the Contractor may waive the bond requirements of this Paragraph 7.5 for particular Subcontractors. The Developer's approval shall not be unreasonably withheld.

ARTICLE 8

CONSTRUCTION BY OWNER, DEVELOPER OR BY SEPARATE CONTRACTORS

8.1 OWNER'S AND DEVELOPER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

8.1.1 The Developer reserves the right and reserves the Owner's right to perform construction or operations related to the Project with the Developer's or the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions identical or substantially similar to these General Conditions of the Contracts for Design and Construction, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner or the Developer, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

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

8.1.3 The Developer shall provide for coordination of the activities of its own forces, the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors, the Developer and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement by Developer. The Construction Schedule shall then constitute the Construction Schedule to be used by the Contractor, the Developer, the Owner and separate contractors until subsequently revised.

8.1.4 Unless otherwise provided in the Contract Documents, when the Developer or the Owner performs construction or operations related to the Project with the Developer's or the Owner's own forces, they shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor

under these General Conditions of the Contracts for Design and Construction, including, without excluding others, those stated in Article 4, this Article 8 and Articles 12, 13 and 14.

8.1.5 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. Except as set forth in Paragraph 3.5, the Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. Except as otherwise provided in the Contract Documents, the Construction GMP includes, without limitation, all costs and expenses in connection with delivery, handling, storage, insurance, installation and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

8.2 MUTUAL RESPONSIBILITY

8.2.1 The Contractor shall afford the Developer, the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

8.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner, the Developer or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report in writing to the Developer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report in writing shall constitute an acknowledgment that the construction by the Owner's or the Developer's separate contractors is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

8.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner, Developer or separate contractors as provided in Subparagraph 12.2.5.

8.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraphs 6.3 and 6.4.

8.2.6 The Developer, the Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 4.14.

ARTICLE 9

CHANGES IN THE CONTRACTOR'S WORK

9.1 CHANGES

9.1.1 Changes in the Contractor's Work shall only be accomplished after execution of the Construction Agreement, and without invalidating the Common Contract Documents, by Change Order, Construction Change Directive or order for a minor change in the Contractor's Work, subject to the limitations stated in this Article 9 and elsewhere in the Contract Documents.

9.1.2 A Change Order shall be based upon agreement among the Developer, Contractor and Architect; a Construction Change Directive requires agreement by the Developer and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Contractor's Work may be issued by the Architect or the Developer.

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

9.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon in writing, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Contractor's Work proposed will cause substantial inequity to the Developer or Contractor, the applicable unit prices shall be equitably adjusted.

9.2 CHANGE ORDERS

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

- .1** a change in the Contractor's Work;
- .2** the amount of the adjustment in the Construction GMP, if any; and

.3 the extent of the adjustment in the Contract Time, if any.

9.2.2 Methods used in determining adjustments to the Construction GMP may include those listed in Subparagraph 9.3.2.

9.2.3 Except as otherwise set forth therein, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Contractor's Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Construction GMP and the Construction Schedule.

9.3 CONSTRUCTION CHANGE DIRECTIVES

9.3.1 A Construction Change Directive is a written order prepared by the Architect, after full consultation with and signed by the Developer, directing a change in the Contractor's Work. The Developer may by Construction Change Directive, without invalidating the Common Contract Documents, order changes in the Contractor's Work within the general scope of the Common Contract Documents consisting of additions, deletions or other revisions.

9.3.2 If the Construction Change Directive provides for an adjustment to the Construction GMP, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 9.3.5.

9.3.3 Upon receipt of a properly authorized Construction Change Directive, the Contractor shall promptly proceed with the change in the Contractor's Work involved and advise the Developer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Construction GMP. Notwithstanding the foregoing, in the event the Contractor disputes that such Construction Change Directive does not affect the Contract Time or the Construction GMP, the Contractor shall be entitled to make a Claim pursuant to the procedures contained in Paragraph 6.2, 6.3 and 6.4 hereof.

9.3.4 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Construction GMP and Contract Time or the method of determining them.

9.3.5 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Construction GMP or Contract Time, the method and the adjustment shall be determined by the Developer on the basis of reasonable expenditures and savings of those performing the Contractor's Work attributable to the change, including, in case of an increase in the Construction GMP, a reasonable allowance for overhead and profit. In such case, and also under Clause 9.3.2.3, the Contractor shall keep and present, in such form as the Developer may prescribe, an itemized accounting together with appropriate supporting data. Costs for the purposes of this Subparagraph 9.3.5 shall be determined in accordance with the provisions of the Construction Agreement.

9.3.6 Pending final determination of cost, amounts not in dispute may be included in Applications for Payment. The amount of credit by the Contractor for a deletion or change which results in a net decrease in the Construction GMP shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Contractor's Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

9.3.7 If the Contractor does not agree with the adjustment in Contract Time or the Construction GMP or the method for determining them, the adjustment or the method shall be subject to the procedure for Claims under Paragraph 6.3 and 6.4.

9.3.8 When the Contractor agrees with the determination made by the Architect concerning the adjustments in the Construction GMP and Contract Time, or otherwise reaches agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

9.4 MINOR CHANGES IN THE CONTRACTOR'S WORK

9.4.1 The Architect will have authority to order minor changes in the Contractor's Work not involving adjustment in the Construction GMP or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Architect, Developer, and Contractor. The Contractor shall carry out such written orders promptly.