

1 **GRAIF BARRETT & MATURA, P.C.**
1850 North Central Avenue, Suite 500
2 Phoenix, Arizona 85004
Tel: (602) 462-9999
3 Fax: (602) 926-8075
E-mail: jgraif@gbmlawpc.com
4 E-mail: nmeyer@gbmlawpc.com
Send Court Docs to: court-info@gbmlawpc.com

5 Jay R. Graif, State Bar No. 017246
6 Jeffrey C. Matura, State Bar No. 019893
Nathan D. Meyer, State Bar No. 020583

7 *Attorneys for Jeffrey C. Stone, Inc.*
8 *d/b/a Summit Builders*

9 **IN THE UNITED STATES BANKRUPTCY COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 In re
12 MORTGAGES LTD.,
13 Debtor.

Chapter 11
Case No. 2:08-bk-07465-RJH

**SUMMIT BUILDER'S OBJECTION TO
ML MANGER'S MOTION TO SELL
REAL PROPERTY FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS**

**Real Property and Improvements located in
Scottsdale, Arizona in the development known as
Osborn III/Ten Lofts Condominium project
located at 7116 and 7126 E. Osborn Rd.**

**Hearing Date: September 28, 2010
Hearing Time: 2:30 p.m.**

21 Jeffrey C. Stone, Inc. dba Summit Builders ("Summit"), General Contractor for the
22 subject Ten Lofts Project, objects to ML Manager LLC ("ML Manager") selling the
23 Property free and clear of liens, claims, encumbrances and interests for four primary
24 reasons. First, pursuant to ARS § 33-992(A), Summit's mechanic's lien is superior to ML
25 Manager's Second Deed of Trust, dated August 22, 2006, because the mechanic's lien
26 relates back to July 21, 2006, which was the date Summit first commenced its work at the
27 Project. Second, ML Manager's self-serving claim that it "likely...will prevail on its
28

1 equitable subrogation” is unsupported and contrary to a recent ruling in Superior Court
2 that denied a motion for summary judgment on equitable subrogation filed by Mortgages
3 Limited under nearly identical circumstances. Third, ML Manager’s claim that “if
4 mechanics lien claimants prevail in the State Court proceedings that their claims will be
5 paid by the title insurance company” provides no security or protection to assure payment
6 to Summit in the event Summit prevails in its lien priority claim. Fourth, ML Manager
7 has not satisfied the statutory requirements that would permit a sale free and clear of liens.
8 Accordingly, Summit objects to a free-and-clear sale of the Property and, alternatively,
9 requests the Court to condition such a sale upon implementation of proper safeguards to
10 protect Summit, should it prevail on its lien priority claim including, but not limited to,
11 mandating that the title insurance company provide written confirmation that it will
12 unconditionally indemnify Summit should Summit prevail on lien priority in the state
13 court proceedings and/or establish in an escrow account sufficient cash that is free and
14 clear from any other interests to cover Summit’s claim.

15 **A. LIEN PRIORITY**

16 In short, Summit will move the state court for summary judgment establishing
17 Summit’s mechanics lien in first priority position. Summit will seek a ruling, as a matter
18 of law, that its mechanic’s lien is superior to the Second Deed of Trust recorded by
19 Defendant Mortgage Ltd. (“ML”). Pursuant to ARS § 33-992(A), Summit’s mechanic’s
20 lien is superior to all subsequent encumbrances, except a deed of trust recorded less than
21 ten days after labor commenced. Here, Summit’s mechanic’s lien attached to the property
22 on July 21, 2006, and ML recorded its Second Deed of Trust on August 22, 2006.
23 Accordingly, Summit’s mechanic’s lien is superior in priority to ML’s Second Deed of
24 Trust.

25 **1. Pertinent Factual & Procedural History**

26 Defendant Osborn III Partners, LLC, (“Osborn”) is the owner of the subject
27 property commonly known as the Ten Lofts Condominiums, located at 7126 East Osborn
28 Road, Scottsdale, Arizona (“Project”). On or about March 27, 2006, Defendants ML and

1 Osborn entered into a loan agreement for an undetermined amount (“First Loan”). On
2 March 31, 2006, ML recorded a Deed of Trust on the Project for \$8,500,000 to secure the
3 First Loan (“First Deed of Trust”). *See* Exh. 1, First DOT.

4 On April 24, 2006, Summit Builders entered into a contract with Osborn to serve as
5 the general contractor and improve the Project (the “Construction Contract”). *See* Exh. 2,
6 Construction Contract. In its capacity as the general contractor, Summit provided labor,
7 materials, machinery, fixtures, and tools for the construction of improvements to the
8 Project. On July 21, 2006, Dennis Short, Summit’s Project Superintendent, met with
9 Hook Engineering at the Project and commenced staking the Project. *See* Exh. 3, Summit
10 Project Log at 1; Exh. 4, Duryea EMT Short (“Our first day on the jobsite was 7-21-06.”);
11 Exh. 5, Daily Project Journal at 7/21/06.

12 Summit thereafter subcontracted with Wescor General, Inc., (“Wescor”) to perform
13 soil removal and over-excavation work at the Project.” *See* Exh. 6, Wescor Subcontract.
14 Wescor subcontracted with Canyon Country Contracting, Inc., (“Canyon Country”) to
15 assist in the soil removal from the Project. *See* Exh. 7, Canyon Invoice 8389. On July 27,
16 2006, Canyon Country began its work on the Project by importing track-out rock. *Id.* On
17 August 2, 2006, Canyon Country began exporting soil from the Project. *See* Exh. 3,
18 Summit Project Log at 1; Exh. 8, Canyon Invoice 8393.

19 On August 3, 2006, Summit mailed its Preliminary 20-Day Lien Notice to Osborn
20 and ML to secure its lien rights in the event Osborn defaulted on its payment obligations.
21 *See* Exh. 9, Prelim. 20-Day Notice.

22 On August 4, August 7, and August 8, 2006, Canyon Country continued to export
23 approximately 2,000 yards of dirt each day. *See* Exh. 3, Summit Project Log at 1; Exh. 5,
24 Daily Project Journal. On August 10, 2006, Canyon Country completed exporting dirt
25 from the Project. *See* Exh. 3, Summit Project Log at 1; Exh. 5, Daily Project Journal at
26 8/11/06. By August 10, 2006, Canyon Country had exported over 1,000 loads of dirt, and
27 over 77 tons of rock, away from the Project. *See* Exh. 7, Canyon Invoice 8389; Exh. 8,
28 Canyon Country Invoice 8393.

1 On or after August 14, 2006, Osborn and ML entered into a second loan agreement
2 for an undetermined amount (“Second Loan”). From the proceeds of the Second Loan,
3 \$5,610,374.41 was used to pay off the First Loan and release the \$8,500,000.00 First Deed
4 of Trust. *See* Exh. 10, Magnus Title Disbursement Summary. On August 22, 2006, ML
5 recorded a \$41,000,000.00 Deed of Trust against the Project securing the Second Loan
6 (“Second Deed of Trust”). *See* Exh. 11, Second DOT.

7 Summit completed all its work under the Construction Contract, and related change
8 orders, in a timely and workmanlike manner. Despite Summit completing all its work and
9 making appropriate demands for payment, Osborn has failed to pay Summit the amount
10 owed under the Construction Contract, and the related change orders. As of July 3, 2008,
11 the principal amount due and owing to Summit was \$2,044,250.70, plus interest,
12 attorneys’ fees, and costs incurred.

13 On July 3, 2008, due to the non-payment to Summit for work completed, Summit
14 recorded a mechanic’s lien in the same amount of \$2,044,250.70 against the Property at
15 Maricopa County Recorder’s Number 2008-0588970 (“Mechanic’s Lien”). *See* Exh. 12,
16 Lien. On December 12, 2008, Summit amended the Mechanic’s Lien at Maricopa County
17 Recorder’s Number 2008-1054737. On December 24, 2008, Summit amended the
18 Mechanic’s Lien at Maricopa County Recorder Number 2008-1085021. On December
19 30, 2008, Summit amended the Mechanic’s Lien at Maricopa County Recorder Number
20 2008-1093926.

21 On December 30, 2008, Summit filed a lien foreclosure action on the Mechanic’s
22 Lien and recorded a Lis Pendens in an effort to recover the monies owed it by Osborn for
23 work and materials provided on the Project.

24 2. LEGAL ARGUMENT

25 a. Summit’s Mechanic’s Lien Attached To The Project on July 26 21, 2006.

27 Pursuant to A.R.S. § 33-992(B), a mechanic’s lien attaches when “labor has
28 commenced on the property....” Here, Summit commenced labor on this Project on July

1 21, 2006, when it staked the property. *See also Woodridge Const. Co. v. First Nat'l Bank*
2 *of Ariz.*, 130 Ariz. 86, 93, 634 P.2d 13, 20 (App. 1981) (“We hold, therefore, that
3 earthwork and site preparation performed pursuant to the requirements of a general overall
4 building construction contract constitute a sufficient commencement of labor to establish
5 priority under ARS § 33-992 for all work performed pursuant to that general construction
6 contract.”). While Summit recorded its lien on July 3, 2008, Summit’s lien priority relates
7 back to the date work first commenced, July 21, 2006.

8 **b. Summit’s Mechanic’s Lien is Superior to ML’s Second Deed of**
9 **Trust.**

10 ARS § 33-992(A) states:

11 The [mechanic’s] liens provided for in this article...are
12 preferred to all liens, mortgages or other encumbrances upon
13 the property attaching subsequent to the time the labor was
14 commenced or the materials were commenced to be furnished
except any mortgage or deed of trust that is given as security
for a loan made by a construction lender...if the mortgage or
deed of trust is recorded within ten days after labor was
commenced or materials were commenced to be furnished.

15 ML recorded its Second Deed of Trust on August 22, 2006. Thus, ML’s priority date is
16 August 12, 2006, subsequent to the priority date of Summit’s Mechanics Lien.

17 **B. ML MANAGER WILL LIKELY NOT PREVAIL ON ITS EQUITABLE**
18 **SUBROGATION CLAIM.**

19 ML Manager’s claim that it “likely...will prevail on its equitable subrogation”
20 (Doc. 2923 at 5:8, 9) is a self-serving, conclusory claim that is also contrary to a recent
21 ruling in Superior Court that denied a motion for summary judgment on equitable
22 subrogation filed by Mortgages Limited. ML Manager offers no argument or authority for
23 its claim that it will likely prevail on its equitable subrogation claim. Additionally,
24 Mortgages Limited, essentially the same entity as ML Manager,¹ recently had a Motion
25 for Summary Judgment regarding equitable subrogation denied in a similar state court
26 proceeding.

27 ¹ ML Manager is the manager of Osborn III Loan LLC (“the Loan LLC”) and the agent for 31Pass-
28 Through Investors (Doc. 2923 1:17, 18). The Loan LLC is comprised of fractional interests in the note
and deed of trust held by Mortgages Limited and MP Funds (Doc. 2923 at 1:23-26).

1 On September 7, 2010, the Honorable Edward Burke denied Mortgages Limited
2 relief on equitable subrogation in *Gould v. Evans Associates, LC, et al. v. Tempe Land*
3 *Company, LLC*, (CV2008-024849). See Exh. 13, Order denying ML Summ. Judgment
4 (09/07/10). In so doing, the Court noted:

- 5 • [A] party seeking equitable subrogation must show there is an express or
6 implied agreement to subrogate. *Id.* at 13.
- 7 • [B]ecause subrogation is a creature of equity, its application may be
8 defeated by intervening rights which would be prejudiced by the
9 substitution. *Id.*
- 10 • In this case, neither the lender nor the owner has paid for the labor and
11 materials furnished by the mechanic's lien claimants. *Id.* at 13-14.
- 12 • Rather the lien claimants seek relief because the construction lender
13 [Mortgages Limited] failed to fully fund its construction loan and now
14 seeks a priority over those who improved the project, which required the
15 fact finder to carefully consider the equities involved. *Id.* at 13-14.
- 16 • Defendants argue that Mortgages Limited is not entitled to equitable
17 relief because Mortgages Limited's inequitable actions and inaction
18 created the underlying default that prevent the Project from being
19 completed and resulting in the recording of the mechanics' and
20 materialmen's liens. *Id.* at 15.
- 21 • During the construction, Mortgages Limited's funding became erratic...
22 Mortgages Limited principals...admitted on multiple occasions that
23 Mortgages Limited had defaulted under its loan agreement with TLC. *Id.*
24 at 15.
- 25 • Mortgages Limited's failure to fund the loan caused construction to stall.
26 Numerous subcontractors and material suppliers ceased work or
27 threatened to stop work. There is evidence that [Mortgages Limited]
28 reassured subcontractors and suppliers that loan funds were forthcoming;
and they should continue working in light of these assurances. As a
result of [Mortgages limited's] representations, work on the Project
continued for an additional period of time. But no additional funds were
paid. *Id.* at 15-16.
- The Amounts claim by Lien Claimants relate to labor and materials
furnished during the last months of the Project. If Mortgages Limited
had not induced subcontractors and suppliers to continue working by
representing that additional loans were forthcoming, Lien Claimants
would be owed less money. *Id.* at 16.
- The court cannot find as a matter of law on the current state of the record
that Mortgages Limited intended, expected, and is equitably entitled to
the benefit of the [First] Deed of Trust's priority.

1 *Id.* at 16.

2 Summit is informed that many of the facts on which the Court based its holding in
3 *Gould v. Evans Associates* exist here:

- 4 • This is also a case where neither the lender nor the owner has paid for
5 the labor and materials furnished by mechanic's lien claimants.
- 6 • This is also a case where the lien claimants seek relief because the
7 construction lender Mortgages Limited failed to fully fund the
8 construction loan and now seeks priority over those who improved the
9 Project.
- 10 • This is also a case where Mortgages Limited is not entitled to equitable
11 relief because its inequitable actions and inaction created the underlying
12 default that prevented the Project from being completed and resulted in
13 the recording of the mechanics' and materialmen's liens.
- 14 • This is also a case in which, during the construction, the funding of
15 Mortgages Limited became erratic.
- 16 • This is also a case in which assurances by Mortgages Limited led to
17 additional work and improvements without payment.
- 18 • This is also a case where the amounts claimed by Summit relate to labor
19 and materials furnished during the last months of the Project.

20 Indeed, at the very worst for Summit, ML Manager is not entitled to summary judgment
21 on its equitable subrogation claim. Accordingly, ML Manager's representation that it will
22 likely prevail on its equitable subrogation is not accurate.

23 **C. ML MANAGER HAS NOT SATISFIED THE REQUIREMENTS OF 11
24 U.S.C. § 363(f) AND IS NOT ENTITLED TO SELL THE PROPERTY
25 FREE AND CLEAR OF SUMMIT'S LIEN**

26 A debtor can sell property free and clear of liens only under certain limited
27 circumstances, none of which are satisfied here. Pursuant to section 363(f) of the
28 Bankruptcy Code, a debtor may sell property free and clear of any interest in the Property
of an entity other than the estate, only if:

- 29 (1) applicable non-bankruptcy law permits sale of such
30 property free and clear of such interest;
- 31 (2) such entity consents;
- 32 (3) such interest is a lien and the price at which such
33 property is to be sold is greater than the aggregate value

- 1 of all liens on such property;
- 2 (4) such interest is in bona fide dispute; or
- 3 (5) such entity could be compelled, in a legal or equitable
4 proceeding, to accept a money satisfaction of such
interest.

5 11 U.S.C. § 363(f)

6 In this case, ML Manager cannot satisfy any of the factors required under § 363(f).
7 Indeed, ML Manager has not even attempted to establish the specific basis upon which it
8 seeks to sell the Property free and clear of liens. Among other things, Summit has a valid
9 and enforceable lien on the Property, Summit does not consent to the sale of the Property
10 free and clear of its lien, and there is no evidence that the proposed sale price is greater
11 than the aggregate of all liens on the Property. *Clear Channel Outdoor, Inc. v. Knupfer*
12 (*In re PW, LLC*), 391 B.R. 25, 39-41 (B.A.P. 9th Cir. 2008) (“§363(f)(3) does not
13 authorize the sale free and clear of a lienholder's interest if the price of the estate property
14 is equal to or less than the aggregate amount of all claims held by creditors who hold a
15 lien or security interest in the property being sold.”) In the event ML Manager attempts to
16 assert some specific grounds for approving a sale free and clear of liens, Summit requests
17 additional time to respond, as Summit has not been provided a fair opportunity to address
18 the specific basis under § 363(f) that ML Manager may consider applicable.

19 **D. CONFIRMATION OF UNRESERVED INDEMNIFICATION BY TITLE**
20 **INSURANCE COMPANY.**

21 Without waiving its objection to a sale free and clear of liens, Summit requests that
22 any such sale free-and-clear of liens, should it be permitted, be conditioned upon title
23 insurance company providing, among other things, written confirmation that it will pay
24 Summit’s claim without reservation or condition, if Summit prevails on lien priority in the
25 state court proceedings. ML Manager asserts, “it is likely that if the mechanics lien
26 claimants prevail in the State Court proceedings that their claims will be paid by the title
27 insurance company.” (Doc. 2923 5:10-12). This representation is worth nothing to
28 Summit and does not provide the adequate protection of its interest, to which it is entitled.

1 Accordingly, as a condition to such sale, Summit requests written, unreserved
2 confirmation of title insurance indemnification to the full extent of Summit's claim.

3 **E. SUMMIT REQUESTS SUFFICIENT CASH PROCEEDS BE POSTED**
4 **AS COLLATERAL FOR ITS INTEREST IN THE PROPERTY.**

5 Should this Court be inclined to allow ML Manager to sell the Property, Summit
6 requests that its lien attach to the sales proceeds and the Court order that sufficient
7 collateral, either in the form of sale proceeds or other funds, be set aside in an escrow
8 account to protect Summit to the full extent of its claim should it prevail on lien priority.
9 It is anticipated that the state court should be able to issue a determination of lien priority
10 prior to the end of 2010. As such, any funds held will not cause harm or prejudice to ML
11 Manager. Failure to order such adequate protection collateral could and would deprive
12 Summit Builders of its due justice and right to recover funds it is owed and the adequate
13 protection of its interest to which it is entitled under the Bankruptcy Code.

14 **F. CONCLUSION**

15 Based on the foregoing, Summit objects to ML Manager's request to sell the
16 subject property free and clear of all liens and encumbrances as such a sale is not
17 permitted under applicable bankruptcy law and Summit would suffer severe harm and
18 prejudice by such action. Accordingly, Summit requests this Court to:

19 (1) deny the request to sell the Property;

20 (2) alternatively, delay the sale until after the state court has determined the lien
21 priority on the property and proper payments have been made;

22 (3) requiring (i) the title company insuring this property be required to avow to the
23 court that it will provided unreserved and unconditional coverage and remit payment to
24 Summit Builders should it prevail on lien priority; or (ii) order that sufficient sales
25 proceeds or other suitable collateral be set aside in an escrow account to ensure full
26 payment to Summit should it prevail on lien priority; and

27 (4) award other and further relief as the Court deems just and proper.
28

1 Dated this 21st day of September, 2010.

2 GRAIF BARRETT & MATURA, P.C.

3
4 By: /s/ Jay R. Graif

5 Jay R. Graif
6 Jeffrey C. Matura
7 Nathan D. Meyer
8 1850 N. Central Avenue, Suite 500
9 Phoenix, Arizona 85004
10 *Attorneys for Jeffrey C. Stone*
11 *dba Summit Builders*

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

#	EXHIBIT	DATE
1	First DOT	3/31/06
2	Construction Contract	4/24/06
3	Summit Project Log	various
4	Duryea EMT Short	12/16/08
5	Daily Project Journal	various
6	Wescor Subcontract	7/28/06
7	Canyon Country Invoice 8389	8/15/06
8	Preliminary 20-Day Notice	8/3/06
9	Canyon Country Invoice 8393	8/25/06
10	Magnus Title Disbursement Summary	8/14/06
11	Second DOT	8/22/06
12	Lien	7/3/08
13	Order Denying ML Summary Judgment	9/7/10

1 ORIGINAL e-filed with Court
this 21st day of September, 2010

2
3 COPY of the foregoing e-mailed
to:

4 FENNEMORE CRAIG, P.C.
5 Cathy L. Reece (005932)
6 Keith L. Hendricks (012750)
7 3003 N. Central Ave., Suite 2600
8 Phoenix, Arizona 85012
9 Email: creece@fclaw.com

10 Copy of the foregoing e-mailed or
11 mailed this day to the 31 Pass-Through
12 investors, the mechanics lien claimants and
13 the parties on the ECF distribution list.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
/s/ Kelly Donaldson

4816-9855-5655, v. 1

First Deed of Trust

EXHIBIT 1

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012

**DEED OF TRUST, ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

Loan No. **848506** March 27, 2006

Secured Loan Amount: **38,500,000.00**

"Trustor" (individually and collectively):

Osborn III Partners, LLC, an Arizona limited liability company
9500 E. Ironwood Square Dr., Ste. 201
Scottsdale, AZ 85258

"Trustee":

Scott M. Coles, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

"Beneficiary":

Mortgages Ltd., an Arizona Corporation
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust"), is made by and among Trustor, Trustee and Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the "Note"), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the "Loan Documents." Trustor understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Beneficiary's behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor's present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in Maricopa County, Arizona, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Real Property"), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the "Improvements");
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the "Property Income");
- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;
- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;
- f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;



© 1998 Mortgages Ltd.

**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**

Loan No. 848306

March 27, 2006

Page 2

g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;

h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;

i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and

j. All proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S WARRANTIES

Trustor hereby warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and

b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;

b. Payment of all sums due under the Note, which include, but are not limited to, the principal amount of the 'Initial Funding' of \$8,500,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;

c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);

d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;

e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including, without limitation, taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by the guarantor or guarantors of the Note, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;



© 1998 Mortgages Ltd.

**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 848306
March 27, 2006
Page 3

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; and

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** In the event that the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within ninety (90) days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that ninety (90) day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within thirty (30) days of such request. If such updated appraisal is not received by Beneficiary within that thirty (30) day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.

c. **Insurance and Casualty.** Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of \$1,000,000 or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies along with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. **Litigation.** If an event of default occurs under the Loan Documents, then Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes, but is not limited to, Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including, but not limited to, all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. **Property Payments.** Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**

Loan No. 848306

March 27, 2006

Page 4

(1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;

(2) All encumbrances, charges and liens on the Trust Property or any part thereof; and

(3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including, but not limited to, all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. **Right to Cure.** Should Trustor fail to make any payment or to do any act as required hereby, then Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to hereto jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.

g. **Expenditures.** Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, along with interest thereon, shall become a part of the debt secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. **Impounds.** Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds shall be held by Beneficiary and may be commingled with other impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. **Financial Statements.** Trustor shall furnish in form and substance satisfactory to Beneficiary: (a) within ninety (90) days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within ninety (90) days after the end of each calendar year, financial statements for such year from Trustor and all Guarantors of the loan; (c) within thirty (30) days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and all Guarantors of the loan; and (e) such other financial information concerning the Trust Property, Trustor, or Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Estate at any time, upon reasonable notice to Trustor.

j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including, without limitation, substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor nor any employees, agents, tenants, contractors or subcontractors of Trustor or any other persons occupying or present upon the Trust Property shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted use of the Trust Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor.



© 1998 Mortgages Ltd.

**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**

Loan No. 848306

March 27, 2006

Page 5

(iii) Trustor shall be solely responsible for, and shall indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including, without limitation: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/DELAY FLEX® MORTGAGE LINE

a. Equity-Flex®. In the event that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, the Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$8,500,000.00 up to the Secured Loan Amount of \$8,500,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ("Advances") on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: In the event Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Paragraph 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

b. Delay-Flex®. In the event that this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:

- (i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;
- (ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;
- (iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;
- (iv) Beneficiary may further condition any delayed funding on endorsements to the Beneficiary's Title Policy insuring the continued validity and priority of the Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;
- (v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary in its sole and absolute discretion, which will occur no earlier than the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and
- (vi) Funding the total Delay-Flex portion of the loan is not to exceed nine (9) months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.

Notice: In the event Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Paragraph 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.



© 1998 Mortgages Ltd.

**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 848306
March 27, 2006
Page 6

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, then notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

In the event any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.

8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
Useful Comment
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or
- f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor hereby grants to Beneficiary, as secured party, a security interest in all personal property, if any, described on Exhibit B attached hereto. Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's covenants and warranties contained in this Paragraph are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and filings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.



© 1991 Mortgages Ltd.

**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 848506
March 27, 2006
Page 7

10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. So long as there is any amount owing under the promissory note (the "Note") secured by this Deed of Trust, prior to the sale of each residential or commercial unit and/or parking unit and/or storage unit (collectively or alternatively a "Unit"), Trustor shall deliver notice to Beneficiary (a "Closing Notice"). The Closing Notice shall: (i) specifically identify the Unit(s) to be conveyed; (ii) state the purchase price to be paid for such Unit; and (iii) be accompanied by the form of the partial release to be executed by Beneficiary in order to release its security interest under the Deed of Trust in the applicable Unit. Upon receipt of a Closing Notice and confirmation of the closing of the sale of the applicable Unit, and provided Trustor is not in default under this Deed of Trust, Beneficiary shall release the applicable Unit and its appurtenant undivided interest in the common elements, from the lien of this Deed of Trust on the condition that Beneficiary shall have received payment of the Unit Release Payment for the applicable Unit. As used in this Deed of Trust, "Unit Release Payment" means the greater of: (i) 75% of the purchase price paid for the applicable Unit; or (ii) 120% of the product of the total outstanding loan principal secured by this Deed of Trust times the fraction obtained by dividing the square footage of the applicable Unit by the total square footage of all Units then encumbered by this Deed of Trust. Borrower shall cause the Trustee, as escrowee, to pay the proceeds of sale in an amount of not less than the Unit Release Payment directly to Beneficiary by wire-transfer of immediately available funds. The Unit Release Payment shall be applied to the unpaid principal balance of the Note and then to any accrued but unpaid interest.

c. Upon Trustor's written request to Servicing Agent stating that all sums secured hereby have been paid in full, then Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and Note, Trustor hereby absolutely transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (the "Leases"); and

b. All income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").

So long as there shall not have occurred an event of default under this Deed of Trust or any of the Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Trust Property, second to maintenance of insurance policies upon the Trust Property required hereby, third to the expenses of the operation of the Trust Property, including maintenance and repairs required hereby, fourth to the payment of that portion of the indebtedness secured hereby then due and payable, and fifth, the balance, if any, to or as directed by Trustor. In furtherance of this assignment and not in lieu hereof, Beneficiary may require a separate assignment of rents and leases and/or separate specific assignments of rents and leases covering one or more of the Leases. In the event of any conflict between the terms of such separate assignment and this Section 11, the terms of such separate assignment shall control. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of the Trustor, collect the Trust Property income by any method authorized by law and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time.

12. DEFAULT AND REMEDIES

a. Default. Among other things constituting default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor fails to perform any obligation required by and in accordance with the Loan Documents;
- (3) Trustor becomes insolvent;
- (4) Trustor fails to pay Trustor's debts as they mature;
- (5) Trustor admits in writing that Trustor is unable to pay Trustor's debts as they mature;
- (6) Trustor is not paying Trustor's debts as they become due;
- (7) Trustor, any endorser of the Note or any guarantor of the Note files or has filed against them, collectively or

individually, any proceeding under the federal bankruptcy laws now or hereafter existing or any similar statute now or hereafter in effect;



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 848506
March 27, 2006
Page 8

(8) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor or the Note's endorser or guarantor; or

(9) In the event that Jonathon Vento and Donald Zelezniak has secured or secures additional loans through Mortgages Ltd., personally or through any entity in which they possess an ownership interest, the "Additional Loans", (including but not limited to Loan No.(s) 839706 and 848106), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loan(s) or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loan(s), only as to the interest of Jonathon Vento and Donald Zelezniak as individuals and/ or members of the borrowing entity to the extent of their ownership.

b. **Acceleration.** Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects.

c. **Trustee's Sale.** Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to the Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including, but not limited to, the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and the Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. **Deficiency Judgment.** To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. **Foreclosure and Other Remedies.** In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including, but not limited to, all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.

f. **Appointment of Receiver or Mortgagee in Possession.** If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following without prior written consent of Beneficiary or its Servicing Agent:

a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including, but not limited to, any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;

b. If Trustor is a corporation and the controlling interest in Trustor is sold, conveyed or transferred;

c. If Trustor is a limited liability company and any interest in Trustor is sold, conveyed or transferred; or



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 848506
March 27, 2006
Page 9

d. If Trustor is a partnership and any general partnership interest in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, insures to the benefit of and binds the Trustor, Trustee and Beneficiary (collectively, the "Parties") and their agents, representatives, heirs, legatees, devisees, successors and assigns. All liability created hereunder shall be joint and several.

c. **Execution by Third Parties.** Any Trustor signing this Deed of Trust as an accommodation party or surety, or who has otherwise subjected property to this Deed of Trust to secure the debt of another, hereby acknowledges and agrees that Trustor has received good and valuable consideration for that extension of credit and the execution of this Deed of Trust, and hereby waives the benefits of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Sections 12-1566, 33-814, 44-142, 47-3605 and Rule 17(P) of the Arizona Rules of Civil Procedure.

d. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

e. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is Trustor's Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of the Beneficiary.

f. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

g. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.

h. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.

i. **Jury Trial Waiver.** Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary nor any person acting on behalf of Beneficiary has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

j. **Promotion.** Mortgages Ltd. shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including, but not limited to, photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Mortgages Ltd. shall not be held liable to Trustor for the release of Promotional Information.

k. **Modification.** This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

l. **Waiver.** The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

m. **Waiver of Statute of Limitations.** Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.



DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
Loan No. 848506
March 27, 2006
Page 10

n. Waiver of Homestead and Redemption. Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

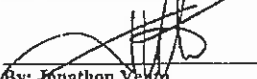
TRUSTOR:

Osborn III Partners, LLC, an Arizona limited liability company

By: Osborn Condominiums, LLC, an Arizona limited liability company
Its: Sole Member

Osborn Lofts Investors, LLC, an Arizona limited liability company
By: ~~OSBORN LOFTS INVESTORS, LLC, an Arizona limited liability company~~
Its: Sole Member

By: Vento Investments, LLC, an Arizona limited liability company
Its: Managing Member

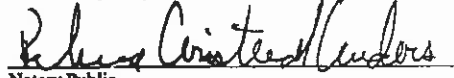

By: Jonathon Vento
Its: Member

STATE OF AZ)
COUNTY OF MARICOPA)

Date of acknowledgement 3/28/06

Acknowledgement of Jonathon Vento

This instrument was acknowledged before me this date by the ~~above~~ subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.


Notary Public

My commission expires 2/10/2007



SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE



**DEED OF TRUST
 ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
 Loan No. 848506
 March 27, 2006
 Page 11

**DEED OF TRUST ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
 COUNTERPART SIGNATURE AND NOTARY PAGE**

Osborn III Partners, LLC, an Arizona limited liability company

By: Osborn Condominiums, LLC, an Arizona limited liability company

Its: Sole Member

Osborn Lofts Investors, LLC, an Arizona limited liability company

By: ~~Osborn Lofts, LLC, an Arizona limited liability company~~

Its: Sole Member

By: Zeltor, LLC, a Nevada limited liability company

Its: Managing Member


 By: Donald J. Zeleznski

Its: Member

By: Z-Don, Inc., a Nevada corporation

Its: Member


 By: Donald J. Zeleznski

Its: President

STATE OF Arizona)
 COUNTY OF Maricopa) ss

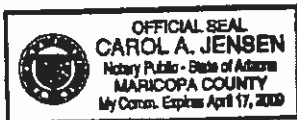
Date of acknowledgement 3-30-06

Acknowledgement of Donald J. Zeleznski

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.


 Notary Public

My commission expires 4-17-09



SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE



DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
Loan No. 848506
March 27, 2006
Page 12

DEED OF TRUST ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
COUNTERPART SIGNATURE AND NOTARY PAGE

Osborn III Partners, LLC, an Arizona limited liability company

By: Osborn Condominiums, LLC, an Arizona limited liability company
Its: Sole Member

Osborn Lofts Investors, LLC, an Arizona limited liability company
By: ~~Osborn Lofts Investors, LLC, an Arizona limited liability company~~
Its: Sole Member

By: KJZ Associates, L.L.C., an Arizona limited liability company

Ryan J. Zeleznak
By: Ryan J. Zeleznak
Its: Member

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

Date of acknowledgement 3/28/06

Acknowledgement of Ryan J. Zeleznak

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

Rebecca Armstrong-Anders
Notary Public

My commission expires 2/10/2007



EXHIBIT "A"

Loan No.: 848506
Borrower: Osborn III Partners, LLC, an Arizona limited liability company

Parcel No. 1:

Lot 8, of ORANGE ACRES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 31 of Maps, Page 14;

EXCEPT the North 22 feet and the South 40 feet thereof.

Parcel No. 2:

Lot 6, of ORANGE ACRES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 31 of Maps, Page 14;

EXCEPT the following described property:

BEGINNING at the Northwest corner of said Lot 6, of ORANGE ACRES, according to Book 31 of Maps, Page 14, records of Maricopa County, Arizona;

THENCE South along the West line of said Lot 6, a distance of 22 feet to a point;

THENCE East along a line 22 feet South of and parallel with the North line of said Lot 6, a distance of 16.66 feet to the beginning of a tangent curve concave Southwesterly and having a radius of 70 feet;

THENCE Southeasterly along the arc of said curve, through a central angle of 90 degrees 56 minutes 41 seconds, a distance of 111.1 feet to a point of tangency with a line lying 22 feet West of and parallel with the East line of said Lot 6;

THENCE South along said parallel line, a distance of 161.07 feet to the beginning of a tangent curve concave Northwesterly and having a radius of 15 feet;

THENCE Southwesterly along the arc of said curve, through a central angle of 89 degrees 04 minutes 00 seconds, a distance of 23.3 feet to a point of tangency with a line lying 40 feet North of and parallel with the South line of said Lot 6;

THENCE West along said parallel line to a point on the West line of said Lot 6;

THENCE South along the West line of Lot 6 to the Southwest corner thereof;

THENCE East along the South line of said Lot 6 to a point of intersection with the East line of the West 24.18 feet of said Lot 6;

THENCE North along said East line, a distance of 33 feet to a point;

THENCE East along a line 33 feet North of and parallel with the South line to a point on the East line of said Lot 6;

THENCE North along the East line of said Lot 6 to the Northeast corner thereof;

THENCE West along the North line of said Lot 6 to the Northwest corner thereof and the TRUE POINT OF BEGINNING; and

EXCEPT the South 33 feet of the following described property:

The South half of Lot 6, ORANGE ACRES, except the West 24.18 feet thereof.

Parcel No. 3:

Lot 10, of ORANGE ACRES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 31 of Maps, Page 14;

EXCEPT the South 40 feet thereof; and

EXCEPT the North 22 feet thereof.

Parcel No. 4:

The West half of Lot 12, of ORANGE ACRES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 31 of Maps, Page 14;

EXCEPT the North 22 feet; and

EXCEPT the North 7 feet of the South 40 feet thereof.

Parcel No. 5:

The East half of Lot 12, of ORANGE ACRES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 31 of Maps, Page 14;

EXCEPT the North 22 feet; and

EXCEPT the South 40 feet thereof.

APN(s): Parcel 1: 130-13-052, Parcel 2: 130-13-048 & 130-13-049,
 Parcel 3: 130-13-054, Parcel 4: 130-13-057, and Parcel 5: 130-13-056

Exhibit "B"

to

Deed of Trust

Borrower Name: Osborn III Partners, LLC, an Arizona limited liability company
Loan No.: 848506

DESCRIPTION OF PERSONAL PROPERTY

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in Paragraph (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof.

Vertical Dashed

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof including, without limitation, all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

(e) Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in Paragraph (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

(f) All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;



© 1998 Mortgages Ltd.

(g) All water stock or water rights relating to the Real Property;

(h) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of the Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;

(i) All proceeds from the sale or other disposition of any of the collateral described above;

(j) All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;

(k) All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;

(l) All of Trustor's rights in any Impound account held by or on behalf of Beneficiary; and

(m) All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

All defined terms used in this Exhibit B to Deed of Trust not defined herein shall have the same meaning as ascribed to such term in the Deed of Trust to which this Exhibit B is attached.

Unofficial Document

Summit Project Log

EXHIBIT 3

01 - SUMMIT BUILDERS PROJECT MANAGEMENT - DAILY JOURNAL LOG

Project 05-00258 - Ten Lofts



Journal ID	Date	Prepared By
1392	05/18/2006	01 Dennis Short
Activites:		
1718	06/30/2006	01 Brian Forbes
Activites:		
1804	07/13/2006	01 Brian Forbes
Activites:		
1847	07/20/2006	01 Dennis Short
Activites:		
1857	07/21/2006	01 Dennis Short
Activites:		
1875	07/25/2006	01 Dennis Short
Activites:		
1899	07/31/2006	01 Dennis Short
Activites:		
1936	08/04/2006	01 Dennis Short
Activites:		
1956	08/07/2006	01 Dennis Short
Activites:		
1960	08/08/2006	01 Dennis Short
Activites:		
1976	08/09/2006	01 Dennis Short
Activites:		
1987	08/11/2006	01 Dennis Short
Activites:		
2004	08/14/2006	01 Dennis Short
Activites:		
2007	08/15/2006	01 Dennis Short
Activites:		



01 - SUMMIT BUILDERS PROJECT MANAGEMENT - DAILY JOURNAL LOG

Project 05-00258 - Ten Lofts

Journal ID	Date	Prepared By
2030	08/17/2006	01 Dennis Short
2047	08/18/2006	01 Dennis Short

Met with Tony on the design on the Mech units

Activities:
Activities:

END OF REPORT

Report Parameters

Project: 05-00258
 Journal ID:
 Prepared By:
 From Date:
 To Date:

Run Date: 01/08/2009
 Run Time: 02:58 PM
 Operator: CELIAS
 Report Code: PM4011

Duryea EMT Short

EXHIBIT 4

Joel Spencer

From: Dennis Short
Sent: Tuesday, December 16, 2008 1:00 PM
To: Peter Schweizer
Cc: Joel Spencer
Subject: FW: 10 Lofts

From: Steve Duryea [mailto:sduryea@hookengineering.com]
Sent: Tuesday, December 16, 2008 12:58 PM
To: Dennis Short
Subject: 10 Lofts

Dennis:

Our first day on this jobsite was on 7-21-06.

Hope this helps.

C. Steve Duryea, Jr., R.L.S.
Hook Engineering, Inc.
Vice President - Director of Operations
3221 N. 24th St., Suite 10
Phx., AZ 85016
<http://hookengineering.com>

Ph: 602-954-0166
Fx: 602-956-0289
M: 602-300-2999

Daily Project Journal

EXHIBIT 5



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Project 05-00258 - Ten Lofts

Page: 1 of 1
Date: 01/08/2009
Time: 02:53 PM

Journal ID: 1847

Date: 07/20/2006

Job: 05-00258

Low Temperature: 96
High Temperature: 109

Precipitation:
Rain Day: N

Sky: cloudy
Wind: NE 6

Activities:

Meet Site inspector on site discussed hauling off dirt (Haul off permit, track out, Sweeper on Street, Noise and Starting Time / Normal 1/2 before Sun-Up
If Owner made an agreement for a certain time then it would change.
Land Scaper hauling granet on 11 Lofts for land scaping around site

Labor:

Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes

Field Force:

Comp	Notes

Own Equipment:

Company	Eqp #	Eqp Name	Tran Code	Job	Phase	Cat.	Hours	Notes

Trade Equipment:

Owner	Equipment	Description

Materials:

Comp	Item Code	Quantity	WM Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel.	Line	Notes

Visitors:

Time	Company	Visitor Name	Remarks

Safety:

--

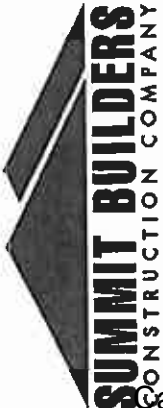
Additional Notes:

Nr.	User	Date	Subject	Comment	Closed

Certified By: SUMMIT BUILDERS

Signed: _____
Dennis Short

Date: 01/08/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Project 05-00258 - Ten Lofts

Page: 1 of 1
Date: 01/09/2009
Time: 06:48 AM

Job: 05-00258

Date: 07/21/2006

Journal ID: 1857

Sky: cloudy
Wind: NE 7

Precipitation:
Rain Day: N

Low Temperature: 91
High Temperature: 113

Activities:

Met Hook Engineering on site they are laying out for over X and removal
Met Tim Maxan on some water proofing details

Labor:	Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes
--------	------	------------	---------------	-----	-------	------	--------------	----------	-----------	-------

Field Force:

Comp Notes

Own Equipment:

Company	Eq #	Eq Name	Tran Code	Job	Phase	Cat.	Hours	Notes
---------	------	---------	-----------	-----	-------	------	-------	-------

Trade Equipment:

Owner	Equipment	Description
-------	-----------	-------------

Materials:

Comp	Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel.	Line	Notes
------	-----------	----------	----	----------	------	-------------	---------	--------	-----------	------	------	-------

Visitors:

Time	Company	Visitor Name	Remarks
------	---------	--------------	---------

Safety:

Additional Notes:

Nr. User	Date	Subject	Comment	Closed
----------	------	---------	---------	--------

Certified By: SUMMIT BUILDERS

Signed:

Dennis Short

Date: 01/09/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Page: 1 of 1
Date: 01/09/2009
Time: 06:49 AM

Project 05-00258 - Ten Lofts

Journal ID: 1875 Date: 07/25/2006 Job: 05-00258

Low Temperature: 89
High Temperature: 112

Precipitation:
Rain Day: N

Sky: pt cloudy
Wind:

Activities:

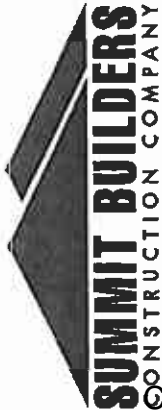
Meeting with The City of Scottsdale yesterday the set the start date for Tuesday, August 1 2006
West Core has Canyon Country hauling the dirt for them and doing the over-x , they have sprinklers going to help with dust control
Land scaper working 11 lofts around the exterior of the fence

Labor:		Employee Name		Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes	
Comp	Employee #										
Field Force:		Notes									
Comp											
Own Equipment:		Eqp #	Eqp Name	Tran Code	Job	Phase	Cat.	Hours	Notes		
Company											
Trade Equipment:		Equipment	Description								
Owner											
Materials:		Comp Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Line Notes
Visitors:		Time	Company	Visitor Name							
Safety:											
Additional Notes:											
Nr. User		Date	Subject								Closed

Certified By: SUMMIT BUILDERS

Signed: _____
Dennis Short

Date: 01/09/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Page: 1 of 1
Date: 01/09/2009
Time: 06:49 AM

Project 05-00258 - Ten Lofts

Job: 05-00258

Date: 07/31/2006

Journal ID: 1899

Sky: pt cloudy
Wind: wsw 5-10

Precipitation:
Rain Day: N

Low Temperature: 83
High Temperature: 94

Activities:

received copier and faxes this morning
Talked to Cacyon Country they will have a loader and water truck on site tomorrow
Talked to Evan at West Core they will be on site tomorrow

Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes			
Field Force:												
Own Equipment:												
Company	Eqp #	Eqp Name	Tran Code	Job	Phase	Cat.	Hours Notes					
Trade Equipment:												
Owner	Equipment	Description										
Materials:												
Comp	Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel.	Line	Notes
Visitors:												
Time	Company	Visitor Name	Remarks									
Safety:												
Additional Notes:												
Nr. User	Date	Subject	Comment									
Closed												

Certified By: SUMMIT BUILDERS

Signed: _____
Dennis Short

Date: 01/09/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Project 05-00258 - Ten Lofts

Page: 1 of 1
Date: 01/09/2009
Time: 06:50 AM

Job: 05-00258

Date: 08/04/2006

Journal ID: 1936

Sky: pt cloudy
Wind: ese 6

Precipitation:
Rain Day: N

Low Temperature: 82
High Temperature: 97

Activities:

continuing to export dirt about 2000 yds per day

Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes	
Field Force:										
Comp										
Canyon Country Contracting Inc									1 loader operator / 1 water truck driver / 1 person running the sweeper /	
Own Equipment:										
Company	Eqp #	Eqp Name	Tran Code	Job	Phase	Cat.			Hours Notes	
Trade Equipment:										
Owner	Equipment	Description								
Materials:										
Comp	Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Line Notes
Visitors:										
Time	Company					Visitor Name		Remarks		
Safety:										
Additional Notes:										
Nr. User		Date		Subject		Comment				Closed

Certified By: SUMMIT BUILDERS

Signed:

Dennis Short

Date: 01/09/2009



01 - SUMMIT BUILDERS PROJECT MANAGEMENT - DAILY JOURNAL

Project 05-00258 - Ten Lofts

Job: 05-00258

Date: 08/07/2006

Journal ID: 1956

Sky: pt cloudy
Wind: SSE 6

Precipitation:
Rain Day: N

Low Temperature: 83
High Temperature: 104

Activities:

Canyon Country haughing dirt aprox 2000 yds

Labor:		Job		Phase		Cat.		Normal Hours	OT Hours	DOT Hours	Notes
Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes		
Field Force:											
Comp		Notes									
Own Equipment:											
Company	Eqp #	Eqp Name	Tran Code	Job	Phase						Hours Notes
Trade Equipment:											
Owner	Equipment	Description									
Materials:											
Comp Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel.	Line	Notes
Visitors:											
Time	Company					Visitor Name					Remarks
Safety:											
Additional Notes:											
Nr. User	Date	Subject									Comment
											Closed

Certified By: SUMMIT BUILDERS

Signed: _____
Dennis Short

Date: 01/09/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Page: 1 of 1
Date: 01/09/2009
Time: 06:51 AM

Project 05-00258 - Ten Lofts

Journal ID: 1960 Date: 08/08/2006 Job: 05-00258

Low Temperature: 84
High Temperature: 103

Precipitation:
Rain Day: N

Sky: pt cloudy
Wind: S 10

Activities:

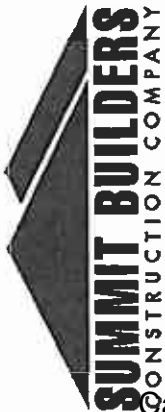
Canyon Country hauling dirt moving about 2000 yds
Owners Meeting Steve, Jayson, (Grace), Dennis and Don (Summil)

Labor:		Employee Name		Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes	
Comp	Employee #	Employee Name	Job	Phase	Cat.						
Field Force:		Notes									
Comp											
Own Equipment:		Eqp #	Eqp Name	Job	Phase	Cat.				Hours Notes	
Company											
Trade Equipment:		Equipment	Description								
Owner											
Canyon Country Contr			1 loader, 1 water truck, about 15 leased trucks								
Materials:		Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Line	Notes
Comp	Item Code										
Visitors:		Company	Visitor Name								Remarks
Time											
Safety:											
Additional Notes:		Date	Subject								Comment
Nr. User											Closed

Certified By: SUMMIT BUILDERS

Signed: _____
Dennis Short

Date: 01/09/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Project 05-00258 - Ten Lofts

Page: 1 of 1
Date: 01/09/2009
Time: 06:51 AM

Journal ID: 1976

Date: 08/09/2006

Job: 05-00258

Low Temperature: 84
High Temperature: 103

Precipitation:
Rain Day: N

Sky: pt cloudy
Wind: NW 8

Activities:

Canyon Country moving dirt should be complete tomorrow
APS on site checking a transformer cut off cables

Labor:		Employee Name		Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes		
Comp	Employee #											
Field Force:		Notes										
Comp												
Own Equipment:		Eqp #	Eqp Name	Tran Code	Job	Phase	Cat.	Hours	Notes			
Company												
Trade Equipment:		Equipment	Description									
Owner												
Materials:		Comp Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Line	Notes
Visitors:		Time	Company	Visitor Name	Remarks							
Safety:												
Additional Notes:												
Nr. User		Date	Subject	Comment								

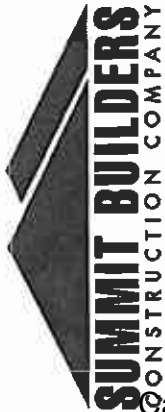
Closed

Certified By: SUMMIT BUILDERS

Signed:

Dennis Short

Date: 01/09/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Project 05-00258 - Ten Lofts

Journal ID: 1987

Date: 08/11/2006

Job: 05-00258

Low Temperature: 81
High Temperature: 100

Precipitation:
Rain Day: N

Sky: PT CLOUDY
Wind: S/ 5-10

Activities:

Canyon country finished yesterday with haugh-off, lowered the water tower sor safety West Core is set the over-x on Tuesday adn the under-ground site utilities equipment is being delivered, today and Monday Had Start up meeting yesterday at office, met with Terry (with Todd and Ass) went over some RFIs couldnt get on line yesterday

Labor:

Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes

Field Force:

Comp	Notes

Own Equipment:

Company	Eqp #	Eqp Name	Tran Code	Job	Phase	Cat.	Hours Notes

Trade Equipment:

Owner	Equipment	Description

Materials:

Comp	Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Line Notes

Visitors:

Time	Company	Visitor Name	Remarks

Safety:

Additional Notes:

Nr. User	Date	Subject	Comment	Closed

Certified By: SUMMIT BUILDERS

Signed: _____

Dennis Short

Date: 01/09/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL
Project 05-00258 - Ten Lofts**

Journal ID: 2004

Date: 08/14/2006

Job: 05-00258

Low Temperature: 80
High Temperature: 99

Sky: PT CLOUDY
Wind: SW 11

Precipitation:
Rain Day: N

Activities:

West Core dillivering equipment to site / recived one scrapper. Suppose to start over-x tommrow

Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes			
Labor:												
Field Force:												
Own Equipment:												
Company	Eq #	Eq Name	Tran Code	Job	Phase	Cat.	Hours Notes					
Trade Equipment:												
Owner	Equipment	Description	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Line	Notes
Materials:												
Comp	Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Line	Notes	
Visitors:												
Time	Company	Visitor Name	Remarks									
Safety:												
Additional Notes:												
Nr. User	Date	Subject	Comment									

Closed

Certified By: SUMMIT BUILDERS

Signed:

Dennis Short

Date: 01/09/2009



01 - SUMMIT BUILDERS PROJECT MANAGEMENT - DAILY JOURNAL

Page: 1 of 1
Date: 01/09/2009
Time: 06:52 AM

Project 05-00258 - Ten Lofts

Journal ID: 2007

Date: 08/15/2006

Job: 05-00258

Low Temperature: 80
High Temperature: 100

Precipitation:
Rain Day: N

Sky: PT Cloudy
Wind: WSW 5

Activities:

West Core started the over X2 scappers / 1 cat / 1 water truck 6 men
Found 2 old septic holes Speedie (Jason) came out recommended that we slurey them in waiting on letter from speedie/ talked to Peter Rupal from Accura Eng and he recomened the same thing
Met with Tony on the design on the Mech units

Labor:

Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes

Field Force:

Comp	Notes

Own Equipment:

Company	Eqp #	Eqp Name	Tran Code	Job	Phase	Cat.	Hours Notes

Trade Equipment:

Owner	Equipment	Description

Materials:

Comp	Item Code	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel.	Line	Notes

Visitors:

Time	Company	Visitor Name	Remarks

Safety:

Additional Notes:	Date	Subject	Comment

Nr. User

Subject

Comment

Closed

Certified By: SUMMIT BUILDERS

Signed: _____
Dennis Short

Date: 01/09/2009



01 - SUMMIT BUILDERS PROJECT MANAGEMENT - DAILY JOURNAL

Page: 1 of 1
Date: 01/09/2009
Time: 06:54 AM

Project 05-00258 - Ten Lofts

Journal ID: 2030 Date: 08/17/2006 Job: 05-00258

Low Temperature: 78
High Temperature: 101

Precipitation:
Rain Day: N

Sky: PT Cloudy
Wind: SE 5-10

Activities:

Comp	Employee #	Employee Name	Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes
Labor:									

Field Force:	Notes
Comp	

Own Equipment:	Equipment	Description
Company	Eqp #	Eqp Name
	Tran Code	Job
	Phase	Cat.
		Hours Notes

Trade Equipment:	Equipment	Description
Owner		

Materials:	Quantity	WM	Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Line Notes
Comp	Item Code								

Visitors:	Time	Company	Visitor Name	Remarks

Safety:	Additional Notes:	Date	Subject	Comment	Closed

Certified By: SUMMIT BUILDERS
Signed: Dennis Short

Date: 01/09/2009



**01 - SUMMIT BUILDERS
PROJECT MANAGEMENT - DAILY JOURNAL**

Page: 1 of 1
Date: 01/09/2009
Time: 06:55 AM

Project 05-00258 - Ten Lofts

Journal ID: 2047 Date: 08/18/2006 Job: 05-00258

Low Temperature: 79
High Temperature: 103

Precipitation:
Rain Day: N

Sky: pt cloudy
Wind: N 5-10

Activities:

Labor:		Employee Name		Job	Phase	Cat.	Normal Hours	OT Hours	DOT Hours	Notes
Comp	Employee #									
Field Force:		Notes								
Comp										
Own Equipment:		Eqp #	Eqp Name	Tran Code	Job	Phase	Cat.		Hours Notes	
Company										
Trade Equipment:		Equipment	Description							
Owner										
Materials:		Comp Item Code	Quantity	WM Ticket #	Time	Received By	Contact	Vendor	PO Number	Rel. Ltrb Notes
Comp										
Visitors:		Time	Company	Visitor Name						Remarks
Time										
Safety:										
Additional Notes:		Nr. User	Date	Subject						Comment
										Closed

Certified By: SUMMIT BUILDERS

Signed: _____
Dennis Short

Date: 01/09/2009

Wescor Subcontract

EXHIBIT 6



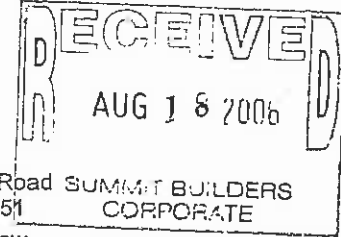
3333 E. Camelback Road
Suite 122
Phoenix, AZ 85018

Phone: 602-840-7700
Fax: 602-840-6897

Subcontract Agreement

No. 525802301

BO



Subcontractor: Wescor General Inc.
3922 E University,
Suite E-6
Phoenix, AZ 85034
Contact: Chris Escarcega
Phone: 602-414-0030
Fax: 602-414-0050

Date: 07/28/2006
Project: 05-00258
X (Ten) Lofts
7126 East Osborn Road
Scottsdale, AZ 85251
Contact: Don Mellow
Phone: 602 840 7700
Fax: 602 840 6897

FILE
Office

Subcontractor's approval of this entire Subcontract Agreement shall be confirmed by executing Subcontractor's signature on the last page of the Subcontract Agreement Terms and Conditions

The following attached documents are included in this agreement:

1. Summit Builders Subcontract Agreement General Conditions
2. Summit Builders Subcontract Agreement Terms and Conditions

SCOPE OF WORK

Furnish all labor, materials, tools, supervision, equipment and incidentals necessary to complete the work specified herein per Contract Documents, plans, specifications, and all addenda as prepared by the Architect and enumerated on Attachment 'A', Drawing Log, to include but not limited to:

SPECIFICATION SECTIONS:
Division 1 - General Requirements
Specification Section (s)-

ATTACHMENTS:

- Attachment D – Labor Rate Matrix
- Attachment F – Subcontractor Bid Information
- Attachment G – Addendum #1, dated January 16,2006
- Attachment H – Specification Index
- Attachment I – Structural Detail Matrix
- Attachment K – Subcontract General Requirements Supplement Information
- Attachment M – Value Engineering

This Subcontractor shall furnish all labor, material, and equipment necessary to perform all work required to complete their specific contract related work on this project. This work shall conform to the conditions set forth in the plans and specifications and include any item of labor, equipment, service and/or material reasonably inferred by the plans an/or specifications or customarily furnished by a Subcontractor performing work in this trade area. The Subcontractor is to also include, but not limited to the following items.

SCOPE OF WORK

- ~~1. ABC for temporary fire lane to comply with City of Scottsdale and ADEQ requirements.~~ *MO*
2. Accepts summit terms & conditions
3. All fill material shall be free of vegetative matter, deleterious or foreign material and rocks and lumps having a diameter of more than 6 inches, or as provided for in the soils report for this project.
4. All import, compaction, excavation, grading and paving to be in conformance and compliance with plans prepared by Todd and Associates, PK Land Consulting Civil Engineers and soils report prepared by Acura Engineering dated 4-20-2004
5. All pads and parking to be +/- .10 unless agreed to otherwise with the Contractor's Project Manager.
6. All Paving rough grades shall be in accordance with the civil drawings and the Soils report.
- ~~7. Backfill and compaction around all structures including building foundations, site walls and foundations and curbs.~~ *MO*
- ~~8. Backfill garage wall around Foundation drain for proper drainage, installed by others~~ *MO*
- ~~9. Backfill of signage planters~~ *MO*
- ~~10. Backfill retaining walls~~ *MO*
11. Benchmark, control points and grade staking by others. Maintenance of engineering controls after initial staking by subcontractor. Any grade checking, or other misc. staking required outside of engineered staking by others, will be by this Subcontractor
12. Bldg. Pad to be laser leveled to plus or minus one tenth of a foot
13. Cleanup and removal of all surplus materials, debris, trash, spoils and rubbish from jobsite as directed by Summit Builders for Buesing scope only.
14. Clear, grub, strip and remove all vegetation, roots, and debris from the building area. For the remainder of the site, this Subcontractor shall remove all stumps and subsurface roots and all matted roots larger than three inches from the site
15. Contractor will communicate and coordinate with onsite materials testing lab. Lab to be under the employment of the Owner.

INITIAL *AB*



3333 E. Camelback Road
Suite 122
Phoenix, AZ 85018

Phone: 602-840-7700
Fax: 602-840-6897

SCOPE OF WORK (cont)

- 16. Conformance and or compliance with the Baseline Construction Schedule and or future revisions by Summit Builders Management
- 17. Construct building pads to sub grade, scarify and compact per spoils report
- 18. Coordinate scheduling of all testing and special inspections for your work with Summit Builders site supervision.
- 19. Coordination and cooperation as directed by Summit Builders on site supervision during the course of construction.
- 20. Cut & fill, import as necessary.
- 21. DEPTH AND MIXING OF FILL LAYERS - Fill material shall be placed in layers, which when compacted shall not exceed 6 Inches. Each layer shall be placed evenly and thoroughly mixed during spreading to ensure uniformity of moisture throughout each layer.
- 22. Do not allow water to accumulate in excavating and grading areas. Remove water to prevent softening of compacted areas, and soil changes detrimental to stability of sub grades and foundations.
- 23. DUST CONTROL - Subcontractor shall make every effort to conform continuously to the requirements of the governing authorities air pollution control ordinances, and shall moisten construction roads to eliminate dust until such time as its work is complete.
- 24. EXCESS WATER - Remove and replace, or scarify and air dry, soil material that is too wet to permit compaction to specified density.
- 25. Export (no stockpiling onsite), unless approved and coordinated with Construction Manager. All dirt that is required to be used in the final earthwork scope shall be returned to the site at no additional cost
- ~~26. Export dirt for this Subcontractors work. Subcontractor to provide haul off for work by other trades during the course of the project.~~ *SP*
- Minimum yardage to be negotiated and included in this Subcontract. *PER C.O. As per insurance*
- 27. FILL COMPACTION - Densities as per soils report. Compaction equipment shall be of such design that it will be able to uniformly compact the fill to the specified density. Compaction of each layer shall be continuous over its entire area.
- ~~28. Final grading to plus or minus one tenth of a foot will be done for garage pad, sidewalks, concrete paving, light poles, site walls, and after underground utilities are in place. Work will be considered complete when accepted in writing by Summit.~~ *SP*
- 29. Footing overex to 2'-0" below the lowest footing in accordance with the soils report.
- 30. Hydrant meter for dust control required as a result of this work. Remove hydrant at the completion of initial earthwork mobilization. Subsequent work will use the water source provided by Summit Builders
- ~~31. Import fill as required for a balanced site, including but not limited to 12" of suitable soil or granular fill for garage pad. Import fill also required for backfill of pool area to +/- 30 from bottom of pool structure.~~ *SP*
- 32. Import or export of material as well as all spoils generated by others are the sole responsibility of the Subcontractor to assure a balanced site.
- 33. Include for haul permit and truck traffic signs (as necessary)
- ~~34. Installation of SWPPP materials and maintenance of same until not required by regulatory agencies.~~ *MA*
- ~~35. Interior building backfill as required to complete scope of work.~~ *MA*
- 36. Locate all existing active utilities on site prior to commencing earthwork operations by implementing and maintaining a Blue Stake ID # for the project. Protect and maintain in place all existing utilities. All costs incurred to repair any utilities incurred that are damaged by this subcontractor, without a current blue stake will be the responsibility of this Subcontractor.
- 37. Maintain access through project during Grading & Earth work operations.
- 38. Meets insurance requirements
- 39. Multiple move-ins as required by the Contractor to accommodate the phasing of the project and the staging of materials. This project will require at least two mobilizations for initial overex operations. ~~At least two mobilizations for building backfill. At least two mobilizations for fine grading operations. At least one mobilization for pool area backfill.~~ *MA*
- 40. Multiple move-ins to remove spoils from other trades. Negotiated price for yardage to include mobilization cost.
- 41. OPTIMUM MOISTURE - Where sub grade or layer of soil material must be moisture conditioned before compaction, uniformly apply water to surface of sub grade, or layer of soil material, to prevent free water from appearing on surface
- 42. Over excavation and recompaction as required by the Geotechnical Engineering Report.
- 43. Provide all material, labor, equipment, service, etc necessary and incidental for the complete Earthwork and Paving for the project site.
- 44. Provide positive drainage away from the proposed building at all times.
- 45. RECONDITIONING COMPACTED AREAS - When completed compacted areas are disturbed by this Subcontractor's subsequent construction operations or by adverse weather, scarify surface, then re-shape and compact to required density prior to further construction.
- 46. Removed soil may not be used for structural fill.
- 47. Repair and re-establish grades in settled, eroded, and rutted areas to specified tolerances.
- 48. SEDIMENT AND EROSION CONTROL - Subcontractor shall make every effort to conform continuously to the requirements of the approved Storm Water Pollution Prevention Plan (SWPPP) during the course of its work.
- 49. Signed acceptance of Bid Information
- 50. Soil materials specifications shall be as defined in the soils report for this project.
- 51. STOCKPILES - Stockpile satisfactory excavated materials where directed, until required for backfill or fill operations. Place and shape stockpiles for proper drainage. Contractor to determine the quantity of material to remain on-site or to be removed
- 52. Street use or hauling permits is included in this subcontractor cost.
- 53. Subcontractor agrees, at no additional cost to the Contractor, to provide satisfactory construction to correct all work of excavation if extended below the elevations and perimeters indicated or specified.
- 54. Subcontractor has included the cost of all approved import material as required to comply with the requirements within the civil engineering documents.

INITIAL MA B



3333 E. Camelback Road
Suite 122
Phoenix, AZ 85018

Phone: 602-840-7700
Fax: 602-840-6897

Subcontract Agreement

No. 525802301

- ~~55. Subcontractor includes all handwork, compaction and equipment required adjacent to the building which may be required in the performance of his work.~~ *Mon*
- 56. Subcontractor to maintain a clean work environment at all times by organizing materials in locations designated by Contractor and keeping these locations free of trash and debris.
- 57. Subcontractor to re-process, scarify, re-compact all areas if required at the time of final grading and in accordance with the requirements of the Soils Engineer and Regulatory Agencies.
- 58. Subcontractor to secure water meter and pay for any/all fees as required during performance of his work.
- 59. SUBGRADE COMPACTION - After the foundation for the fill has been cleared and scarified, it shall be diced or bladed until it is free of large clods, brought to the proper moisture content and compacted to the specified density as provided for in the soils.
- 60. Submit Certificates of Compliances indicating that material to be Incorporated in work meet specifications.
- 61. Submitted worker hourly rates.
- 62. SUBSURFACE CONDITIONS - Subcontractor shall formulate its own conclusions as to the subsurface conditions and shall remove all materials to the design subgrades indicated or as directed by the soils engineer.
- 63. SURFACE WATER - Establish and grade drainage patterns and flow line inverts required for proper drainage. Grade areas adjacent to building lines to drain away from structures and to prevent ponding.
- 64. Testing by owner. Cost of retesting due to failed tests by grading/paving contractor.
- 65. This Subcontractor includes keeping clean by all means necessary, even street sweeping as required for all activities that introduce debris in the adjacent roadways, in a timeframe as directed by the Construction Managers.
- 66. This Subcontractor includes removing and replacing any site fencing that is disturbed for activities by this Subcontractor only.
- 67. This Subcontractor to file a Notice of Intent with governing agencies, and provide a Notice of Termination at the completion of scope of work. Copies to be provided to Summit Builders
- 68. Tie off all utilities and mark on permanent structures, and maintain previously recorded utilities and accurately record location of such utilities on the Project As-Builts
- 69. ~~Two (2)~~ construction entrances complying in depth and size with Maricopa County regulations. Maintain track out pads to comply with Maricopa County requirements. Maintenance of same until Completion of building pads.
- 70. Uniformly grade all areas covered by the project, including excavated and filled sections and adjacent transition areas(IE: between buildings, on -site structures, sidewalks adjacent to buildings and paving, banks and slopes, etc.).
- 71. UNSUITABLE SOILS - Remove unsatisfactory soil materials encountered that extend below required elevations, to additional depth directed by soils engineer.
- 72. WET MATERIAL - Soil material that has been removed because it is too wet to permit compaction may be stockpiled or spread and allowed to dry. Assist drying by harrowing or pulverizing, until moisture content is reduced to a satisfactory value.
- 73. Conformance and or compliance with the Baseline Construction Schedule and or future revisions by Summit Builders Management
- 74. Includes all accepted Value Engineering options pertaining to this scope of work.
- 75. Includes Addendum #1.
- 76. Includes all market increases thru completion of this scope of work.
- 77. Bid should include multiple mobilization trips to the job site as required.
- 78. Subcontractor acknowledges and agrees that if any discrepancies are found between the drawings and specifications the more stringent requirement will be followed at no additional cost to the Contractor.
- 79. Subcontractor is to include all contingencies which may arise and which may be required. No additional compensation will be permitted for failure to fully ascertain all aspects of this Project.
- 80. Upon completion of the layout, it is the responsibility of this subcontractor to review all survey information and notify Summit's field representative if it discovers an error in the layout, prior to commencing the work.
- Asphalt Paving
- ~~81. Prime coat~~ *Mon*
- ~~82. Tack coats~~ *Mon*
- ~~83. Grading and compaction of substrate is by this Subcontractor. Suitable backfill is included to achieve acceptable grades before placement of asphalt.~~ *Mon*
- ~~84. Multiple move-ins for paving if required.~~ *Mon*
- ~~85. Asphalt patch @ new drive approaches.~~ *Mon*
- ~~86. Traffic control & barricades.~~ *Mon*
- ~~87. Saw cut, removal, and haul off of existing driveway concrete, and curb scheduled to be replaced is by the Concrete Subcontractor, and per the Contract Documents.~~ *Mon*
- ~~88. No retention will be withheld for mass earthwork scope.~~ *Mon*

CONTRACT SUM

All Work to be completed for the lump sum price of:

Three Hundred Thirty-Five Thousand Two Hundred Twenty-Five Dollars and 00/100

\$ 335,225.00

INITIAL *MB*

**SUMMIT BUILDERS
SUBCONTRACT AGREEMENT
GENERAL CONDITIONS**

1. Subcontractor shall furnish a schedule of values and complete Subcontractor's Sworn Statement of Suppliers and have all other required paperwork completed and submitted to General Contractor prior to submission of first application for payment. (See attached accounting package for required forms.)
2. Coordination with all other trades on the project is part of this Subcontract Agreement.
3. Layout for your work is part of this Subcontract Agreement.
4. Subcontractor shall provide insurance certificates for General Liability, Auto Liability and Workmen's Compensation insurance, naming the referenced project, General Contractor and the Owner as additional insureds.
5. Clean-up and removal from jobsite of all debris created by your scope of work as directed by General Contractor's Construction Manager.
6. Submittals - eight (8) copies and one (1) reproducible of all submittal data, samples, shop drawings, etc. are to be furnished within fifteen (15) days of receipt of this Subcontract Agreement, unless this time requirement is modified.
7. Subcontractor shall forward to General Contractor main office all Material Safety Data Sheets (MSDS) pertaining to its trade per OSHA regulations.
8. In order to be paid for materials stored onsite, Subcontractor must submit its invoice along with legible supplier invoices. No stored material payments will be made without proper back-up and Owner approval.
9. As-built drawings must be kept current and verified on a daily basis. These drawings are made available for Subcontractor's use in the jobsite trailer. If Subcontractor's as-built drawings are not kept current, any damage to any Subcontractor's work or work in progress shall be Subcontractor's responsibility.
10. All close-out documents, including warranty letters, operations and maintenance manuals, extra materials and as-built drawings per specifications shall be submitted to General Contractor prior to submitting final and retention billings.
11. Subcontractor's signature on the last page of the Subcontract Agreement Terms and Conditions indicates Subcontractor's agreement and acceptance of all the terms and conditions contained in this entire Agreement.

INITIAL



PROJECT: X (TEN) Lofts
 Date
 Created: 1/3/2006
 Updated: 3/13/06 9:54 AM

Drawing index included in the GMP for X Lofts

Sheet Symbol	Sheet Name	Drawing date	Stamp Date	Delta #	Delta Date	Received
CIVIL DRAWINGS						
1 of 5	IMPROVEMENT PLANS	12/02/05	12/02/05	N/A	N/A	12/13/2005
2 of 5	GRADING AND DRAINAGE PLAN	12/02/05	12/02/05	N/A	N/A	12/13/2005
3 of 5	GRADING AND DRAINAGE PLAN	12/02/05	12/02/05	N/A	N/A	12/13/2005
4 of 5	PRIVATE WATER AND SEWER PLAN	12/02/05	12/02/05	N/A	N/A	12/13/2005
5 of 5	DETAILS	12/02/05	12/02/05	N/A	N/A	12/13/2005
LANDSCAPE						
LO-1	LANDSCAPE & IRRIGATION LEGENDS AND NOTES	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L1-1	LANDSCAPE PLANTING PLAN	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L1-2	LANDSCAPE PLANTING PLAN	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L1-3	LANDSCAPE PLANTING DETAILS	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L2-1	IRRIGATION PLAN	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L2-2	IRRIGATION PLAN	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L2-3	IRRIGATION DETAILS	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L3-1	HARDSCAPE CONSTRUCTION LAYOUT	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L3-2	HARDSCAPE CONSTRUCTION LAYOUT	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L3-3	HARDSCAPE PAVER LAYOUT	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L3-4	HARDSCAPE DETAILS (NOT INCLUDED FOR CITY REVIEW)	09/08/05	12/09/05	1	10/31/2005	12/13/2005
L3-5	HARDSCAPE DETAILS (NOT INCLUDED FOR CITY REVIEW)	09/08/05	12/09/05	1	10/31/2005	12/13/2005
ARCHITECTURAL						
A0.1	TITLE SHEET	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.2	GENERAL NOTES, SYMBOLS, ABBREV.	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A0.3	CODE ANALYSIS AND EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.4	ENLARGED COURTYARD PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.5	GENERAL NOTES & ACCESSIBLE PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.6	1ST FLR/SITE ACCESS ROUTE/EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.7	2ND FLR/SITE ACCESS ROUTE/EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.8	3RD FLR/SITE ACCESS ROUTE/EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.9	4TH FLR/SITE ACCESS ROUTE/EXITING PLAN	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A.10	OPEN SPACE PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A1.1	SITE PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A1.2	LARGE SCALE PARTIAL PLANS AT 1ST FLOOR	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A1.3	SITE DETAILS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A1.4	SITE DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A1.5	SITE DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.1	UNIT "A" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.2	UNIT "B" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A2.3	UNIT "C" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.4	UNIT "D" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.5	UNIT "E" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.6	UNIT "F" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.7	UNIT "G" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.8	UNIT "H" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.9	UNIT "I" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A2.10	UNIT "K2" ENLARGED PLAN	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A2.11	UNIT "K3" ENLARGED PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.12	UNIT "L" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A2.13	UNIT "L2" & "L3" ENLARGED PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.14	UNIT "M" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A2.15	UNIT "N" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.0	FIRST FLOOR PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.1	SECOND FLOOR PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A3.1.2	SECOND FLOOR DIMENSION PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A3.1.3	THIRD FLOOR PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A3.1.4	FOURTH FLOOR PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A3.1.5	ROOF PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.6	EXTERIOR ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.7	COURTYARD ELEVATIONS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A3.1.8	EXHIBIT FOR ROOF ELEMENTS OVER 50'-0"	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.2.1	CLUBHOUSE & EXERCISE HOUSE FLOOR PLANS & INTERIOR ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.2.2	CLUBHOUSE & EXERCISE HOUSE ROOF PLANS & REFLECTED CEILING PLANS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A3.2.3	CLUBHOUSE EXTERIOR ELEVATIONS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A3.2.4	EXERCISE HOUSE EXTERIOR	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.2.5	ELEVATIONS CLUBHOUSE & EXERCISE HOUSE SECTION & DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005

A4.1	BUILDING SECTIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A4.2	PARTIAL BUILDING SECTIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A4.3	PARTIAL BUILDING SECTIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A5.1	ENLARGED STAIR PLANS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A5.2	ENLARGED STAIR PLANS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A5.3	STAIR SECTIONS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A5.4	STAIR DETAILS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A5.5	ELEVATOR PLANS, DETAILS, AND HOISTWAY SECTION	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A6.1	DOOR SCHEDULE	09/08/05	12/08/05	0	Delta 1 notes	12/13/2005
A6.2	WINDOW SCHEDULE	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A6.3	DOOR DETAILS					12/13/2005
A6.4	DRAWING NOT USED					
A6.5	WINDOW DETAILS	09/08/05	12/08/05	0	Delta 1 notes	12/13/2005
A6.6	WINDOW DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A7.1	WALL TYPES & FIRE RATED ASSEMBLIES	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A7.2	WALL TYPES & FIRE RATED ASSEMBLIES	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A7.3	THRU PENETRATION FIRE STOPS/PARTITION TYPES	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A7.4	THRU PENETRATION FIRE STOPS/PARTITION TYPES	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A7.4	THRU PENETRATION FIRE STOPS/PARTITION TYPES	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.1.1	EXTERIOR BUILDING DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.1.2	EXTERIOR BUILDING DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.1.3	EXTERIOR BUILDING DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.1.4	EXTERIOR BUILDING DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.1	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.2	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.3	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.4	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.5	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.3.1	INTERIOR DETAILS	09/08/05	12/08/05	0	Delta 1 notes	12/13/2005

STRUCTURAL DRAWINGS

S1.1	GENERAL STRUCTURAL NOTES	09/08/05	12/09/05	1	12/9/2005	12/13/2005
S1.2	TYPICAL DETAILS	09/08/05	12/09/05	0		12/13/2005
S1.3	TYPICAL DETAILS	09/08/05	12/09/05	0		12/13/2005
S1.4	TYPICAL DETAILS	09/08/05	12/09/05	1	12/9/2005	12/13/2005
S1.5	SCHEDULE SHEET	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S2.1	FOUNDATION PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.1.1	GARAGE DECK SLAB FRAMING PLAN-1ST FLOOR	09/08/05	12/12/05	1	12/8/2005	12/13/2005
S3.1.2	PARTIAL GARAGE DECK FLOOR FRAMING PLAN-1ST FLOOR	09/08/05	12/12/05	1	12/8/2005	12/13/2005
S3.1.3	PARTIAL 3RD FLOOR SHEAR WALL PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.2.1	3RD FLOOR FRAMING PLAN	09/08/05	12/09/05	0		12/13/2005
S3.2.2	PARTIAL 3RD FLOOR FRAMING PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.2.3	PARTIAL 3RD FLOOR SHEAR WALL PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.3.1	4TH FLOOR FRAMING PLAN	09/08/05	12/09/05	0		12/13/2005
S3.3.2	PARTIAL 4TH FLOOR FRAMING PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.3.3	PARTIAL 4TH FLOOR SHEAR WALL PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.4.1	ROOF FRAMING PLAN	09/08/05	12/09/05	0		12/13/2005
S3.4.2	PARTIAL ROOF FRAMING PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.5.1	EXERCISE BLDG & CLUBHOUSE BLDG PLANS & ROOF FRAMING PLANS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S4.1	FOUNDATION DETAILS	09/08/05	12/09/05	0		12/13/2005
S4.2	FOUNDATION DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S5.1	CONCRETE SLAB DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S5.2	CONCRETE SLAB DETAILS	09/08/05	12/09/05	0		12/13/2005
S6.1	FLOOR FRAMING DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S6.2	FLOOR FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
S6.3	FLOOR FRAMING DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S6.4	FLOOR FRAMING DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S7.1	ROOF FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
S7.2	ROOF FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
S7.3	ROOF FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
S7.4	ROOF FRAMING DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S8.1	STAIR FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005

MECHANICAL DRAWINGS

M1.1	GARAGE MECHANICAL FLOOR PLAN -1ST FLOOR	09/08/05	01/24/06	4	1/9/2006	
M1.2	ROOF MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	
M2.1	UNIT "A"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M2.2	UNIT "B"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M2.3	UNIT "C" & "D"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M2.4	UNIT "G" & "H"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M2.5	UNIT "J" & "K"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M2.6	UNIT "L"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M2.7	UNIT "M" & "N"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M2.8	UNIT "O" & "P"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M3.1	EXERCISE CLUB BUILDING MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	
M3.1.1	1ST FLOOR BUILDING MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	
M3.1.2	2ND FLOOR BUILDING MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	
M3.1.3	3RD FLOOR BUILDING MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	
M3.1.4	ROOF MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	
M4.1	MECHANICAL NOTES AND DETAILS	09/08/05	01/24/06	4	1/9/2006	

P2.1	UNIT "A"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P2.2	UNIT "B"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P2.3	UNIT "C" & "D"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P2.4	UNIT "H" & "K"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P2.5	UNIT "L"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P2.6	UNIT "J" & "J2"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P2.7	UNIT "M"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P2.8	UNIT "N"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P3.1.0	1ST FLOOR PLUMBING FLOOR PLAN-WASTE AND VENT	09/08/05	12/12/05	1	12/9/2005
P3.1.0.1	1ST FLOOR PODIUM LEVEL PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P3.1.1	2ND FLOOR PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P3.1.1.1	2ND FLOOR PLUMBING FLOOR PLAN-RAINWATER	09/08/05	12/12/05	1	12/9/2005
P3.1.2	3RD FLOOR PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P3.1.3	4TH FLOOR PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005
P3.1.4	ROOF PLUMBING PLAN	09/08/05	12/12/05	1	12/9/2005
P3.2.1	EXERCISE & CLUB BUILDING PLUMBING FLOOR PLAN	09/08/05	12/12/05	0	
P4.1.0	WASTE & VENT RISER DIAGRAMS	09/08/05	12/12/05	1	12/9/2005
P4.1.1	HOT & COLD WATER DIAGRAMS	09/08/05	12/12/05	0	
P4.1.2	HOT & COLD WATER DIAGRAMS	09/08/05	12/12/05	0	
P5.1.0	SCHEDULE, NOTES AND WATER CALCULATIONS	09/08/05	12/12/05	1	12/9/2005
ELECTRICAL DRAWINGS					
E1.1.0	ELECTRICAL SITE LIGHTING	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E1.1.1	ELECTRICAL PHOTOMETRY PLAN	09/08/05	12/03/05	2	9/28/2005 12/13/2005
E1.1.2	LIGHTING FIXTURE CUT SHEETS	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E1.1.3	LIGHTING FIXTURE CUT SHEETS	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E1.1.4	LIGHTING FIXTURE CUT SHEETS	09/08/05	12/12/05	2	9/28/2005 12/13/2005
E1.2.0	ELECTRICAL SITE POWER DISTRIBUTION	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E2.1	ELECTRICAL FLOOR PLANS UNIT "A"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E2.2	ELECTRICAL FLOOR PLANS UNIT "B"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E2.3	ELECTRICAL FLOOR PLANS UNIT "C" & "D"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E2.4	ELECTRICAL FLOOR PLANS UNIT "H"	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E2.5	ELECTRICAL FLOOR PLANS UNIT "J" & "J2"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E2.6	ELECTRICAL FLOOR PLANS UNIT "K"-ENLARGED PLAN	09/08/05	12/12/05	2	9/28/2005 12/13/2005
E2.7	ELECTRICAL FLOOR PLANS UNIT "L"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E2.8	ELECTRICAL FLOOR PLANS UNIT "M" & "N"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.0.1	ELECTRICAL LIGHTING PLAN GARAGE PLAN-1ST FLOOR	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.0.2	PHOTOMETRY PLAN GARAGE PLAN-1ST FLOOR	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.0.3	ELECTRICAL POWER PLAN	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.1.0	ELECTRICAL LIGHTING PLAN 2ND FLOOR	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.1.1	ELECTRICAL POWER PLAN-2ND FLOOR	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.2.0	ELECTRICAL LIGHTING PLAN-3RD FLOOR	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.2.1	ELECTRICAL POWER PLAN-3RD FLOOR	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.3.0	ELECTRICAL LIGHTING PLAN-4TH FLOOR	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.3.1	ELECTRICAL POWER PLAN-4TH FLOOR	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.4.0	ELECTRICAL BUILDING PLAN ROOF PLAN	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E3.5.0	ELECTRICAL BUILDING PLAN EXERCISE CLUB BUILDING	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E4.01	LIGHTING FIXTURE CUT SHEETS	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E5.01	ELECTRICAL DIAGRAMS	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E5.02	ELECTRICAL DIAGRAMS	09/08/05	12/09/05	2	9/28/2005 12/13/2005
E6.01	ELECTRICAL SPECIFICATIONS AND SYMBOL LIST	09/08/05	12/09/05	2	9/28/2005 12/13/2005
T0.00	TELECOMMUNICATIONS COVER SHEET	09/08/05	NO STAMP	0	2/16/2006
T1.10	FIRST FLOOR PLAN	09/08/05	NO STAMP	0	2/16/2006
T1.20	SITE PLAN	09/08/05	NO STAMP	0	2/16/2006
T2.10	FIRST FLOOR PLAN	09/08/05	NO STAMP	0	2/16/2006
T2.11	SECOND FLOOR PLAN	09/08/05	NO STAMP	0	2/16/2006
T2.12	THIRD FLOOR PLAN	09/08/05	NO STAMP	0	2/16/2006
T2.13	FOURTH FLOOR PLAN	09/08/05	NO STAMP	0	2/16/2006
T2.20	TYPICAL UNIT LAYOUT	09/08/05	NO STAMP	0	2/16/2006
T2.21	TYPICAL UNIT LAYOUT	09/08/05	NO STAMP	0	2/16/2006
T3.10	FIRST FLOOR PLAN	09/08/05	NO STAMP	0	2/16/2006
T3.11	SECOND FLOOR PLAN	09/08/05	NO STAMP	0	2/16/2006
T4.01	SOUTHWEST IDF LAYOUT	09/08/05	NO STAMP	0	2/16/2006
T4.02	SOUTHEAST IDF LAYOUT	09/08/05	NO STAMP	0	2/16/2006
T4.10	TELECOMMUNICATIONS OUTLET DETAIL	09/08/05	NO STAMP	0	2/16/2006
T4.11	TELECOMMUNICATIONS MEDIA BOX	09/08/05	NO STAMP	0	2/16/2006
T5.00	TELECOMMUNICATION PATHWAYS	09/08/05	NO STAMP	0	2/16/2006
T5.10	TELECOMMUNICATIONS COPPER BACKBONE	09/08/05	NO STAMP	0	2/16/2006
T5.20	TELECOMMUNICATIONS SATV BACKBONE	09/08/05	NO STAMP	0	2/16/2006

BT10R	0010	0000		START OF CONSTRUCTION	482
DELAY100				QWEST LINE DELAY	60
QWEST100				QWEST CONSTRUCTION DURATION	30
F300	0010	00100	AA-0	Earthwork Schedule Area A (Mob #1-East Side)	22
F3010	0010	00100	AA-0	Earthwork Mobilization Area A (East Side)	1
F3020	0010	00100	AA-0	Mass Excavation-Area A (East Side)	8
F3030	0010	00100	AA-0	Over Ex Footings and Process Area A (East)	18
F3040	0010	00100	AA-0	Grading Complete Area B (East Side)	0
F3100	0010	00100	AB-0	Earthwork Schedule Area B (Mob #2-West)	21
F3110	0010	00100	AB-0	Earthwork Mobilization Area B (West Side)	1
F3120	0010	00100	AB-0	Mass Excavation-Area B (West Side)	7
F3130	0010	00100	AB-0	Over Ex Footings and Process Area B (West)	14
F3140	0010	00100	AB-0	Grading Complete Area B (West Side)	2
C200	0010	00000	SU-01	SiteWork & Utilities Schedule	68
C225	0010	00000	SU-04	Survey for SE Sewer Connection	1
C240	0010	00000	SU-04	Survey for SE Domestic Water Connection	1
C255	0010	00000	SU-04	Survey for RE Landscape Water Connection	1
C260	0010	00000	SU-04	Set Barricades-SE UTILITIES	1
C270	0010	00000	SU-04	Asphalt sawcut and removal- SE UTILITIES	3
C280	0010	00000	SU-04	Install SE Sewer	2
C215	0010	00000	SU-04	Install SE Domestic Water	2
C230	0010	00000	SU-04	Install SE Landscape Water	2
C245	0010	00000	SU-04	City Inspections-SE UTILITIES	1
C265	0010	00000	SU-04	Backfill and Compact- SE UTILITIES	2
C275	0010	00000	SU-04	Street Asphalt Repairs-SE UTILITIES	1
C290	0010	00000	SU-08	Survey for NE Sewer Connection	1
C205	0010	00000	SU-08	Survey for NE Domestic Water Connection	1
C235	0010	00000	SU-04	Set Barricades-SE UTILITIES	1
C240	0010	00000	SU-04	Asphalt sawcut and removal- SE UTILITIES	1
C250	0010	00000	SU-08	Install NE Sewer	2
C265	0010	00000	SU-08	Install NE Domestic Water	2
C280	0010	00000	SU-08	City Inspections-NE UTILITIES	1
C285	0010	00000	SU-08	Backfill and Compact- NE UTILITIES	2
C2910	0010	00000	SU-08	Street Asphalt Repairs-NE UTILITIES	1
C2000	0010	00000	SU-01	Survey for SW Sewer Connection	1
C2075	0010	00000	SU-01	Survey for SW Domestic Water Connection	1
C2090	0010	00000	SU-01	Survey for SW Landscape Water Connection	1
C2120	0010	00000	SU-01	Set Barricades	1
C2105	0010	00000	SU-01	Asphalt sawcut and removal	1
C2135	0010	00000	SU-01	Install SW Sewer	2
C2150	0010	00000	SU-01	Install SW Domestic Water	3
C2165	0010	00000	SU-01	Install SW Landscape Water	2
C2180	0010	00000	SU-01	City Inspections-SW UTILITIES	1
C2185	0010	00000	SU-01	Backfill and Compact- SW UTILITIES	2
C2210	0010	00000	SU-01	Street Asphalt Repairs-SW UTILITIES	1
C2525	0010	00000	SU-08	Survey for NW Sewer Connection	1
C2540	0010	00000	SU-08	Survey for NW Domestic Water Connection	1
C2570	0010	00000	SU-08	Set Barricades-NW UTILITIES	1
C2585	0010	00000	SU-08	Asphalt sawcut and removal- NW UTILITIES	1
C2595	0010	00000	SU-08	Install NW Sewer	2
C2600	0010	00000	SU-08	Install NW Domestic Water	2
C2615	0010	00000	SU-08	City Inspections-NW UTILITIES	1
C2630	0010	00000	SU-08	Backfill and Compact- NW UTILITIES	2
C2645	0010	00000	SU-08	Street Asphalt Repairs-NW UTILITIES	1
C2690	0010	00000	SU-10	Survey for Fireline- North Side	1

Start date	05/15/08
Finish date	02/18/09
Draw date	05/15/08
Plan date	07/07/08
Permit number	LA
Permit issued	25/1
© Primavera Systems, Inc.	

Summit Builders Construction Company
X (Ten) Lofts

Early bar
Finish indication point

C2700	0010	00300	BU-10	City Inspections-Fireline North	1
C2708	0010	00300	BU-10	Backfill and Compact-Fireline North	2
C3720	0010	00300	BU-10	Utilities Complete	0
C3810	0010	00100	AE-0	APS Utility Underground	17*
C3820	0010	00100	AE-0	Layout/Survey APS trench	1
C3830	0010	00100	AE-0	Excavate APS trench	3
C3840	0010	00100	AE-0	Inspect APS trench	1
C3850	0010	00100	AE-0	Install APS conduit system	6
C3860	0010	00100	AE-0	Inspect Conduit System	1
C3870	0010	00100	AE-0	APS Slurry backfill	2
C3880	0010	00100	AE-0	Set APS transformers	2
C3890	0010	00100	AE-0	Put APS Primary and Secondary Feeders	2
C3900	0010	00100	AE-0	APS System Complete	0
AF3002	0010	00110	A1-0	Area A Foundation	82*
AF3011	0010	00110	A1-0	Pool Certification	1
AF3021	0010	00110	A1-0	Layout Perimeter & Garage CMU Footings- Area A	1
AF3031	0010	00110	A1-0	Excavate Perimeter & Garage CMU Footing- Area A	2
AF3041	0010	00110	A1-0	Rebar in Perimeter & Garage CMU Footing- Area A	2
AF3051	0010	00110	A1-0	Perimeter & Garage footings poured-Area A	1
AF3061	0010	00110	A1-0	Perimeter & Garage CMU Wall Install- Area A	30
AF3061	0010	00110	A1-0	Backfill Perimeter Walls	3
AF3071	0010	00110	A1-0	Survey Interior spread footings- Area A	2
AF3081	0010	00110	A1-0	Excavate Interior Footings-Area A	10
AF3101	0010	00110	A1-0	Set Rebar-Interior Footings-Area A	12
AF3111	0010	00110	A1-0	Pour Interior Footings- Area A	12
AF3121	0010	00110	A1-0	Set column Forms and Rebar- Area A	4
AF3131	0010	00110	A1-0	Pour columns- Area A	6
AF3141	0010	00110	A1-0	Strip column formwork- Area A	3
AF3191	0010	00110	A1-0	Excavate Elevator Pit- Area A	1
AF3201	0010	00110	A1-0	Forms & Pour Elevator Pit- Area A	2
AF3211	0010	00110	A1-0	Strip Forms at Elevator Pit- Area A	1
AF3151	0010	00110	A1-0	Plumbing Underground- Area A	10
AF3171	0010	00110	A1-0	Fire Sprinkler Underground- Area A	3
AF3221	0010	00110	A1-0	ABC Backfill- Area A	5
AF3181	0010	00110	A1-0	Electrical Underground- Area A	7
AF3181	0010	00110	A1-0	Special Systems Underground- Area A	3
AF3241	0010	00110	A1-0	Pour Garage Parking Concrete Slab- Area A	1
AF3245	0010	00110	A1-0	Pour SES Pads	2
BP1000	0010	00005	000A	Swimming Pool	311*
BG4010	0010	00110	A3-0	Excavate & Pour Swimming Pool Footings	3
BG4020	0010	00110	A3-0	Install Swimming Pool Wall Forms	3
BG4030	0010	00110	A3-0	Install Swimming Pool Wall Rebar	3
BG4060	0010	00110	A3-0	Pour Swimming Pool Walls	1
BG4070	0010	00110	A3-0	Strip Swimming Pool Forms	1
SP1060	0010	00110	A3-0	Backfill Swimming Pool Interior Footings	1
SP1070	0010	00110	A3-0	Mass Backfill Swimming Pool	3
SP1080	0010	00110	A3-0	Pour Swimming Pool Sub-Slab	2
SP1090	0030	00210	003P	Install Swimming Pool Forms & Rebar	4
SP1100	0030	00210	003P	Install Swimming Pool Gunite	1
SP1110	0030	00210	003P	Install Swimming Pool Tile	2
SP1120	0030	00210	003P	Install Swimming Pool Plaster	1
SP1130	0030	00210	003P	Fill up Swimming Pool with Water	2
BF3001	0010	00120	A3-0	Area B Foundation	88*
BF3015	0010	00120	A3-0	Survey Perimeter CMU Footing- Area B	1

Start date 05/15/08
 Finish date 02/19/09
 Issue date 05/15/08
 Run date 07/27/08
 Page number 2A
 Page count 25J
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Small Early bar
 ♦ Finish milestone point

BF3021	0010	00120	A3-0	Install rebar in perimeter CMU Footing- Area B	2
BF3043	0010	00120	A3-0	Perimeter footing poured-Area B	1
BF3054	0010	00120	A3-0	Perimeter CMU & Garage Wall Install- Area B	30
BF3085	0010	00120	A3-0	Backfill Perimeter Walls	3
BF3085	0010	00120	A3-0	Survey interior spread footings- Area B	1
BF3078	0010	00120	A3-0	Excavate interior Footings-Area B	6
BF3085	0010	00120	A3-0	Set Rebar-Interior Footings-Area B	3
BF3105	0010	00120	A3-0	Pour Interior Footings- Area B	1
BF3116	0010	00120	A3-0	Set column Forms and Rebar- Area B	4
BF3125	0010	00120	A3-0	Pour columns- Area B	6
BF3139	0010	00120	A3-0	Strip column formwork- Area B	3
BF3185	0010	00120	A3-0	Excavate Elevator PB- Area B	1
BF3185	0010	00120	A3-0	Form & Pour Elevator PB- Area B	2
BF3206	0010	00120	A3-0	Strip Forms at Elevator PB- Area B	1
BF3145	0010	00120	A3-0	Plumbing Underground- Area B	10
BF3216	0010	00120	A3-0	ABC Backfill- Area B	6
BF3196	0010	00120	A3-0	Electrical Underground- Area B	7
BF3175	0010	00120	A3-0	Special Systems Underground- Area B	3
BF3235	0010	00120	A3-0	Pour Garage Parking Concrete Slab- Area B	1
BF3240	0010	00120	A3-0	Pour SEB Pad	2
GA4000	0010	00005	A1-1	Garage Parking Schedule	120*
GA14000	0010	00130	A1-1	Area A1 (Pour #1)	48*
GA14010	0010	00130	A1-1	Form Deck Pour #1	8
GA14020	0010	00130	A1-1	Edge Form Pour #1	4
GA14030	0010	00130	A1-1	Layout & Install MEP Sheaves & Piping- Pour #1	3
GA14040	0010	00130	A1-1	Rebar Pour #1	1
GA14050	0010	00130	A1-1	Place Pour #1	1
GA14060	0010	00130	A1-1	Strip & Cure Pour #1	8
GA14070	0010	00130	A1-1	Remove Shoring Pour #1	2
GA14080	0010	00130	A1-1	Re-Shore Pour #1	1
GA14090	0010	00130	A1-1	Remove Re-Shores Pour #1	1
GA14100	0010	00132	A1-7	Install CMU Walls	8
GA14140	0010	00132	A1-7	Install Security Gates	1
GA14170	0010	00148	A1-8	Install Steel Gates	2
GA14100	0010	00130	A1-1	Topping Slab-Edge Form SW Building Pour #1	6
GA14110	0010	00130	A1-1	Topping Slab-Form SW Building Pour #1	1
GA14120	0010	00130	A1-1	Topping Slab-Place SW Building Pour #1	1
GA14150	0010	00132	A1-4	Install Steel Stair #	1
GA14180	0010	00132	A1-4	Pour treads at Stair #	1
GA24000	0010	00130	A2-1	Area A2 (Pour #2)	48*
GA24010	0010	00130	A2-1	Form Deck Pour #2	8
GA24020	0010	00130	A2-1	Edge Form Pour #2	4
GA24030	0010	00130	A2-1	Layout & Install MEP Sheaves & Piping- Pour #2	3
GA24040	0010	00130	A2-1	Rebar Pour #2	8
GA24050	0010	00130	A2-1	Place Pour #2	1
GA24060	0010	00130	A2-1	Strip & Cure Pour #2	8
GA24070	0010	00130	A2-1	Remove Shoring Pour #2	2
GA24080	0010	00130	A2-1	Re-Shore Pour #2	1
GA24090	0010	00130	A2-1	Remove Re-Shores Pour #2	1
GA24000	0010	00132	A2-7	Install CMU Walls	8
GA24210	0010	00132	A2-7	Install Security Gates	1
GA24220	0010	00148	A2-8	Install Steel Gates	2
GA24100	0010	00130	A2-1	Topping Slab-Edge Form SW Building Pour #2	6
GA24110	0010	00130	A2-1	Topping Slab-Form SW Building Pour #2	1
GA24120	0010	00130	A2-1	Topping Slab-Place SW Building Pour #2	1
GA24150	0010	00132	A2-4	Install Steel Stair #	1
GA24180	0010	00132	A2-4	Pour treads at Stair #	1
GA34000	0010	00130	A3-1	Area A3 (Pour #3)	48*
GA34010	0010	00130	A3-1	Form Deck Pour #3	8
GA34020	0010	00130	A3-1	Edge Form Pour #3	4

Sheet date	05/15/08
Project name	8271808
Date made	05/15/08
Run date	07/07/08
Page number	3A
Page count	250
© Primavera Systems, Inc.	

Summit Builders Construction Company
X (Ten) Lofts

Finish color	Grey tan
Finish color	Black reflective paint

GA3400	0010	00130	A3-1	Layout & Install MEP Recess & Piping- Pour #3	8
GA3404	0010	00130	A3-1	Rebar Pour #3	8
GA3405	0010	00130	A3-1	Place Pour #3	1
GA3406	0010	00130	A3-1	Strip & Cure Pour #3	8
GA3407	0010	00130	A3-1	Remove Shoring Pour #3	2
GA3408	0010	00130	A3-1	Re-Shore Pour #3	1
GA3409	0010	00130	A3-1	Remove Re-Shores Pour #3	1
GA3420	0010	00132	A3-7	Install CMU Walls	8
GA3410	0010	00130	A3-1	Topping Slab-Edge Form SW Building Pour #3	8
GA3411	0010	00130	A3-1	Topping Slab-Prep SW Building Pour #3	1
GA3412	0010	00130	A3-1	Topping Slab-Place SW Building Pour #3	1
GA3413	0010	00132	A3-4	Install Steel Stair #	1
GA3414	0010	00132	A3-4	Pour treads at Stair #	1
GA4400	0010	00130	A4-1	Area A4 (Pour #4)	64'
GA4401	0010	00130	A4-1	Form Deck Pour #4	8
GA4402	0010	00130	A4-1	Edge Form Pour #4	4
GA4403	0010	00130	A4-1	Layout & Install MEP Sleeves & Piping- Pour #4	3
GA4404	0010	00130	A4-1	Rebar Pour #4	8
GA4405	0010	00130	A4-1	Place Pour #4	1
GA4406	0010	00130	A4-1	Strip & Cure Pour #4	8
GA4407	0010	00130	A4-1	Remove Shoring Pour #4	2
GA4408	0010	00130	A4-1	Re-Shore Pour #4	1
GA4409	0010	00130	A4-1	Remove Re-Shores Pour #4	1
GA4420	0010	00132	A4-7	Install CMU Walls	8
GA4410	0010	00130	A4-1	Topping Slab-Edge Form SW Building Pour #4	8
GA4411	0010	00130	A4-1	Topping Slab-Prep SW Building Pour #4	1
GA4412	0010	00130	A4-1	Topping Slab-Place SW Building Pour #4	1
GA4413	0010	00132	A4-4	Install Steel Stair #	1
GA4414	0010	00132	A4-4	Pour treads at Stair #	1
GA5400	0010	00130	A5-1	Area A5 (Pour #5)	64'
GA5401	0010	00130	A5-1	Form Deck Pour #5	8
GA5402	0010	00130	A5-1	Edge Form Pour #5	4
GA5403	0010	00130	A5-1	Layout & Install MEP Sleeves & Piping- Pour #5	3
GA5404	0010	00130	A5-1	Rebar Pour #5	8
GA5405	0010	00130	A5-1	Place Pour #5	1
GA5406	0010	00130	A5-1	Strip & Cure Pour #5	8
GA5407	0010	00130	A5-1	Remove Shoring Pour #5	2
GA5408	0010	00130	A5-1	Re-Shore Pour #5	1
GA5409	0010	00130	A5-1	Remove Re-Shores Pour #5	1
GA5420	0010	00132	A5-7	Install CMU Walls	8
GA5410	0010	00132	A5-7	Install Security Gates	1
GA5420	0010	00132	A5-7	Install Steel Gates	2
GA5410	0010	00130	A5-1	Topping Slab-Edge Form SW Building Pour #5	8
GA5411	0010	00130	A5-1	Topping Slab-Prep SW Building Pour #5	1
GA5412	0010	00130	A5-1	Topping Slab-Place SW Building Pour #5	1
GA5413	0010	00132	A5-4	Install Steel Stair #	1
GA5414	0010	00132	A5-4	Pour treads at Stair #	1
GA6400	0010	00130	A6-1	Area A6 (Pour #6)	72'
GA6401	0010	00130	A6-1	Form Deck Pour #6	8
GA6402	0010	00130	A6-1	Edge Form Pour #6	4
GA6403	0010	00130	A6-1	Layout & Install MEP Sleeves & Piping- Pour #6	3
GA6404	0010	00130	A6-1	Rebar Pour #6	8
GA6405	0010	00130	A6-1	Place Pour #6	1
GA6406	0010	00130	A6-1	Strip & Cure Pour #6	8
GA6407	0010	00130	A6-1	Remove Shoring Pour #6	2
GA6408	0010	00130	A6-1	Re-Shore Pour #6	1
GA6409	0010	00130	A6-1	Remove Re-Shores Pour #6	1
GA6420	0010	00132	A6-7	Install CMU Walls	8
GA6420	0010	00132	A6-7	Install Security Gates	1
GA6420	0010	00132	A6-7	Install Steel Gates	2
GA6410	0010	00130	A6-1	Topping Slab-Edge Form SW Building Pour #6	8
GA6411	0010	00130	A6-1	Topping Slab-Prep SW Building Pour #6	1
GA6412	0010	00130	A6-1	Topping Slab-Place SW Building Pour #6	1
GA6413	0010	00132	A6-4	Install Steel Stair #	1
GA6414	0010	00132	A6-4	Pour treads at Stair #	1

Start date 05/16/08
 Finish date 07/15/08
 Draw date 05/15/08
 Run date 07/07/08
 Pages included 45
 Page count 251
 © Proforma Systems, Inc.

Summit Builders Construction Company
 X(Ten) Lofts

Early bar
 Finish collection point

Item No.	Code	Description	Quantity	Unit
A11500	0010	1st Floor Schedule	15	90'
A115010	0010	Area A1-First Floor		
A115020	0010	Layout, Snap Lines	1	
A115030	0010	Frame Walls	8	
A115040	0010	Roll & Set T.J. Joist	5	
A115050	0010	Shear Decking	2	
A115060	0010	A1-1 Deck Nail Inspections	1	
A115110	0010	Install Exterior Windows/Patio Doors	2	
A115120	0010	Insulate for Pre-Rock	2	
A115130	0010	Pre-Rock	3	
A115140	0010	Soffit Framing	3	
A115150	0010	HVAC Rough	10	
A115160	0010	Plumbing Rough	10	
A115170	0010	Fire Sprinkler Rough	10	
A115180	0010	Electrical Rough	10	
A115190	0010	Low Voltage/Special Systems Rough	8	
A115200	0010	Frame Pick-up	3	
A115210	0010	Straight Edge	3	
A115210	0010	Frame Inspection Complete	0	
A115220	0010	Load Drywall	1	
A115230	0010	Insulate Walls & Ceilings	2	
A115240	0010	Hang Drywall	10	
A115250	0010	Tape Drywall	8	
A115260	0010	Texture Drywall	1	
A115270	0010	Pour lightweight concrete	1	
A115280	0010	Pour Hardrock Patio Deck	1	
A115285	0010	Install Pre-Hung Doors/Frames	4	
A115290	0010	Install Carpentry	4	
A115300	0010	Paint Interior Walls, Ceilings, & Doors	3	
A115310	0010	Owner Deadline Decor Changes	1	
A115320	0010	Install All Flooring	10	
A115330	0010	Phase 1 Clean	2	
A115340	0010	Install Hardware	2	
A115350	0010	Install Cabinets	4	
A115360	0010	Install Countertops	4	
A115370	0010	Install Fire Sprinkler Trim	1	
A115380	0010	Install Plumbing Trim	3	
A115390	0010	Install Electrical Trim	3	
A115400	0010	Install Bath Accessories	2	
A115410	0010	Install Appliances	1	
A115420	0010	Start-up & Test Systems	3	
A115440	0010	Phase 2 Clean	2	
A115450	0010	City Inspections	0	
A115460	0010	Architect Punchlist	1	
A115470	0010	Phase 3 Clean	1	
A115480	0010	Unit Turnover	0	
A215010	0010	Area A2-First Floor	90'	
A215020	0010	Layout, Snap Lines	1	
A215030	0010	Frame Walls	8	
A215040	0010	Roll & Set T.J. Joist	5	
A215050	0010	Shear Decking	2	
A215060	0010	A2-1 Deck Nail Inspections	1	
A215070	0010	Install Exterior Windows/Patio Doors	2	
A215080	0010	Insulate for Pre-Rock	2	
A215090	0010	Pre-Rock	3	

Start date 05/15/08
 Finish date 02/18/09
 Date date 05/15/08
 Run date 07/02/09
 Page number 8A
 Page count 253
 © Procon's Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lifts

Early low
 Finish reference point

A215100	0010	00140	A2-1	Soffit Framing	2
A215110	0010	00162	A2-1	HVAC Rough	10
A215120	0010	00152	A2-1	Plumbing Rough	10
A215130	0010	00152	A3-1	Fire Sprinkler Rough	10
A215140	0010	00153	A2-1	Electrical Rough	10
A215150	0010	00152	A2-1	Low Voltage/Special Systems Rough	8
A215160	0010	00152	A2-1	Frame Pick-up	3
A215170	0010	00162	A2-1	Straight Edge	3
A215180	0010	00152	A2-1	Frame Inspection Complete	0
A215190	0010	00162	A2-1	Load Drywall	1
A215200	0010	00162	A2-1	Insulate Walls & Ceilings	2
A215210	0010	00162	A2-1	Hang Drywall	10
A215220	0010	00162	A2-1	Tape Drywall	8
A215230	0010	00162	A2-1	Texture Drywall	1
A215240	0010	00162	A2-1	Pour lightweight concrete	1
A215250	0010	00162	A2-1	Pour Hardrock Patio Deck	1
A215260	0010	00172	A2-1	Install Pre-Hung Doors/Frames	4
A215270	0010	00172	A2-1	Install Carpentry	4
A215280	0010	00172	A2-1	Paint Interior Walls, Ceilings, & Doors	3
A215290	0010	00005	A2-1	Owner Deadline Decor Changes	1
A215300	0010	00173	A2-1	Install All Flooring	10
A215310	0010	00173	A2-1	Phase 1 Clean	2
A215320	0010	00172	A2-1	Install Hardware	3
A215330	0010	00172	A2-1	Install Cabinets	4
A215340	0010	00172	A2-1	Install Countertops	4
A215350	0010	00172	A2-1	Install Fire Sprinkler Trim	1
A215360	0010	00172	A2-1	Install Plumbing Trim	3
A215370	0010	00172	A2-1	Install Electrical Trim	3
A215380	0010	00172	A2-1	Install Bath Accessories	2
A215390	0010	00172	A2-1	Install Appliances	1
A215400	0010	00172	A2-1	Start-up & Test Systems	3
A215410	0010	00172	A2-1	Phase 2 Clean	2
A215420	0010	00172	A2-1	City Inspections	0
A215430	0010	00172	A2-1	Architect Punchlist	1
A215440	0010	00172	A2-1	Phase 3 Clean	1
A215450	0010	00172	A2-1	Unit Turnover	0
A315010	0010	00140	A3-1	Area A3-First Floor	90'
A315020	0010	00140	A3-1	Layout, Snap Lines	1
A315030	0010	00140	A3-1	Frame Walls	5
A315040	0010	00140	A3-1	Roll & Set T.I. Joist	5
A315050	0010	00140	A3-1	Sheet Decking	2
A315060	0010	00140	A3-1	A3-1 Deck (No) Inspections	1
A315070	0010	00140	A3-1	Install Exterior Windows/Patio Doors	2
A315080	0010	00140	A3-1	Insulate for Pre-Rock	2
A315090	0010	00140	A3-1	Pre-Rock	3
A315100	0010	00140	A3-1	Soffit Framing	3
A315110	0010	00152	A2-1	HVAC Rough	10
A315120	0010	00152	A2-1	Plumbing Rough	10
A315130	0010	00152	A2-1	Fire Sprinkler Rough	10
A315140	0010	00153	A2-1	Electrical Rough	10
A315150	0010	00152	A2-1	Low Voltage/Special Systems Rough	8
A315160	0010	00152	A2-1	Frame Pick-up	3
A315170	0010	00152	A2-1	Straight Edge	3
A315180	0010	00152	A2-1	Frame Inspection Complete	0

Sheet date	02/15/08
Final date	02/18/08
Date date	02/18/08
Run date	02/07/08
Page number	5A
Page count	253
© Primavera Systems, Inc.	

Summit Builders Construction Company
X (Ten) Lofts

Early bar
Fresh placement point

A318100	0010	00162	A3-1	Load Drywall	1
A318200	0010	00162	A3-1	Insulate Walls & Ceilings	2
A318210	0010	00162	A3-1	Hang Drywall	10
A318220	0010	00162	A3-1	Tape Drywall	8
A318230	0010	00162	A3-1	Texture Drywall	1
A318240	0010	00162	A3-1	Pour lightweight concrete	1
A318250	0010	00162	A3-1	Pour Hardrock Patio Deck	1
A318260	0010	00172	A3-1	Install Pre-Hung Doors/Frames	4
A318270	0010	00172	A3-1	Install Carpentry	4
A318280	0010	00172	A3-1	Paint Interior Walls, Ceilings, & Doors	3
A318290	0010	00005	A3-1	Owner Deadline Decor Changes	1
A318300	0010	00172	A3-1	Install All Flooring	10
A318310	0010	00172	A3-1	Phase 1 Clean	2
A318320	0010	00172	A3-1	Install Hardware	2
A318330	0010	00172	A3-1	Install Cabinets	4
A318340	0010	00172	A3-1	Install Countertops	4
A318350	0010	00172	A3-1	Install Fire Sprinkler Trim	1
A318360	0010	00172	A3-1	Install Plumbing Trim	3
A318370	0010	00172	A3-1	Install Electrical Trim	3
A318380	0010	00172	A3-1	Install Bath Accessories	2
A318390	0010	00172	A3-1	Install Appliances	1
A318400	0010	00172	A3-1	Start-up & Test Systems	3
A318410	0010	00172	A3-1	Phase 2 Clean	2
A318420	0010	00172	A3-1	City Inspections	0
A318430	0010	00172	A3-1	Architect Punchlist	1
A318440	0010	00172	A3-1	Phase 3 Clean	1
A318450	0010	00172	A3-1	Unit Turnover	0
A415010	0010	00142	A4-1	Area A4-First Floor	00*
A415020	0010	00142	A4-1	Layout, Snap Lines	1
A415030	0010	00142	A4-1	Frame Walls	5
A415040	0010	00142	A4-1	Roll & Set T/J Joist	5
A415050	0010	00142	A4-1	Sheat Decking	2
A415060	0010	00142	A4-1	A4-1 Deck Nail Inspections	1
A415070	0010	00142	A4-1	Install Exterior Windows/Patio Doors	2
A415080	0010	00142	A4-1	Insulate for Pre-Rock	2
A415090	0010	00142	A4-1	Pre-Rock	3
A415100	0010	00142	A4-1	Soffit Framing	3
A415110	0010	00152	A4-1	HVAC Rough	10
A415120	0010	00152	A4-1	Plumbing Rough	10
A415130	0010	00152	A4-1	Fire Sprinkler Rough	10
A415140	0010	00152	A4-1	Electrical Rough	10
A415150	0010	00152	A4-1	Low Voltage/Special Systems Rough	6
A415160	0010	00152	A4-1	Frame Pick-up	3
A415170	0010	00152	A4-1	Straight Edge	3
A415180	0010	00152	A4-1	Frame Inspection Complete	0
A415190	0010	00162	A4-1	Load Drywall	1
A415200	0010	00162	A4-1	Insulate Walls & Ceilings	2
A415210	0010	00162	A4-1	Hang Drywall	10
A415220	0010	00162	A4-1	Tape Drywall	8
A415230	0010	00162	A4-1	Texture Drywall	1
A415240	0010	00162	A4-1	Pour lightweight concrete	1
A415250	0010	00162	A4-1	Pour Hardrock Patio Deck	1
A415260	0010	00172	A4-1	Install Pre-Hung Doors/Frames	4
A415270	0010	00172	A4-1	Install Carpentry	4

Start date 05/15/08
 Finish date 02/18/09
 Data date 05/15/08
 Run date 07/27/08
 Page number 7A
 Page count 233
 © Proforma Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish submittals point

A415280	0010	00172	A4-1	Paint Interior Walls, Ceilings, & Doors	3
A415290	0010	00005	A4-1	Owner Deadline Decor Changes	1
A415300	0010	00172	A4-1	Install AB Flooring	10
A415310	0010	00172	A4-1	Phase 1 Clean	2
A415320	0010	00172	A4-1	Install Hardware	2
A415330	0010	00172	A4-1	Install Cabinets	4
A415340	0010	00172	A4-1	Install Countertops	4
A415350	0010	00172	A4-1	Install Fire Sprinkler Trim	1
A415360	0010	00172	A4-1	Install Plumbing Trim	3
A415370	0010	00172	A4-1	Install Electrical Trim	3
A415380	0010	00172	A4-1	Install Bath Accessories	2
A415390	0010	00172	A4-1	Install Appliances	1
A415400	0010	00172	A4-1	Start-up & Test Systems	3
A415410	0010	00172	A4-1	Phase 2 Clean	2
A415420	0010	00172	A4-1	City Inspections	0
A415430	0010	00172	A4-1	Architect Punchlist	1
A415440	0010	00172	A4-1	Phase 3 Clean	1
A415450	0010	00172	A4-1	Unit Turnover	0
A515010	0010	00142	A5-1	Area A5-First Floor	60*
A515020	0010	00142	A5-1	Layout, Snap Lines	1
A515030	0010	00142	A5-1	Frame Walls	6
A515040	0010	00142	A5-1	Roll & Set TJI Joist	5
A515050	0010	00142	A5-1	Shear Decking	2
A515060	0010	00142	A5-1	A5-1 Deck Nail Inspections	1
A515070	0010	00142	A5-1	Install Exterior Windows/Patio Doors	2
A515080	0010	00142	A5-1	Insulate for Pre-Rock	2
A515090	0010	00142	A5-1	Pre-Rock	3
A515100	0010	00142	A5-1	Soffit Framing	3
A515110	0010	00152	A5-1	HVAC Rough	10
A515120	0010	00152	A5-1	Plumbing Rough	10
A515130	0010	00152	A5-1	Fire Sprinkler Rough	10
A515140	0010	00152	A5-1	Electrical Rough	10
A515150	0010	00152	A5-1	Low Voltage/Special Systems Rough	8
A515160	0010	00152	A5-1	Frame Pick-up	3
A515170	0010	00152	A5-1	Straight Edge	3
A515180	0010	00162	A5-1	Frame Inspection Complete	0
A515190	0010	00162	A5-1	Load Drywall	1
A515200	0010	00162	A5-1	Insulate Walls & Ceilings	2
A515210	0010	00162	A5-1	Hang Drywall	10
A515220	0010	00162	A5-1	Tape Drywall	6
A515230	0010	00162	A5-1	Texture Drywall	1
A515240	0010	00162	A5-1	Pour lightweight concrete	1
A515250	0010	00162	A5-1	Pour Hardrock Patio Deck	1
A515260	0010	00172	A5-1	Install Pre-Hung Doors/Frames	4
A515270	0010	00172	A5-1	Install Carpentry	4
A515280	0010	00172	A5-1	Paint Interior Walls, Ceilings, & Doors	3
A515290	0010	00005	A5-1	Owner Deadline Decor Changes	1
A515300	0010	00172	A5-1	Install AB Flooring	10
A515310	0010	00172	A5-1	Phase 1 Clean	2
A515320	0010	00172	A5-1	Install Hardware	2
A515330	0010	00172	A5-1	Install Cabinets	4
A515340	0010	00172	A5-1	Install Countertops	4
A515350	0010	00172	A5-1	Install Fire Sprinkler Trim	1
A515360	0010	00172	A5-1	Install Plumbing Trim	3

Start date 05/15/08
 Finish date 03/19/09
 Date edit 05/15/08
 Run date 07/07/09
 Page number 84
 Page count 251
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 + Polish indicates point

AS15370	0010	00172	AS-1	Install Electrical Trim	3
AS15380	0010	00172	AS-1	Install Bath Accessories	2
AS15390	0010	00172	AS-1	Install Appliances	1
AS15400	0010	00172	AS-1	Start-up & Test Systems	3
AS15410	0010	00172	AS-1	Phase 2 Clean	2
AS15420	0010	00172	AS-1	City Inspections	0
AS15430	0010	00172	AS-1	Architect Punchlist	1
AS15440	0010	00172	AS-1	Phase 3 Clean	1
AS15450	0010	00172	AS-1	Unit Turnover	0
AS15010	0010	00142	AS-1	Area A&B-First Floor	00
AS15020	0010	00142	AS-1	Layout, Snap Lines	1
AS15030	0010	00142	AS-1	Frame Walls	5
AS15040	0010	00142	AS-1	Roll & Set TJI Joist	5
AS15050	0010	00142	AS-1	Sheet Decking	2
AS15060	0010	00142	AS-1	AS-1 Deck Nail Inspections	1
AS15070	0010	00142	AS-1	Install Exterior Windows/Patio Doors	2
AS15080	0010	00142	AS-1	Insulate for Pre-Rock	3
AS15090	0010	00142	AS-1	Pre-Rock	3
AS15100	0010	00142	AS-1	SoftM Framing	3
AS15110	0010	00152	AS-1	HVAC Rough	10
AS15120	0010	00152	AS-1	Plumbing Rough	10
AS15130	0010	00152	AS-1	Fire Sprinkler Rough	10
AS15140	0010	00152	AS-1	Electrical Rough	10
AS15150	0010	00152	AS-1	Low Voltage/Special Systems Rough	8
AS15160	0010	00152	AS-1	Frame Pick-up	3
AS15170	0010	00152	AS-1	Straight Edges	3
AS15180	0010	00152	AS-1	Frame Inspection Complete	0
AS15190	0010	00162	AS-1	Load Drywall	1
AS15200	0010	00162	AS-1	Insulate Walls & Ceilings	2
AS15210	0010	00162	AS-1	Hang Drywall	10
AS15220	0010	00162	AS-1	Tape Drywall	8
AS15230	0010	00162	AS-1	Texture Drywall	1
AS15240	0010	00162	AS-1	Pour lightweight concrete	1
AS15250	0010	00162	AS-1	Pour Handrock Patio Deck	1
AS15260	0010	00172	AS-1	Install Pre-hung Doors/Frames	4
AS15270	0010	00172	AS-1	Install Carpentry	4
AS15280	0010	00172	AS-1	Paint Interior Walls, Ceilings, & Doors	3
AS15290	0010	00005	AS-1	Owner Deadlines Decor Changes	1
AS15300	0010	00172	AS-1	Install All Flooring	10
AS15310	0010	00172	AS-1	Phase 1 Clean	2
AS15320	0010	00172	AS-1	Install Hardware	2
AS15330	0010	00172	AS-1	Install Cabinets	4
AS15340	0010	00172	AS-1	Install Countertops	4
AS15350	0010	00172	AS-1	Install Fire Sprinkler Trim	1
AS15360	0010	00172	AS-1	Install Plumbing Trim	3
AS15370	0010	00172	AS-1	Install Electrical Trim	3
AS15380	0010	00172	AS-1	Install Bath Accessories	2
AS15390	0010	00172	AS-1	Install Appliances	1
AS15400	0010	00172	AS-1	Start-up & Test Systems	3
AS15410	0010	00172	AS-1	Phase 2 Clean	2
AS15420	0010	00172	AS-1	City Inspections	0
AS15430	0010	00172	AS-1	Architect Punchlist	1
AS15440	0010	00172	AS-1	Phase 3 Clean	1
AS15450	0010	00172	AS-1	Unit Turnover	0

Start date 09/15/08
 Finish date 09/18/08
 Draw date 09/15/08
 Run date 09/15/08
 Page number 5A
 Page count 25U
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish milestone point

Code	Activity	Start	End	Duration	Notes
EXR11000	Exercise Schedule			31	
EXR11001	Layout, Snap Lines			4	
EXR11010	Frame Walls			12	
EXR11011	Plumb & Brace Walls			4	
EXR11020	Headers & Beams			4	
EXR11025	Roll & Set T.J. Joist			5	
EXR11030	Sheet Decking			3	
EXR11035	Deck Nail Inspections			2	
EXR11040	Straight Edge/Strap & Sheer			7	
EXR11045	Remove Bracing			2	
EXR11050	Install Exterior Windows/Patio Doors			4	
EXR11055	Insulate for Pre-Rock			2	
EXR11060	Pre-Rock			4	
EXR11065	Boffi Framing			3	
EXR11070	HVAC Rough			8	
EXR11075	Plumbing Rough			8	
EXR11080	Fire Sprinkler Rough			8	
EXR11085	Electrical Rough			8	
EXR11090	Low Voltage/Special Systems Rough			8	
EXR11095	Frame Pick-up			5	
EXR11100	Frame Inspection Complete			0	
EXR11105	Load Drywall			2	
EXR11110	Insulate Walls & Ceilings			3	
EXR11115	Hang Drywall			8	
EXR11120	Tape Drywall			8	
EXR11125	Texture Drywall			1	
EXR11130	Pour Slightweight concrete			1	
EXR11135	Pour Hardrock Patio Deck			1	
EXR11140	Install Carpentry			4	
EXR11145	Paint Interior Walls, Ceilings, & Doors			3	
EXR11150	Install All Flooring			7	
EXR11155	Phase 1 Clean			2	
EXR11160	Install Doors & Hardware			4	
EXR11165	Install Cabinets			2	
EXR11170	Install Countertops			2	
EXR11175	Install Fire Sprinkler Trim			1	
EXR11180	Install Plumbing Trim			2	
EXR11185	Install Electrical Trim			2	
EXR11190	Install Bath Accessories			2	
EXR11195	Install Appliances			1	
EXR11200	Install Window Coverings			2	
EXR11205	Start-up & Test Systems			3	
EXR11210	Phase 2 Clean			2	
EXR11215	City Inspections			0	
EXR11220	Architect Punchlist			2	
EXR11225	Phase 3 Clean			1	
EXR11230	Unit Turnover			1	
CLB10000	Clubhouse Schedule			80	
CLB10001	Layout, Snap Lines			4	
CLB10005	Frame Walls			12	
CLB10010	Plumb & Brace Walls			4	
CLB10015	Headers & Beams			4	
CLB10020	Roll & Set T.J. Joist			8	
CLB10025	Sheet Decking			3	
CLB10030	Deck Nail Inspections			2	

Start date 05/15/08
 Finish date 02/18/09
 Data date 05/15/08
 Run date 07/07/08
 Page number 10A
 Page count 251
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish collection point

CLB10025	0020	00142	AC-1	Straight Edge/Strap & Sheer	7
CLB10040	0020	00142	AC-1	Remove Bracing	2
CLB10045	0020	00142	AC-1	Install Exterior Windows/Patio Doors	4
CLB10050	0020	00142	AC-1	Insulate for Pre-Rock	2
CLB10055	0020	00142	AC-1	Pre-Rock	4
CLB10060	0020	00142	AC-1	Soffit Framing	3
CLB10065	0020	00152	AC-1	HVAC Rough	6
CLB10070	0020	00182	AC-1	Plumbing Rough	8
CLB10075	0020	00182	AC-1	Fire Sprinkler Rough	6
CLB10080	0020	00182	AC-1	Electrical Rough	8
CLB10085	0020	00182	AC-1	Low Voltage/Special Systems Rough	6
CLB10090	0020	00182	AC-1	Frame Pick-up	3
CLB10095	0020	00182	AC-1	Frame Inspection Complete	0
CLB10100	0020	00182	AC-1	Load Drywall	2
CLB10105	0020	00182	AC-1	Insulate Walls & Ceilings	3
CLB10110	0020	00182	AC-1	Hang Drywall	8
CLB10115	0020	00182	AC-1	Tape Drywall	5
CLB10120	0020	00182	AC-1	Texture Drywall	1
CLB10125	0020	00182	AC-1	Pour lightweight concrete	1
CLB10130	0020	00182	AC-1	Pour Hardrock Patio Deck	1
CLB10135	0020	00172	AC-1	Install Carpentry	4
CLB10140	0020	00172	AC-1	Paint Interior Walls, Ceilings, & Doors	3
CLB10145	0020	00172	AC-1	Install All Flooring	7
CLB10150	0020	00172	AC-1	Phase 1 Clean	2
CLB10155	0020	00172	AC-1	Install Doors & Hardware	4
CLB10160	0020	00172	AC-1	Install Cabinets	2
CLB10165	0020	00172	AC-1	Install Countertops	2
CLB10170	0020	00172	AC-1	Install Fire Sprinkler Trim	1
CLB10175	0020	00172	AC-1	Install Plumbing Trim	2
CLB10180	0020	00172	AC-1	Install Electrical Trim	2
CLB10185	0020	00172	AC-1	Install Bath Accessories	2
CLB10190	0020	00172	AC-1	Install Appliances	1
CLB10195	0020	00172	AC-1	Install Window Coverings	2
CLB10200	0020	00172	AC-1	Start-up & Test Systems	3
CLB10205	0020	00172	AC-1	Phase 2 Clean	3
CLB10210	0020	00172	AC-1	City Inspections	0
CLB10215	0020	00172	AC-1	Architect Punchlist	2
CLB10220	0020	00172	AC-1	Phase 3 Clean	1
CLB10225	0020	00172	AC-1	Unit Turnover	1
A20000	0010	00000	002A	2nd Floor Schedule	165*
A120010	0010	00142	A1-2	Area A1-Second Floor	00*
A120020	0010	00142	A1-2	Layout, Snap Lines	1
A120030	0010	00142	A1-2	Frame Walls	5
A120040	0010	00142	A1-2	Roll & Set T.J. Joints	8
A120050	0010	00142	A1-2	Sheet Decking	2
A120060	0010	00142	A1-2	A1-2 Deck Nail Inspections	1
A120070	0010	00142	A1-2	Install Exterior Windows/Patio Doors	2
A120080	0010	00142	A1-2	Insulate for Pre-Rock	2
A120090	0010	00142	A1-2	Pre-Rock	3
A120100	0010	00142	A1-2	Soffit Framing	3
A120110	0010	00182	A1-2	HVAC Rough	10
A120120	0010	00182	A1-2	Plumbing Rough	10
A120130	0010	00182	A1-2	Fire Sprinkler Rough	10
A120140	0010	00182	A1-2	Electrical Rough	10

Start date 05/15/08
 Finish date 07/15/08
 Draw date 05/15/08
 Run date 07/07/08
 Page number 11A
 Page total 25J
 © Primavera Systems, Inc.

Summit Builders Construction Company
X (Ten) Lofts

■■■■ Early bar
 ◆ Finish milestone point

A126150	0010	00152	A1-2	Low Voltage/Special Systems Rough	6
A126160	0010	00152	A1-2	Frame Pick-up	3
A126170	0010	00152	A1-2	Straight Edge	3
A126180	0010	00152	A1-2	Frame Inspection Complete	0
A126180	0010	00182	A1-2	Load Drywall	1
A126200	0010	00182	A1-2	Insulate Walls & Ceilings	2
A126210	0010	00182	A1-2	Hang Drywall	10
A126220	0010	00182	A1-2	Tape Drywall	6
A126230	0010	00182	A1-2	Texture Drywall	1
A126240	0010	00182	A1-2	Pour lightweight concrete	1
A126250	0010	00182	A1-2	Pour Hardrock Patio Deck	1
A126260	0010	00172	A1-2	Install Pre-Hung Doors/Frames	4
A126270	0010	00172	A1-2	Install Carpentry	4
A126280	0010	00172	A1-2	Paint Interior Walls, Ceilings, & Doors	3
A126290	0010	00008	A1-2	Owner Deadline Decor Changes	1
A126300	0010	00172	A1-2	Install All Flooring	10
A126310	0010	00172	A1-2	Phase 1 Clean	2
A126320	0010	00172	A1-2	Install Hardware	2
A126330	0010	00172	A1-2	Install Cabinets	4
A126340	0010	00172	A1-2	Install Countertops	4
A126350	0010	00172	A1-2	Install Fire Sprinkler Trim	1
A126360	0010	00172	A1-2	Install Plumbing Trim	3
A126370	0010	00172	A1-2	Install Electrical Trim	3
A126380	0010	00172	A1-2	Install Bath Accessories	2
A126390	0010	00172	A1-2	Install Appliances	1
A126400	0010	00172	A1-2	Start-up & Test Systems	3
A126410	0010	00172	A1-2	Phase 2 Clean	2
A126420	0010	00172	A1-2	City Inspections	0
A126430	0010	00172	A1-2	Architect Punchlist	1
A126440	0010	00172	A1-2	Phase 3 Clean	1
A126450	0010	00172	A1-2	Unit Turnover	0
A226010	0010	00142	A2-2	Area A2-Second Floor	80
A226020	0010	00142	A2-2	Layout, Snap Lines	1
A226030	0010	00142	A2-2	Frame Walls	8
A226040	0010	00142	A2-2	Roll & Set TJI Joist	8
A226050	0010	00142	A2-2	Sheet Decking	2
A226060	0010	00142	A2-2	A2-2 Deck Nail Inspections	1
A226070	0010	00142	A2-2	Install Exterior Windows/Patio Doors	3
A226080	0010	00142	A2-2	Insulate for Pre-Rock	2
A226090	0010	00142	A2-2	Pre-Rock	3
A226100	0010	00142	A2-2	Soffit Framing	2
A226110	0010	00152	A2-2	HVAC Rough	10
A226120	0010	00152	A2-2	Plumbing Rough	10
A226130	0010	00152	A2-2	Fire Sprinkler Rough	10
A226140	0010	00152	A2-2	Electrical Rough	10
A226150	0010	00152	A2-2	Low Voltage/Special Systems Rough	6
A226160	0010	00152	A2-2	Frame Pick-up	3
A226170	0010	00152	A2-2	Straight Edge	3
A226180	0010	00152	A2-2	Frame Inspection Complete	0
A226190	0010	00182	A2-2	Load Drywall	1
A226200	0010	00182	A2-2	Insulate Walls & Ceilings	2
A226210	0010	00182	A2-2	Hang Drywall	10
A226220	0010	00182	A2-2	Tape Drywall	6
A226230	0010	00182	A2-2	Texture Drywall	1

Start date 05/15/08
 Finish date 02/18/08
 Data user 05/18/08
 Run date 07/07/08
 Page number 12A
 Page count 263
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish estimate point

A22540	0010	00183	A3-2	Pour lightweight concrete	1
A22550	0010	00182	A3-2	Pour Hardrock Patio Deck	1
A22560	0010	00173	A3-2	Install Pre-Hung Doors/Frames	4
A22570	0010	00172	A3-2	Install Carpentry	4
A22580	0010	00172	A3-2	Paint Interior Walls, Ceilings, & Doors	3
A22590	0010	00005	A3-2	Owner Deadline Decor Changes	1
A22600	0010	00172	A3-2	Install All Flooring	10
A22610	0010	00172	A3-2	Phase 1 Clean	2
A22620	0010	00172	A3-2	Install Hardware	2
A22630	0010	00172	A3-2	Install Cabinets	4
A22640	0010	00172	A3-2	Install Countertops	4
A22650	0010	00172	A3-2	Install Fire Sprinkler Trim	1
A22660	0010	00172	A3-2	Install Plumbing Trim	3
A22670	0010	00172	A3-2	Install Electrical Trim	3
A22680	0010	00172	A3-2	Install Bath Accessories	2
A22690	0010	00172	A3-2	Install Appliances	1
A22700	0010	00172	A3-2	Start-up & Test Systems	3
A22810	0010	00172	A3-2	Phase 2 Clean	2
A22820	0010	00172	A3-2	City Inspections	0
A22830	0010	00172	A3-2	Architect Punchlist	1
A22840	0010	00172	A3-2	Phase 3 Clean	1
A22850	0010	00172	A3-2	Unit Turnover	0
A328010	0010	00142	A3-2	Area A3-Second Floor	90
A328020	0010	00142	A3-2	Layout, Sump Lines	1
A328030	0010	00142	A3-2	Frame Walls	8
A328040	0010	00142	A3-2	Roll & Set TJI Joist	8
A328050	0010	00142	A3-2	Sheet Decking	2
A328060	0010	00142	A3-2	A3-2 Deck Nail Inspections	1
A328070	0010	00142	A3-2	Install Exterior Windows/Patio Doors	2
A328080	0010	00142	A3-2	Insulate for Pre-Rock	2
A328090	0010	00142	A3-2	Pre-Rock	3
A328100	0010	00142	A3-2	Soffit Framing	3
A328110	0010	00152	A3-2	HVAC Rough	10
A328120	0010	00152	A3-2	Plumbing Rough	10
A328130	0010	00152	A3-2	Fire Sprinkler Rough	10
A328140	0010	00152	A3-2	Electrical Rough	10
A328150	0010	00152	A3-2	Low Voltage/Special Systems Rough	8
A328160	0010	00152	A3-2	Frame Pick-up	3
A328170	0010	00152	A3-2	Straight Edge	3
A328180	0010	00152	A3-2	Frame Inspection Complete	0
A328190	0010	00162	A3-2	Load Drywall	1
A328200	0010	00162	A3-2	Insulate Walls & Ceilings	2
A328210	0010	00162	A3-2	Hang Drywall	10
A328220	0010	00162	A3-2	Tape Drywall	6
A328230	0010	00162	A3-2	Texture Drywall	1
A328240	0010	00162	A3-2	Pour lightweight concrete	1
A328250	0010	00162	A3-2	Pour Hardrock Patio Deck	1
A328260	0010	00172	A3-2	Install Pre-Hung Doors/Frames	4
A328270	0010	00172	A3-2	Install Carpentry	4
A328280	0010	00172	A3-2	Paint Interior Walls, Ceilings, & Doors	3
A328290	0010	00005	A3-2	Owner Deadline Decor Changes	1
A328300	0010	00172	A3-2	Install All Flooring	10
A328310	0010	00172	A3-2	Phase 1 Clean	2
A328320	0010	00172	A3-2	Install Hardware	2

Start date 05/15/08
 Finish date 08/18/08
 Data date 05/15/08
 Plot date 07/07/08
 Project number 134
 Project count 247
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish milestone point

A32830	0010	00173	A3-3	Install Cabinets	4
A32834	0010	00172	A3-2	Install Countertops	4
A32835	0010	00172	A3-2	Install Fire Sprinkler Trim	1
A32836	0010	00172	A3-2	Install Plumbing Trim	3
A32837	0010	00172	A3-2	Install Electrical Trim	3
A32838	0010	00173	A3-2	Install Bath Accessories	2
A32839	0010	00172	A3-2	Install Appliances	1
A32840	0010	00172	A3-2	Start-up & Test Systems	3
A32841	0010	00172	A3-3	Phase 2 Clean	2
A32842	0010	00172	A3-2	City Inspections	0
A32843	0010	00172	A3-2	Architect Punchlist	1
A32844	0010	00172	A3-2	Phase 3 Clean	1
A32845	0010	00172	A3-3	Unit Turnover	0
A42801	0010	00142	A4-3	Area A4-Second Floor	80'
A42802	0010	00142	A4-2	LAYOUT, Snap Lines	1
A42803	0010	00142	A4-2	Frame Walls	8
A42804	0010	00142	A4-2	Roll & Set T.J. Joist	8
A42805	0010	00142	A4-2	Sheet Decking	2
A42806	0010	00142	A4-2	A4-2 Deck Nail Inspections	1
A42807	0010	00142	A4-2	Install Exterior Windows/Patio Doors	2
A42808	0010	00142	A4-2	Insulate for Pre-Rock	2
A42809	0010	00142	A4-2	Pre-Rock	3
A42810	0010	00142	A4-2	SoftW Framing	3
A42811	0010	00152	A4-2	HVAC Rough	10
A42812	0010	00152	A4-2	Plumbing Rough	10
A42813	0010	00152	A4-2	Fire Sprinkler Rough	10
A42814	0010	00152	A4-2	Electrical Rough	10
A42815	0010	00152	A4-2	Low Voltage/Special Systems Rough	6
A42816	0010	00152	A4-2	Frame Pick-up	3
A42817	0010	00152	A4-2	Straight Edge	3
A42818	0010	00152	A4-2	Frame Inspection Complete	0
A42819	0010	00182	A4-2	Load Drywall	1
A42820	0010	00182	A4-2	Insulate Walls & Ceilings	2
A42821	0010	00182	A4-2	Hang Drywall	10
A42822	0010	00182	A4-2	Tape Drywall	8
A42823	0010	00182	A4-2	Texture Drywall	1
A42824	0010	00182	A4-2	Pour lightweight concrete	1
A42825	0010	00183	A4-2	Pour Hardrock Patio Deck	1
A42826	0010	00172	A4-2	Install Pre-Hung Doors/Frames	4
A42827	0010	00172	A4-2	Install Carpentry	4
A42828	0010	00172	A4-2	Paint Interior Walls, Ceilings, & Doors	3
A42829	0010	00008	A4-2	Owner Deadline Decor Changes	1
A42830	0010	00172	A4-2	Install All Flooring	10
A42831	0010	00172	A4-2	Phase 1 Clean	2
A42832	0010	00172	A4-2	Install Hardware	2
A42833	0010	00172	A4-2	Install Cabinets	4
A42834	0010	00172	A4-2	Install Countertops	4
A42835	0010	00172	A4-2	Install Fire Sprinkler Trim	1
A42836	0010	00172	A4-2	Install Plumbing Trim	3
A42837	0010	00172	A4-2	Install Electrical Trim	3
A42838	0010	00172	A4-2	Install Bath Accessories	2
A42839	0010	00172	A4-2	Install Appliances	1
A42840	0010	00173	A4-2	Start-up & Test Systems	3
A42841	0010	00172	A4-2	Phase 2 Clean	2

Start date 05/15/08
 Finish date 07/18/08
 Issue date 05/15/08
 Run date 07/07/08
 Page number 14A
 Page count 251
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Empty bar
 Finish callout point

AS28430	0010	00172	AA-2	City Inspections	0
AS28430	0010	00172	AA-2	Architect Punchlist	1
AS28440	0010	00172	AA-2	Phase 3 Clean	1
AS28450	0010	00173	AA-2	Unit Turnover	0
AS28010	0010	00142	A5-2	Area A5-Second Floor	80'
AS28020	0010	00142	A5-2	Layout, Snap Lines	1
AS28030	0010	00142	A5-2	Frame Walls	5
AS28040	0010	00142	A5-2	Roof & Set T.J. Joints	5
AS28050	0010	00142	A5-2	Sheet Decking	2
AS28060	0010	00142	A5-2	A5-2 Deck Nail Inspections	1
AS28070	0010	00142	A5-2	Install Exterior Windows/Patio Doors	2
AS28080	0010	00142	A5-2	Insulate for Pre-Rock	2
AS28090	0010	00142	A5-2	Pre-Rock	3
AS28100	0010	00142	A5-2	Soffit Framing	3
AS28110	0010	00152	A5-2	HVAC Rough	10
AS28120	0010	00152	A5-2	Plumbing Rough	10
AS28130	0010	00152	A5-2	Fire Sprinkler Rough	10
AS28140	0010	00152	A5-2	Electrical Rough	10
AS28150	0010	00152	A5-2	Low Voltage/Special Systems Rough	8
AS28160	0010	00152	A5-2	Frame Pick-up	3
AS28170	0010	00152	A5-2	Straight Edge	3
AS28180	0010	00152	A5-2	Frame Inspection Complete	0
AS28190	0010	00162	A5-2	Load Drywall	1
AS28200	0010	00162	A5-2	Insulate Walls & Ceilings	2
AS28210	0010	00162	A5-2	Hang Drywall	10
AS28220	0010	00162	A5-2	Tap Drywall	8
AS28230	0010	00162	A5-2	Texture Drywall	1
AS28240	0010	00162	A5-2	Pour lightweight concrete	1
AS28250	0010	00162	A5-2	Pour Hardrock Patio Deck	1
AS28260	0010	00172	A5-2	Install Pre-Hung Doors/Frames	4
AS28270	0010	00172	A5-2	Install Carpentry	4
AS28280	0010	00172	A5-2	Paint Interior Walls, Ceilings, & Doors	3
AS28290	0010	00000	A5-2	Owner Deadline Decor Changes	1
AS28300	0010	00172	A5-2	Install All Flooring	10
AS28310	0010	00173	A5-2	Phase 1 Clean	2
AS28320	0010	00173	A5-2	Install Hardware	2
AS28330	0010	00172	A5-2	Install Cabinets	4
AS28340	0010	00173	A5-2	Install Countertops	4
AS28350	0010	00172	A5-2	Install Fire Sprinkler Trim	1
AS28360	0010	00172	A5-2	Install Plumbing Trim	3
AS28370	0010	00172	A5-2	Install Electrical Trim	3
AS28380	0010	00173	A5-2	Install Bath Accessories	2
AS28390	0010	00172	A5-2	Install Appliances	1
AS28400	0010	00172	A5-2	Start-up & Test Systems	3
AS28410	0010	00173	A5-2	Phase 2 Clean	2
AS28420	0010	00172	A5-2	City Inspections	0
AS28430	0010	00172	A5-2	Architect Punchlist	1
AS28440	0010	00172	A5-2	Phase 3 Clean	1
AS28450	0010	00172	A5-2	Unit Turnover	0
AS28010	0010	00142	A5-2	Area A5-Second Floor	80'
AS28020	0010	00142	A5-2	Layout, Snap Lines	1
AS28030	0010	00142	A5-2	Frame Walls	5
AS28040	0010	00142	A5-2	Roof & Set T.J. Joints	5
AS28050	0010	00142	A5-2	Sheet Decking	2

Start date 05/15/08
Finish date 02/15/09
Take down 02/15/09
Plan date 07/27/08
Page number 16A
Page count 251
© Primavera Systems, Inc.

Summit Builders Construction Company
X (Ten) Lofts

Early bar
Finish collection point

AE2000	0010	00142	A6-2	As-2 Deck Nail Inspections	1
AE20070	0010	00142	A6-2	Install Exterior Windows/Patio Doors	2
AE20080	0010	00142	A6-2	Insulate for Pre-Rock	2
AE20090	0010	00142	A6-2	Pre-Rock	3
AE20100	0010	00142	A6-2	Soft Framing	3
AE20110	0010	00152	A6-2	HVAC Rough	10
AE20120	0010	00152	A6-2	Plumbing Rough	10
AE20130	0010	00152	A6-2	Fire Sprinkler Rough	10
AE20140	0010	00152	A6-2	Electrical Rough	10
AE20150	0010	00152	A6-2	Low Voltage/Special Systems Rough	8
AE20160	0010	00152	A6-2	Frame Pick-up	3
AE20170	0010	00152	A6-2	Straight Edge	3
AE20180	0010	00152	A6-2	Frame Inspection Complete	0
AE20190	0010	00162	A6-2	Load Drywall	1
AE20200	0010	00162	A6-2	Insulate Walls & Ceilings	2
AE20210	0010	00162	A6-2	Hang Drywall	10
AE20220	0010	00162	A6-2	Tape Drywall	6
AE20230	0010	00162	A6-2	Texture Drywall	1
AE20240	0010	00162	A6-2	Pour lightweight concrete	1
AE20250	0010	00162	A6-2	Pour Hardrock Patio Deck	1
AE20260	0010	00172	A6-2	Install Pre-Hung Doors/Frames	4
AE20270	0010	00173	A6-2	Install Carpentry	4
AE20280	0010	00173	A6-2	Paint Interior Walls, Ceilings, & Doors	3
AE20290	0010	00005	A6-2	Owner Deadline Decor Changes	1
AE20300	0010	00172	A6-2	Install All Flooring	10
AE20310	0010	00173	A6-2	Phase 1 Clean	2
AE20320	0010	00172	A6-2	Install Hardware	2
AE20330	0010	00172	A6-2	Install Cabinets	4
AE20340	0010	00172	A6-2	Install Countertops	4
AE20350	0010	00172	A6-2	Install Fire Sprinkler Trim	1
AE20360	0010	00172	A6-2	Install Plumbing Trim	3
AE20370	0010	00172	A6-2	Install Electrical Trim	3
AE20380	0010	00172	A6-2	Install Bath Accessories	2
AE20390	0010	00173	A6-2	Install Appliances	1
AE20400	0010	00172	A6-2	Start-up & Test Systems	3
AE20410	0010	00172	A6-2	Phase 2 Clean	2
AE20420	0010	00172	A6-2	City Inspections	0
AE20430	0010	00172	A6-2	Architect Punchlist	1
AE20440	0010	00172	A6-2	Phase 3 Clean	1
AE20450	0010	00172	A6-2	Unit Turnover	0
A37000	0010	00005	000A	3rd Floor Schedule	187'
A137010	0010	00142	A1-3	Area A1-Third Floor	90'
A137020	0010	00142	A1-3	Layout, Snap Lines	1
A137030	0010	00142	A1-3	Frame Walls	8
A137040	0010	00142	A1-3	Roll & Set TJI Joist	6
A137050	0010	00142	A1-3	Sheet Decking	2
A137060	0010	00142	A1-3	A1-3 Deck Nail Inspections	1
A137070	0010	00142	A1-3	Install Exterior Windows/Patio Doors	2
A137080	0010	00142	A1-3	Insulate for Pre-Rock	2
A137090	0010	00142	A1-3	Pre-Rock	3
A137100	0010	00142	A1-3	Soft Framing	3
A137110	0010	00152	A1-3	HVAC Rough	10
A137120	0010	00152	A1-3	Plumbing Rough	10
A137130	0010	00152	A1-3	Fire Sprinkler Rough	10
A137140	0010	00152	A1-3	Electrical Rough	10

Start date 05/15/08
 Finish date 09/15/08
 Issue date 09/15/08
 Run date 09/21/08
 Page number 18A
 Page count 251
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish indicates point

A137150	0010	00152	A1-3	Low Voltage/Special Systems Rough	6
A137160	0010	00152	A1-3	Frame Pick-up	3
A137170	0010	00152	A1-3	Straight Edge	3
A137180	0010	00152	A1-3	Frame Inspection Complete	0
A137180	0010	00162	A1-3	Load Drywall	1
A137200	0010	00162	A1-3	Insulate Walls & Ceilings	2
A137210	0010	00162	A1-3	Hang Drywall	10
A137220	0010	00162	A1-3	Tap Drywall	6
A137230	0010	00162	A1-3	Texture Drywall	1
A137240	0010	00162	A1-3	Pour lightweight concrete	1
A137250	0010	00162	A1-3	Pour Hardrock Patio Deck	1
A137260	0010	00172	A1-3	Install Pre-Hung Doors/Frames	4
A137270	0010	00172	A1-3	Install Carpentry	4
A137280	0010	00172	A1-3	Paint Interior Walls, Ceilings, & Doors	3
A137290	0010	00005	A1-3	Owner Deadline Decor Changes	1
A137300	0010	00173	A1-3	Install All Flooring	10
A137310	0010	00172	A1-3	Phase 1 Clean	2
A137320	0010	00172	A1-3	Install Hardware	2
A137330	0010	00172	A1-3	Install Cabinets	4
A137340	0010	00172	A1-3	Install Countertops	4
A137350	0010	00173	A1-3	Install Fire Sprinkler Trim	1
A137360	0010	00173	A1-3	Install Plumbing Trim	3
A137370	0010	00172	A1-3	Install Electrical Trim	3
A137380	0010	00172	A1-3	Install Bath Accessories	2
A137390	0010	00172	A1-3	Install Appliances	1
A137400	0010	00172	A1-3	Start-up & Test Systems	3
A137410	0010	00173	A1-3	Phase 2 Clean	2
A137420	0010	00172	A1-3	City Inspections	0
A137430	0010	00172	A1-3	Architect Punchlist	1
A137440	0010	00173	A1-3	Phase 3 Clean	1
A137450	0010	00172	A1-3	Unit Turnover	0
A237010	0010	00142	A2-3	Area A2-Third Floor	122
A237020	0010	00142	A2-3	Layout, Snap Lines	1
A237030	0010	00142	A2-3	Frame Walls	5
A237040	0010	00142	A2-3	Roll & Set TJI Joist	5
A237050	0010	00142	A2-3	Sheet Decking	2
A237060	0010	00142	A2-3	A2-3 Deck Nail Inspections	1
A237070	0010	00142	A2-3	Install Exterior Windows/Patio Doors	2
A237080	0010	00142	A2-3	Insulate for Pre-Rock	2
A237090	0010	00142	A2-3	Pre-Rock	3
A237100	0010	00142	A2-3	Soffit Framing	3
A237110	0010	00152	A2-3	HVAC Rough	10
A237120	0010	00152	A2-3	Plumbing Rough	10
A237130	0010	00152	A2-3	Fire Sprinkler Rough	10
A237140	0010	00152	A2-3	Electrical Rough	10
A237150	0010	00152	A2-3	Low Voltage/Special Systems Rough	6
A237160	0010	00162	A2-3	Frame Pick-up	3
A237170	0010	00152	A2-3	Straight Edge	3
A237180	0010	00162	A2-3	Frame Inspection Complete	0
A237180	0010	00162	A2-3	Load Drywall	1
A237200	0010	00162	A2-3	Insulate Walls & Ceilings	2
A237210	0010	00162	A2-3	Hang Drywall	10
A237220	0010	00162	A2-3	Tap Drywall	6
A237230	0010	00162	A2-3	Texture Drywall	1

Start date 05/15/08
 Finish date 02/18/09
 Draw date 05/15/08
 Run date 07/07/08
 Page number 11A
 Page count 251
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish calendar point

A237240	0010	00182	A2-3	Pour lightweight concrete	1
A237250	0010	00182	A2-3	Pour Hardrock Patio Deck	1
A237260	0010	00172	A2-3	Install Pre-Hung Doors/Frames	4
A237270	0010	00172	A2-3	Install Carpentry	4
A237280	0010	00172	A2-3	Paint Interior Walls, Ceilings, & Doors	3
A237290	0010	00008	A2-3	Owner Deadline Decor Changes	1
A237300	0010	00172	A2-3	Install All Flooring	10
A237310	0010	00172	A2-3	Phase 1 Clean	2
A237320	0010	00172	A2-3	Install Hardware	2
A237330	0010	00172	A2-3	Install Cabinets	4
A237340	0010	00172	A2-3	Install Countertops	4
A237350	0010	00172	A2-3	Install Fire Sprinkler Trim	1
A237360	0010	00172	A2-3	Install Plumbing Trim	3
A237370	0010	00172	A2-3	Install Electrical Trim	3
A237380	0010	00172	A2-3	Install Bath Accessories	2
A237390	0010	00172	A2-3	Install Appliances	1
A237400	0010	00172	A2-3	Start-up & Test Systems	3
A237410	0010	00172	A2-3	Phase 2 Clean	2
A237420	0010	00172	A2-3	City Inspections	0
A237430	0010	00172	A2-3	Architect Punchlist	1
A237440	0010	00172	A2-3	Phase 3 Clean	1
A237450	0010	00172	A2-3	Unit Turnover	0
A337010	0010	00142	A3-3	Area A3-Third Floor	80*
A337020	0010	00142	A3-3	Layout, Snap Lines	1
A337030	0010	00142	A3-3	Frame Walls	8
A337040	0010	00142	A3-3	Roll & Set T.J. Joist	8
A337050	0010	00142	A3-3	Sheet Decking	2
A337060	0010	00142	A3-3	A3-3 Deck Nail Inspections	1
A337070	0010	00142	A3-3	Install Exterior Windows/Patio Doors	2
A337080	0010	00142	A3-3	Insulate for Pre-Rock	2
A337090	0010	00142	A3-3	Pre-Rock	3
A337100	0010	00142	A3-3	Bottom Framing	3
A337110	0010	00152	A3-3	HVAC Rough	10
A337120	0010	00152	A3-3	Plumbing Rough	10
A337130	0010	00152	A3-3	Fire Sprinkler Rough	10
A337140	0010	00152	A3-3	Electrical Rough	10
A337150	0010	00152	A3-3	Low Voltage/Special Systems Rough	8
A337160	0010	00152	A3-3	Frame Pick-up	3
A337170	0010	00182	A3-3	Straight Edge	3
A337180	0010	00152	A3-3	Frame Inspection Complete	0
A337190	0010	00182	A3-3	Load Drywall	1
A337200	0010	00182	A3-3	Insulate Walls & Ceilings	2
A337210	0010	00182	A3-3	Hang Drywall	10
A337220	0010	00182	A3-3	Tape Drywall	0
A337230	0010	00182	A3-3	Texture Drywall	1
A337240	0010	00182	A3-3	Pour lightweight concrete	1
A337250	0010	00182	A3-3	Pour Hardrock Patio Deck	1
A337260	0010	00172	A3-3	Install Pre-Hung Doors/Frames	4
A337270	0010	00172	A3-3	Install Carpentry	4
A337280	0010	00172	A3-3	Paint Interior Walls, Ceilings, & Doors	3
A337290	0010	00008	A3-3	Owner Deadline Decor Changes	1
A337300	0010	00172	A3-3	Install All Flooring	10
A337310	0010	00172	A3-3	Phase 1 Clean	2
A337320	0010	00172	A3-3	Install Hardware	2

Start date 05/15/08
 Finish date 02/18/09
 Date date 05/15/08
 Run date 07/07/08
 Page Number 18A
 Page Count 253
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish milestone point

A337200	0010	00172	A3-3	Install Cabinets	4
A337240		00172	A3-3	Install Countertops	4
A337260	0010	00172	A3-3	Install Fire Sprinkler Trim	1
A337280	0010	00172	A3-3	Install Plumbing Trim	3
A337290	0010	00172	A3-3	Install Electrical Trim	3
A337300	0010	00172	A3-3	Install Bath Accessories	2
A337360	0010	00172	A3-3	Install Appliances	1
A337400	0010	00172	A3-3	Start-up & Test Systems	3
A337410	0010	00172	A3-3	Phase 2 Clean	2
A337420	0010	00172	A3-3	City Inspections	0
A337430	0010	00172	A3-3	Architect Punchlist	1
A337440	0010	00172	A3-3	Phase 3 Clean	1
A337450	0010	00172	A3-3	Unit Turnover	0
A437010	0010	00142	A4-3	Area A4-Third Floor	122'
A437020	0010	00142	A4-3	LAYOUT, Snap Lines	1
A437030	0010	00143	A4-3	Frame Walls	5
A437040	0010	00142	A4-3	Roll & Set T.R. Joist	5
A437050	0010	00143	A4-3	Sheet Decking	2
A437060	0010	00142	A4-3	A4-3 Deck Nail Inspections	1
A437070	0010	00142	A4-3	Install Exterior Windows/Patio Doors	2
A437080	0010	00142	A4-3	Insulate for Pre-Rock	2
A437090	0010	00142	A4-3	Pre-Rock	3
A437100	0010	00142	A4-3	Soffit Framing	3
A437110	0010	00152	A4-3	HVAC Rough	10
A437130	0010	00152	A4-3	Piercing Rough	10
A437130	0010	00152	A4-3	Fire Sprinkler Rough	10
A437140	0010	00152	A4-3	Electrical Rough	10
A437150	0010	00152	A4-3	Low Voltage/Special Systems Rough	6
A437160	0010	00152	A4-3	Frame Pick-up	3
A437170	0010	00152	A4-3	Straight Edge	3
A437180	0010	00152	A4-3	Frame Inspection Complete	0
A437190	0010	00162	A4-3	Load Drywall	1
A437200	0010	00162	A4-3	Insulate Walls & Ceilings	2
A437210	0010	00162	A4-3	Hang Drywall	10
A437220	0010	00162	A4-3	Tape Drywall	6
A437230	0010	00162	A4-3	Texture Drywall	1
A437240	0010	00162	A4-3	Pour Lightweight concrete	1
A437250	0010	00162	A4-3	Pour Hardrock Patio Deck	1
A437260	0010	00172	A4-3	Install Pre-Hung Doors/Frames	4
A437270	0010	00172	A4-3	Install Carpentry	4
A437280	0010	00172	A4-3	Paint Interior Walls, Ceilings, & Doors	3
A437290	0010	00005	A4-3	Owner Deadlines Decor Changes	1
A437300	0010	00172	A4-3	Install All Flooring	10
A437310	0010	00172	A4-3	Phase 1 Clean	2
A437320	0010	00172	A4-3	Install Hardware	2
A437330	0010	00172	A4-3	Install Cabinets	4
A437340	0010	00172	A4-3	Install Countertops	4
A437350	0010	00172	A4-3	Install Fire Sprinkler Trim	1
A437360	0010	00172	A4-3	Install Plumbing Trim	3
A437370	0010	00172	A4-3	Install Electrical Trim	3
A437380	0010	00172	A4-3	Install Bath Accessories	2
A437390	0010	00172	A4-3	Install Appliances	1
A437400	0010	00172	A4-3	Start-up & Test Systems	3
A437410	0010	00172	A4-3	Phase 2 Clean	2

Start date 05/15/08
 Finish date 09/15/08
 Date 05/15/08
 Run date 05/27/08
 Pages 134
 Print 254
 © Proforma Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish reflection point

AS37430	0010	00172	A4-3	City Inspections	0
AS37430	0010	00172	A4-3	Architect Punchlist	1
AS37440	0010	00172	A4-3	Phase 3 Clean	1
AS37450	0010	00172	A4-3	Unit Turnover	0
AS37010	0010	00142	A5-3	Area A5-Third Floor	80'
AS37020	0010	00142	A5-3	Layout, Snap Lines	1
AS37030	0010	00142	A5-3	Frame Walls	5
AS37040	0010	00142	A5-3	Roll & Set T.J. Joist	8
AS37050	0010	00142	A5-3	Sheel Decking	2
AS37060	0010	00142	A5-3	A5-3 Deck Nail Inspections	1
AS37070	0010	00142	A5-3	Install Exterior Windows/Patio Doors	3
AS37080	0010	00142	A5-3	Insulate for Pre-Rock	3
AS37090	0010	00142	A5-3	Pre-Rock	3
AS37100	0010	00142	A5-3	Softie Framing	3
AS37110	0010	00182	A5-3	HVAC Rough	10
AS37120	0010	00182	A5-3	Plumbing Rough	10
AS37130	0010	00182	A5-3	Fire Sprinkler Rough	10
AS37140	0010	00182	A5-3	Electrical Rough	10
AS37150	0010	00182	A5-3	Low Voltage/Special Systems Rough	8
AS37160	0010	00182	A5-3	Frame Pick-up	3
AS37170	0010	00182	A5-3	Straight Edge	3
AS37180	0010	00182	A5-3	Frame Inspection Complete	0
AS37190	0010	00182	A5-3	Load Drywall	1
AS37200	0010	00182	A5-3	Insulate Walls & Ceilings	2
AS37210	0010	00182	A5-3	Hang Drywall	10
AS37220	0010	00182	A5-3	Tape Drywall	8
AS37230	0010	00182	A5-3	Texture Drywall	1
AS37240	0010	00182	A5-3	Pour lightweight concrete	1
AS37250	0010	00182	A5-3	Pour Hardrock Patio Deck	1
AS37260	0010	00172	A5-3	Install Pre-Hung Doors/Frames	4
AS37270	0010	00172	A5-3	Install Carpentry	4
AS37280	0010	00172	A5-3	Paint Interior Walls, Ceilings, & Doors	3
AS37290	0010	00005	A5-3	Owner Deadline Decor Changes	1
AS37300	0010	00172	A5-3	Install All Flooring	10
AS37310	0010	00172	A5-3	Phase 1 Clean	2
AS37320	0010	00172	A5-3	Install Hardware	2
AS37330	0010	00172	A5-3	Install Cabinets	4
AS37340	0010	00172	A5-3	Install Countertops	4
AS37350	0010	00172	A5-3	Install Fire Sprinkler Trim	1
AS37360	0010	00172	A5-3	Install Plumbing Trim	3
AS37370	0010	00172	A5-3	Install Electrical Trim	3
AS37380	0010	00172	A5-3	Install Bath Accessories	2
AS37390	0010	00172	A5-3	Install Appliances	1
AS37400	0010	00172	A5-3	Start-up & Test Systems	3
AS37410	0010	00172	A5-3	Phase 2 Clean	2
AS37420	0010	00172	A5-3	City Inspections	0
AS37430	0010	00172	A5-3	Architect Punchlist	1
AS37440	0010	00172	A5-3	Phase 3 Clean	1
AS37450	0010	00172	A5-3	Unit Turnover	0
AS37010	0010	00142	A6-3	Area A6-Third Floor	122'
AS37020	0010	00142	A6-3	Layout, Snap Lines	1
AS37030	0010	00142	A6-3	Frame Walls	8
AS37040	0010	00142	A6-3	Roll & Set T.J. Joist	8
AS37050	0010	00142	A6-3	Sheel Decking	2

Start date 05/15/08
 Finish date 02/18/09
 Data date 05/15/08
 Run date 07/27/08
 Page number 254
 Page count 254
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish milestone point

A63708	0010	00142	A6-3	A6-3 Deck Nail Inspections	1
A63709	0010	00142	A6-3	Install Exterior Windows/Patio Doors	2
A63709	0010	00142	A6-3	Insulate for Pre-Rock	2
A63709	0010	00142	A6-3	Pre-Rock	3
A63710	0010	00142	A6-3	Boiler Framing	3
A63710	0010	00152	A6-3	HVAC Rough	10
A63712	0010	00182	A6-3	Plumbing Rough	10
A63713	0010	00182	A6-3	Fire Sprinkler Rough	10
A63714	0010	00182	A6-3	Electrical Rough	10
A63715	0010	00182	A6-3	Low Voltage/Special Systems Rough	6
A63716	0010	00182	A6-3	Frame Pick-up	3
A63717	0010	00182	A6-3	Straight Edge	3
A63718	0010	00182	A6-3	Frame Inspection Complete	0
A63719	0010	00182	A6-3	Load Drywall	1
A63720	0010	00182	A6-3	Inside Walls & Ceilings	2
A63721	0010	00182	A6-3	Hang Drywall	10
A63722	0010	00182	A6-3	Tape Drywall	8
A63723	0010	00182	A6-3	Texture Drywall	1
A63724	0010	00182	A6-3	Pour lightweight concrete	1
A63725	0010	00182	A6-3	Pour Hardrock Patio Deck	1
A63726	0010	00172	A6-3	Install Pre-Hung Doors/Frames	4
A63727	0010	00172	A6-3	Install Carpentry	4
A63728	0010	00172	A6-3	Paint Interior Walls, Ceilings, & Doors	3
A63729	0010	00008	A6-3	Owner Deadline Decor Changes	1
A63730	0010	00172	A6-3	Install All Flooring	10
A63731	0010	00172	A6-3	Phase 1 Clean	2
A63732	0010	00172	A6-3	Install Hardware	2
A63733	0010	00172	A6-3	Install Cabinets	4
A63734	0010	00172	A6-3	Install Countertops	4
A63735	0010	00172	A6-3	Install Fire Sprinkler Trim	1
A63736	0010	00172	A6-3	Install Plumbing Trim	3
A63737	0010	00172	A6-3	Install Electrical Trim	3
A63738	0010	00172	A6-3	Install Bath Accessories	2
A63739	0010	00172	A6-3	Install Appliances	1
A63740	0010	00172	A6-3	Start-up & Test Systems	3
A63741	0010	00172	A6-3	Phase 2 Clean	2
A63742	0010	00172	A6-3	City Inspections	0
A63743	0010	00172	A6-3	Architect Punchlist	1
A63744	0010	00172	A6-3	Phase 3 Clean	1
A63745	0010	00172	A6-3	Unit Turnover	0
RA000	0010	00005	00RA	Roof Schedule	114'
RA000	0010	00148	A1-4	Area A-Roof	08'
RA001	0010	00148	A1-4	Roof Sheathing	8
RA002	0010	00148	A1-4	Roof Crickets	8
RA003	0010	00148	A1-4	Roof Drains	10
RA004	0010	00148	A1-4	Built-up Roof Dry-In	25
RA005	0010	00148	A1-4	Metal Roof Dry-In	18
RA006	0010	00148	A1-4	Boiler and Storage Tank	14
RA007	0010	00148	A1-4	Attic Spaces (2)	30
RB000	0010	00148	A4-4	Area B-Roof	81'
RB001	0010	00148	A4-4	Roof Sheathing	8
RB002	0010	00148	A4-4	Roof Crickets	8
RB003	0010	00148	A4-4	Roof Drains	10
RB004	0010	00148	A4-4	Built-up Roof Dry-In	25
RB005	0010	00148	A4-4	Metal Roof Dry-In	16

Start date	05/15/08
Finish date	02/18/09
Draw date	02/18/08
Plan date	02/27/08
Permit number	754
Page count	24
© Primavera Systems, Inc.	

Summit Builders Construction Company
X (Ten) Lofts

Early bar
Finish evaluation point

RC8570	0010	00148	A4-8	Attic Spaces (2)	30
RC8600	0010	00148	A4-8	Area C-Roof	68'
RC8610	0010	00148	A8-8	Roof Sheathing	8
RC8620	0010	00148	A8-8	Roof Crickets	6
RC8630	0010	00148	A8-8	Roof Drains	10
RC8640	0010	00148	A8-8	Build-up Roof Dry-In	25
RC8650	0010	00148	A8-8	Metal Roof Dry-In	15
EA000	0010	00005	A1-7	Exterior Schedule	200'
EA19000	0010	00132	A1-7	Area A1-Exterior & Interior Activities	122'
EA19080	0010	00132	A1-8	Set Scaffolding (Int/Ext.)-Area A1	4
EA19100	0010	00132	A1-8	Install CMU (Int/Ext.)-Area A1	22
EA19120	0010	00132	A1-8	Rebar, Grout, Clean-up (Int/Ext.)-Area A1	6
EA19140	0010	00132	A1-8	Remove Scaffolding (Int/Ext.)-Area A1	3
EA19010	0010	00148	A1-8	Exterior Plywood Sheathing	10
EA19020	0010	00148	A1-8	Exterior Gypsum Sheathing	10
EA19030	0010	00148	A1-8	Weather Resistant Barrier	8
EA19040	0010	00148	A1-8	Rigid Insulation Board	8
EA19050	0010	00148	A1-8	Stucco System	14
EA19070	0010	00148	A1-8	Security Screens	8
EA19080	0010	00148	A1-8	Metal Awnings/Railings	5
EA19090	0010	00148	A1-8	Paint Exterior Stucco and Steel Items	5
EA29000	0010	00132	A2-7	Area A2-Exterior & Interior Activities	104'
EA29080	0010	00132	A2-8	Set Scaffolding (Int/Ext.)-Area A2	4
EA29100	0010	00132	A2-8	Install CMU (Int/Ext.)-Area A2	22
EA29120	0010	00132	A2-8	Rebar, Grout, Clean-up (Int/Ext.)-Area A2	8
EA29140	0010	00132	A2-8	Remove Scaffolding (Int/Ext.)-Area A2	3
EA29010	0010	00148	A2-8	Exterior Plywood Sheathing	10
EA29020	0010	00148	A2-8	Exterior Gypsum Sheathing	10
EA29030	0010	00148	A2-8	Weather Resistant Barrier	8
EA29040	0010	00148	A2-8	Rigid Insulation Board	8
EA29050	0010	00148	A2-8	Stucco System	14
EA29060	0010	00148	A2-8	Metal Awnings/Railings	5
EA29070	0010	00148	A2-8	Paint Exterior Stucco and Steel Items	5
EA39000	0010	00132	A3-7	Area A3-Exterior & Interior Activities	120'
EA39080	0010	00132	A3-8	Set Scaffolding (Int/Ext.)-Area A3	4
EA39100	0010	00132	A3-8	Install CMU (Int/Ext.)-Area A3	22
EA39110	0010	00132	A3-8	Rebar, Grout, Clean-up (Int/Ext.)-Area A3	8
EA39120	0010	00132	A3-8	Remove Scaffolding (Int/Ext.)-Area A3	3
EA39010	0010	00148	A3-8	Exterior Plywood Sheathing	10
EA39020	0010	00148	A3-8	Exterior Gypsum Sheathing	10
EA39030	0010	00148	A3-8	Weather Resistant Barrier	8
EA39040	0010	00148	A3-8	Rigid Insulation Board	8
EA39050	0010	00148	A3-8	Stucco System	14
EA39060	0010	00148	A3-8	Metal Awnings/Railings	5
EA39070	0010	00148	A3-8	Paint Exterior Stucco and Steel Items	5
EA49000	0010	00132	A4-7	Area A4-Exterior & Interior Activities	125'
EA49080	0010	00132	A4-8	Set Scaffolding (Int/Ext.)-Area A4	4
EA49100	0010	00132	A4-8	Install CMU (Int/Ext.)-Area A4	22
EA49120	0010	00132	A4-8	Rebar, Grout, Clean-up (Int/Ext.)-Area A4	8
EA49140	0010	00132	A4-8	Remove Scaffolding (Int/Ext.)-Area A4	3
EA49010	0010	00148	A4-8	Exterior Plywood Sheathing	10
EA49020	0010	00148	A4-8	Exterior Gypsum Sheathing	10
EA49030	0010	00148	A4-8	Weather Resistant Barrier	8
EA49040	0010	00148	A4-8	Rigid Insulation Board	8
EA49050	0010	00148	A4-8	Stucco System	14

Start date	05/15/08
Finish date	07/18/08
Date date	05/15/08
Run date	07/02/08
Page number	22A
Page count	251
© Primavera Systems, Inc.	

Summit Builders Construction Company
X (Ten) Lofts

Early bar
Finish primavera print

EA4800	0010	00148	A4-9	Metal Awning/Railings	8
EA48130	0010	00148	A4-9	Paint Exterior Stucco and Steel Items	8
EA50010	0010	00132	A5-7	Area A5-Exterior & Interior Activities	128
EA50020	0010	00132	A5-8	Set Scaffolding (Int./Ext.)-Area A5	4
EA50030	0010	00132	A5-8	Install CMU (Int./Ext.)-Area A5	22
EA50040	0010	00132	A5-8	Rebar, Grout, Clean-up (Int./Ext.)-Area A5	8
EA50050	0010	00132	A5-8	Remove Scaffolding (Int./Ext.)-Area A5	3
EA50060	0010	00148	A5-9	Exterior Plywood Sheathing	10
EA50070	0010	00148	A5-9	Exterior Gypsum Sheathing	10
EA50080	0010	00148	A5-9	Weather Resistant Barrier	8
EA50090	0010	00148	A5-9	Rigid Insulation Board	8
EA50100	0010	00148	A5-9	Stucco System	14
EA50110	0010	00148	A5-9	Metal Awning/Railings	8
EA50120	0010	00148	A5-9	Paint Exterior Stucco and Steel Items	8
EA50010	0010	00132	A5-7	Area A6-Exterior & Interior Activities	128
EA50020	0010	00132	A6-8	Set Scaffolding (Int./Ext.)-Area A6	4
EA50030	0010	00132	A6-8	Install CMU (Int./Ext.)-Area A6	22
EA50040	0010	00132	A6-8	Rebar, Grout, Clean-up (Int./Ext.)-Area A6	8
EA50050	0010	00132	A6-8	Remove Scaffolding (Int./Ext.)-Area A6	3
EA50060	0010	00148	A6-9	Exterior Plywood Sheathing	10
EA50070	0010	00148	A6-9	Exterior Gypsum Sheathing	10
EA50080	0010	00148	A6-9	Weather Resistant Barrier	8
EA50090	0010	00148	A6-9	Rigid Insulation Board	8
EA50100	0010	00148	A6-9	Stucco System	14
EA50110	0010	00148	A6-9	Metal Awning/Railings	8
EA50120	0010	00148	A6-9	Paint Exterior Stucco and Steel Items	8
PD1000	0030	00210	00PA	Podium Hardcape Schedule	70
PDA1005	0030	00210	00PA	Area A Podium Deck Hardcape & Amenities	44
PDA1010	0030	00210	00PA	Layout CMU Raised Planters-Area A	1
PDA1020	0030	00210	00PA	Install CMU Raised Planters-Area A	3
PDA1030	0030	00210	00PA	Grout CMU Raised Planters-Area A	1
PDA1035	0030	00210	00PA	Install CMU Cap at Raised Planters-Area A	2
PDA1040	0030	00210	00PA	Stucco Brown Coat CMU Raised Planters-Area A	1
PDA1050	0030	00210	00PA	Stucco Texture Coat CMU Raised Planters Area A	1
PDA1060	0030	00210	00PA	Paint CMU Raised Planters-Area A	1
PDA1070	0030	00210	00PA	Install Waterproofing-Area A	2
PDA1080	0030	00210	00PA	Install Waterproofing protection Board-Area A	2
PDA1090	0030	00210	00PA	Install ABC Sub-base Material-Area A	2
PDA1100	0030	00210	00PA	Install Colored Concrete Topping-Area A	3
PDA1110	0030	00210	00PA	Install Planter Filter Mesh at Planters-Area A	1
PDA1120	0030	00210	00PA	Install Irrigation to Planters-Area A	4
PDA1130	0030	00210	00PA	Install Dirt Backfill @ Planters-Area A	2
PDA1140	0030	00210	00PA	Install Plants/Trees-Area A	2
PDA1150	0030	00210	00PA	Install Fireplace-Area A	8
PDA1160	0030	00210	00PA	Install Raised Sunning Deck-Area A	8
PDA1170	0030	00210	00PA	Install BBQ's Grills-Area A	1
PDA1180	0030	00210	00PA	Install Pool Fence-Area A	3
PDA1190	0030	00210	00PA	Install Ramada-Area A	10
PDB0098	0030	00210	00PB	Area B Podium Deck Hardcape & Amenities	28
PDB1000	0030	00210	00PB	Layout CMU Raised Planters-Area B	1
PDB1010	0030	00210	00PB	Install CMU Raised Planters-Area B	3
PDB1020	0030	00210	00PB	Grout CMU Raised Planters-Area B	1
PDB1030	0030	00210	00PB	Install CMU Cap at Raised Planters-Area B	2
PDB1040	0030	00210	00PB	Stucco Brown Coat CMU Raised Planters-Area B	1
PDB1050	0030	00210	00PB	Stucco Texture Coat CMU Raised Planters Area B	1
PDB1060	0030	00210	00PB	Paint CMU Raised Planters-Area B	1
PDB1070	0030	00210	00PB	Install Waterproofing-Area B	2

Start date 09/16/08
 Finish date 02/18/09
 Issue date 09/16/08
 Run date 07/02/09
 Page number 25A
 Page count 25J
 © Pitcovert Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish collection point

POB1080	0030	00210	00P8	Install Waterproofing Protection Board-Area B	2
POB1090	0030	00210	00P8	Install ABC Sub-base Material-Area B	2
POB1104	0030	00210	00P8	Install Colored Concrete Topping-Area B	3
POB1110	0030	00210	00P8	Install Planter Filter Mesh at Planters-Area B	1
POB1120	0030	00210	00P8	Install Irrigation to Planters-Area B	4
POB1130	0030	00210	00P8	Install Dirt Backfill @ Planters-Area B	2
POB1140	0030	00210	00P8	Install Plants/Trees-Area B	2
POB1150	0030	00210	00P8	Install Firepit-Area B	3
POB1160	0030	00210	00P8	Install (2) Ramada-Area B	10
HC000	0010	00220	HS-01	Hardscape Schedule	67'
HC001	0010	00220	HS-01	South Side Hardscape Activities	28'
HC002	0010	00220	HS-01	Rough Cut Building to Curb-South Side	3
HC015	0010	00220	HS-01	Fine Cut Building to Curb-South Side	2
HC030	0010	00220	HS-01	Sewcut and Remove Existing Driveways & Curb	2
HC045	0010	00220	HS-01	Set Forms for curb & driveway replacement	3
HC060	0010	00220	HS-01	Pour curb & driveway replacement	2
HC075	0010	00220	HS-01	Strip forms and backfill	1
HC080	0010	00220	HS-02	Replace asphalt at curb & driveways	3
HC105	0010	00220	HS-04	Set Survey Stakes- SW Quad	1
HC120	0010	00220	HS-04	Set forms for hardscape-SW Quad	3
HC135	0010	00220	HS-04	Pour hardscape-SW Quad	4
HC150	0010	00220	HS-04	Strip forms-SW Quad	1
HC165	0010	00220	HS-06	Set Survey Stakes- SE Quad	1
HC180	0010	00220	HS-06	Set forms for hardscape-SE Quad	3
HC195	0010	00220	HS-06	Pour hardscape-SE Quad	4
HC210	0010	00220	HS-06	Strip forms-SE Quad	1
HC215	0010	00220	HS-02	North Side Hardscape Activities	58'
HC228	0010	00220	HS-02	Rough Cut Building to Curb-North Side	3
HC227	0010	00220	HS-02	Fine Cut Building to Curb-North Side	2
HC225	0010	00220	HS-06	Set Survey Stakes- NW Quad	1
HC240	0010	00220	HS-06	Set forms for hardscape-NW Quad	3
HC255	0010	00220	HS-06	Pour hardscape-NW Quad	4
HC270	0010	00220	HS-06	Strip forms-NW Quad	1
HC285	0010	00220	HS-10	Set Survey Stakes- NE Quad	1
HC300	0010	00220	HS-10	Set forms for hardscape-NE Quad	3
HC315	0010	00220	HS-10	Pour hardscape-NE Quad	4
HC330	0010	00220	HS-10	Strip forms-NE Quad	1
HC345	0010	00220	HS-02	Survey Seatwall locations	1
HC360	0010	00220	HS-02	Excavate Seatwall footings	1
HC375	0010	00220	HS-02	Pour Seatwall footings	2
HC390	0010	00220	HS-02	Pour CIP Seatwalls	4
HC405	0010	00220	HS-02	Install Entry Plaza Paving Stones-South Entrance	8
HC420	0010	00220	HS-02	Install Entry Plaza Paving Stones-North Entrance	4
HC450	0010	00220	HS-02	Survey Monument Sign	1
HC465	0010	00220	HS-02	Excavate Sign Footings	2
HC480	0010	00220	HS-02	Build Sign	10
HC495	0010	00220	HS-02	Complete Landscaping & Lighting- Monument Sign	15
LS2000	0010	00220	HS-04	Landscaping Schedule	78'
LS2001	0010	00220	HS-04	South Side Landscape Activities	31'
LS2003	0010	00220	HS-04	Irrigation layout-SW Quad	2
LS2010	0010	00220	HS-04	Irrigation Stewing-SW Quad	3
LS2020	0010	00220	HS-04	Irrigation Trenching/ Main Pipe Install-SW Quad	2
LS2030	0010	00220	HS-04	Irrigation Branch Line Install-SW Quad	4
LS2040	0010	00220	HS-04	Excavate Tree Holes-SW Quad	4
LS2050	0010	00220	HS-04	Excavate Shrub Holes-SW Quad	3
LS2060	0010	00220	HS-04	Irrigation Pipe Water Test-SW Quad	2
LS2070	0010	00220	HS-04	Backfill & Compaction-SW Quad	2

Start date 09/15/08
 Finish date 02/15/09
 Open date 02/15/08
 Run date 02/07/08
 Page number 244
 Page count 257
 © Primavera Systems, Inc.

Summit Builders Construction Company
 X (Ten) Lofts

Early bar
 Finish milestone point

LS2080	0010	00230	HS-04	Tree & Plant Shrub Installation-SW Quad	3
LS2090	0010	00230	HS-04	Final Backfill and Fine Grading-SW Quad	2
LS2100	0010	00230	HS-04	Install Decomposed Granite-SW Quad	2
LS2110	0010	00230	HS-06	Irrigation layout-SE Quad	2
LS2120	0010	00230	HS-06	Irrigation Sleeving-SE Quad	3
LS2130	0010	00230	HS-08	Irrigation Trenching/ Main Pipe Install-SE Quad	2
LS2140	0010	00230	HS-08	Irrigation Branch Line Install-SE Quad	4
LS2150	0010	00230	HS-04	Excavate Tree Holes-SE Quad	4
LS2160	0010	00230	HS-06	Excavate Shrub Holes-SE Quad	3
LS2170	0010	00230	HS-08	Irrigation Pipe Water Test-SE Quad	2
LS2180	0010	00230	HS-08	Backfill & Compaction-SE Quad	2
LS2190	0010	00230	HS-06	Tree & Plant Shrub Installation-SE Quad	3
LS2200	0010	00230	HS-08	Final Backfill and Fine Grading-SE Quad	2
LS2210	0010	00230	HS-08	Install Decomposed Granite-SE Quad	2
LS2215	0010	00230	HS-10	North Side Landscape Activities	58
LS2220	0010	00230	HS-10	Irrigation layout-NE Quad	2
LS2230	0010	00230	HS-10	Irrigation Sleeving-NE Quad	3
LS2240	0010	00230	HS-10	Irrigation Trenching/ Main Pipe Install-NE Quad	2
LS2250	0010	00230	HS-10	Irrigation Branch Line Install-NE Quad	4
LS2260	0010	00230	HS-10	Excavate Tree Holes-NE Quad	4
LS2270	0010	00230	HS-10	Excavate Shrub Holes-NE Quad	3
LS2280	0010	00230	HS-10	Irrigation Pipe Water Test-NE Quad	2
LS2290	0010	00230	HS-10	Backfill & Compaction-NE Quad	2
LS2300	0010	00230	HS-10	Tree & Plant Shrub Installation-NE Quad	3
LS2310	0010	00230	HS-10	Final Backfill and Fine Grading-NE Quad	2
LS2320	0010	00230	HS-10	Install Decomposed Granite-NE Quad	2
LS2330	0010	00230	HS-12	Irrigation layout-NW Quad	2
LS2340	0010	00230	HS-12	Irrigation Sleeving-NW Quad	3
LS2350	0010	00230	HS-12	Irrigation Trenching/ Main Pipe Install-NW Quad	2
LS2360	0010	00230	HS-12	Irrigation Branch Line Install-NW Quad	4
LS2370	0010	00230	HS-12	Excavate Tree Holes-NW Quad	4
LS2380	0010	00230	HS-12	Excavate Shrub Holes-NW Quad	3
LS2390	0010	00230	HS-12	Irrigation Pipe Water Test-NW Quad	2
LS2400	0010	00230	HS-12	Backfill & Compaction-NW Quad	2
LS2410	0010	00230	HS-12	Tree & Plant Shrub Installation-NW Quad	3
LS2420	0010	00230	HS-12	Final Backfill and Fine Grading-NW Quad	2
LS2430	0010	00230	HS-12	Install Decomposed Granite-NW Quad	2
10000	0010	00240		Final Inspections/Approvals	25
10100	0010	00240		Punchlist	120
11000	0010	00240		Substantial Completion	1
12000	0010	00240		Closure Schedule	55

Start date	05/15/08
Finish date	07/15/08
Draw date	05/15/08
Run date	07/07/08
Page number	25A
Page count	25J
© Prosovere Systems, Inc.	

Summit Builders Construction Company
X (Ten) Lofts

Early bar
Finish collection point

**SUMMIT BUILDERS
SUBCONTRACT AGREEMENT
TERMS AND CONDITIONS**

Revised 04/04/06

1. **CONTRACT DOCUMENTS.** As used herein, the term "Contract Documents" shall refer to and include this Subcontract and its exhibits, the terms, provisions, and conditions of the contract between the General Contractor and the Owner (the "Prime Contract") along with the drawings, standard specifications, general conditions, supplementary and special provisions, General Contractor's Project schedule, and all addenda, amendments or modifications thereto, the invitation and instruction to bidders, if any, and all other exhibits or documents that form or are made a part of the Prime Contract. The parties agree that the Contract Documents are incorporated herein by reference. Subcontractor represents and warrants that it (1) has carefully examined and understands the Contract Documents, (2) is familiar with the job site and conditions and circumstances under which its work will be performed, and (3) is in no way relying upon any opinion or representation of General Contractor in submitting a bid for the Project or entering into this Subcontract. Subcontractor binds itself to Contractor and Owner and is obligated to Contractor and Owner in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. All rights which Owner may exercise and enforce against Contractor may be exercised and enforced by Owner against Subcontractor. In case of conflicts or inconsistencies between this Subcontract and the other Contract Documents, the Subcontract shall control. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with the Contract Documents. General Contractor shall have the same rights and privileges as against Subcontractor as the Owner in the Prime Contract has against General Contractor.

2. **SCOPE OF WORK.** Subcontractor agrees to furnish and pay for all labor, materials, supplies, tools, equipment, supervision, services, field measurements, shop drawings, engineering and incidental items necessary to complete all of the work reasonably required by or inferred from the above described work, hereinafter referred to as the "Work".

A. All materials furnished but not installed by Subcontractor shall be delivered F.O.B. jobsite unless otherwise provided herein. All risks associated with said materials shall remain with Subcontractor until such risk passes to the Owner under the Contract Documents.

B. The Work shall be performed by Subcontractor (1) as an independent contractor, (2) in strict conformance with the Contract Documents, (3) in a good and workmanlike manner, and (4) to the satisfaction of General Contractor and the Owner.

C. Subcontractor shall comply with all federal, state, county, and municipal laws, ordinances, rules and regulations relating to the Work, and pay all fees, give all notices and obtain, at its own cost and expense, all required licenses, permits, inspections and registrations necessary for the performance of the Work. If the Work requires consultation with public utility companies, it shall be the responsibility of the Subcontractor to communicate with all utilities and to conduct the Work so that the property of the utilities is not damaged.

3. **PAYMENT.** Subject to the following conditions, and so long as Subcontractor is performing in a timely and acceptable manner, and is not otherwise in default of its obligations hereunder, Subcontractor shall be paid the total sum as described in Work Description. Unless otherwise noted in the Contract Documents, funding will be monthly based on an invoice and supporting documentation submitted by the Subcontractor for Work actually performed and approved by General Contractor. The amount due to Subcontractor shall be based upon the quantities and measurements determined and accepted by General Contractor and the Owner, or its representatives, less retention. All payments made to Subcontractor shall first be used to pay any person or entity providing labor, materials or equipment in connection with the Work or to otherwise satisfy any obligation that could lead to lien or a claim against any bond provided by General Contractor. All payments to Subcontractor shall be subject to the following:

A. General Contractor will pay Subcontractor the approved portion of the Subcontractor's monthly progress or other pay request within seven working days after General Contractor receives payment for such Work from the Owner. The parties agree that General Contractor's actual receipt of any progress, change order, claim, retention or final payment from Owner shall be an express condition precedent to General Contractor's or its surety's obligation to make any such payment to Subcontractor for the Work. Subcontractor agrees that all payments to Subcontractor shall only be made from, and its right to recover for the Work is exclusively limited to, the funds actually received by the General Contractor from the Owner and from no other source. Subcontractor acknowledges that it is sharing, to the extent of payments to be made to the Subcontractor, in the risk that the Owner may fail to make one or more payments to the General Contractor for all or a portion of the Work or any changes thereto.

B. General Contractor's obligation to pay Subcontractor is further conditioned upon Subcontractor's timely and prior submittal of statutory lien waivers and bond releases, in a form acceptable to General Contractor, for Subcontractor and its lower tier subcontractors or suppliers that performed work for or supplied materials or equipment to Subcontractor and the jobsite during the current payment month. Each waiver must show that there are no outstanding amounts due. General Contractor shall have the right to joint check or withhold an amount equal to the total amounts shown on conditional lien releases as being outstanding.

C. In addition to the foregoing, final payment shall be made to Subcontractor in exchange for unconditional final lien releases provided to General Contractor from Subcontractor and all parties that either filed a preliminary lien notice or provided labor and/or material in connection with the Project. Acceptance of final payment shall constitute a waiver of all claims by Subcontractor relating to the Work. Final payment shall not relieve Subcontractor from liability for warranty, guaranty, or indemnity obligations, for faulty or defective work, or any other obligation imposed by this agreement.

D. General Contractor shall hold retention of ten percent (10%), or such other percentage as may be specified in the Prime Contract or agreed to by the parties in writing. Subject to General Contractor's rights of set off, any such retention shall be payable to Subcontractor within seven (7) days after the General Contractor has been paid the retention by the Owner.

E. When requested by General Contractor, Subcontractor shall provide a sworn statement identifying the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Work, together with the amount due or to become due for such work. General Contractor shall have the right to contact these subcontractors and suppliers at any time to verify payment or amounts due. General Contractor retains the right to take whatever steps it deems necessary to ensure that progress and final payments will be utilized to pay

potential lien or bond claimants, including, but not limited to, the issuance of joint checks or making payment directly to any claimant after notice to Subcontractor. All such payments will reduce the amounts otherwise due to Subcontractor under this agreement. If such payments exceed the balance due or to become due under this agreement, then Subcontractor shall be liable for the difference. Subcontractor shall defend and indemnify General Contractor, its surety and the Owner from any and all claims of Subcontractor's employees, and lower tier subcontractors, laborers, employees, or suppliers.

F. Material delivered to the Project by or on behalf of Subcontractor shall not constitute material furnished in the performance of the Work until such material has been incorporated into the improvements constituting the Project. Payment shall not constitute evidence of acceptance of any Work performed or materials delivered.

G. If General Contractor is notified or informed of a deficiency in the Work, any actual or potential third party claim against Subcontractor, General Contractor, or the Owner, as a result of the Work, or it appears that General Contractor could sustain any loss or damage as a result of labor or materials furnished to the Project or any action or omission by Subcontractor in the performance of the Work or any other project where the parties are working or have worked together, General Contractor may, without penalty, withhold from any payment due Subcontractor an amount that General Contractor reasonably determines is required to cover said claims or damages. The exercise of this right shall not bar or waive any other rights or remedies that General Contractor may have.

4. **DUTIES OF SUBCONTRACTOR.** Subcontractor agrees to do the following:

A. **TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.** Subcontractor agrees to commence the Work within twenty-four (24) hours after receiving written notification to proceed from General Contractor and to proceed at such times, in such order and in such places as General Contractor may designate. Subcontractor shall diligently perform the Work in accordance with the General Contractor's project schedule, as it may be revised from time to time, and in a manner that will cause no delay in the progress of General Contractor's or other subcontractors' work on the Project.

Upon request, Subcontractor shall promptly provide General Contractor with any information relating to the order or nature of the Work. Subcontractor acknowledges that General Contractor's project schedule may be revised by General Contractor as work progresses. Subcontractor agrees to take the steps required to stay informed of and comply with General Contractor's schedule and progress. General Contractor may require Subcontractor to prosecute segments of the Work in phases. Subcontractor shall comply with instructions given by General Contractor, including any instructions to suspend, delay or accelerate the Work. Subcontractor shall not be entitled to any extra compensation from General Contractor for any suspension, delay or acceleration, regardless of who is responsible for same, unless specifically agreed to in writing by the General Contractor and the General Contractor actually receives payment from the Owner or other responsible subcontractor(s) for any additional costs incurred by Subcontractor. The Owner's payment to General Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from General Contractor. Otherwise, Subcontractor warrants that the prices set forth herein include all costs necessary for Subcontractor to adhere to the General Contractor's schedule, as it may be revised throughout the Project.

Unless a shorter period is otherwise required by the Contract Documents, Subcontractor shall provide written notice to General Contractor within forty-eight (48) hours after the discovery of any act, event, condition, or occurrence that would entitle the General Contractor to an extension of time or additional compensation from Owner under the terms of the Contract Documents. Unless payment is actually received from the Owner to cover any damages sustained or additional costs incurred by Subcontractor as a result of any such act, event, condition, or occurrence, Subcontractor shall only be allowed a time extension to complete the Subcontract Work if additional time is granted to General Contractor by the Owner. Subcontractor shall not be entitled to any additional compensation. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render General Contractor liable for liquidated damages or other loss under the Prime Contract. Subcontractor shall be liable for any and all damages caused by its failure to perform in accordance with General Contractor's schedule, as it may be revised throughout the Project, including, but not limited to, any liquidated or other damages assessed against General Contractor under the Prime Contract, as well as any additional costs incurred or damages sustained by General Contractor.

Subcontractor agrees to cooperate fully with General Contractor and with other subcontractors performing work on the Project and to not interfere with the performance of work by others. In the event Subcontractor and any other subcontractor cannot agree on the extent of cooperation or the work to be done by any of them, such disagreement shall be resolved by General Contractor so as to ensure the orderly and timely completion of the Project.

If the General Contractor delays or suspends Subcontractor's progress for any reason then Subcontractor's sole remedy will be an extension of the time allowed to complete the Subcontract Work. General Contractor will not be responsible for any damages sustained or costs incurred by Subcontractor as a result of any such delay.

B. **Site Facilities.** Except as otherwise specified herein, Subcontractor shall furnish temporary site facilities necessary for the performance of its obligations under this Agreement, including, but not limited to, storage, sheds, water, drinking water, heat, light, scaffolding, shoring, weather protection, excavation, trenching, fill, backfill, compaction, grading and adequate security for materials placed upon the job site.

C. **Drawings.** Subcontractor shall be responsible for the preparation, submittal and accuracy of all shop drawings or other technical information or approvals that relate to the Work that must be prepared and submitted to Owner or its representatives pursuant to the Contract Documents. All such documents, samples, or information shall be submitted in a form and manner required by General Contractor and in sufficient time to allow General Contractor to review and send it to Owner in a timely manner. In no event shall such documentation, sample, or information be submitted later than five (5) days following General's General Contractor's request. General Contractor's review or approval of shop drawings or technical submittals shall not be deemed to authorize deviations from the requirements of the Contract Documents.

D. **Indemnification.** To the fullest extent permitted by law, Subcontractor shall indemnify, defend and save harmless General Contractor, its surety, Owner, and any other person or entity that General Contractor is required to defend and/or indemnify pursuant to the Contract Documents or as may otherwise be so designated by General Contractor, and their agents, employees or representatives from and against any and all claims, debts, demands, damages (including direct, liquidated, consequential, incidental or other damages), judgments, awards, losses, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature at any time arising out of any failure of Subcontractor to

perform any of the terms and conditions of this subcontract or which are in any manner directly or indirectly caused or occasioned by or contributed to, or claimed to be caused or occasioned by, or contributed to, by any act, omission, fault or negligence, whether active or passive, of Subcontractor or anyone acting under its direction or control, or on its behalf in connection with or incident to the work, even though the same may have resulted from the joint, concurring or contributory act, omission or negligence whether active or passive, of General Contractor, Owner or any other person, unless the same be caused by the sole negligence or willful misconduct of General Contractor, or its agents, servants or other independent contractors. Without limiting the generality of the foregoing, the same shall include damages relating to injury or death to any person or persons, including agents and employees of Owner, General Contractor and Subcontractor, and damage to any property, regardless of location, including property of Owner, General Contractor and Subcontractor and shall extend to any similar obligations of General Contractor undertaken by it under the Prime Contract with respect to the work hereunder. Without limiting the generality of the foregoing, Subcontractor will on request and at its expense defend any action, suit or proceedings arising hereunder and shall reimburse and pay General Contractor for any loss, cost, damage or expense (including legal fees) suffered by it hereunder. Subcontractor agrees that Counsel, Consultants and experts retained by Subcontractor to defend General Contractor shall be subject to General Contractor's approval. Subcontractor's defense and indemnification obligations will survive the expiration or termination of this agreement. The insurance maintained by Subcontractor in accordance with the agreement shall insure but not limit the performance of Subcontractor's indemnification obligations set forth herein.

E. **Insurance.** Subcontractor agrees to procure and maintain at its sole cost and expense, the minimum insurance coverages on all operations hereunder, with insurance companies approved by General Contractor, for the amounts, times, and durations set forth in the Contract Documents or as otherwise designated by General Contractor in writing, but in no event less than the following:

1. **Workers' Compensation and Employer's Liability Insurance** which shall extend to workers' compensation laws of any state, district or territory of the United States in which work is situated. Workers' Compensation and Employer's Liability insurance shall have limits of not less than the statutory limits of \$1,000,000 for any one occurrence. Subcontractor waives all rights against Contractor, the Owner, separate contractors and all other subcontractors for loss or damage to the extent covered by Worker's Compensation or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance.

Before commencing any work hereunder, Subcontractor shall furnish General Contractor certificates and endorsements from approved insurance companies evidencing that all the foregoing insurance is in force and will not be canceled without ten (10) days prior written notice to General Contractor.

2. **Commercial General Liability Insurance** on a per project basis with policy limits of not less than \$2,000,000 as to each occurrence for Bodily Injury, Personal Injury, Products Completed Operations and Property Damage coverage and a General Aggregate of \$2,000,000, which said limits may be a combination of primary and excess insurance coverage. Such policy or policies shall be on a claims made basis and shall specify as additional insured the General Contractor, the Owner, their directing officers and employees, and any other person, entity or agency that the General Contractor is required to name as an additional insured under the Prime Contract, and shall include coverage for the following:

- (a) Premises and Operations Liability;
- (b) Contractual Liability insuring the obligations assumed by Subcontractor in this subcontract;
- (c) Completed Operations and Products Liability with additional insured endorsements CG 2037 and 2010, or acceptable equivalents;
- (d) Broad Form Property Damage Liability;
- (e) Liability which Subcontractor may incur as a result of the operations, acts or omissions of its subcontractors, suppliers or material men, and their agents or employees;
- (f) Automobile liability, including owned, non-owned, and hired automobiles with limits of no less than \$1,000,000;
- (g) Explosion, Collapse and Underground Hazards; and
- (h) Such policy or policies shall be endorsed to stipulate that the insurance afforded for Subcontractor shall be primary insurance and that any insurance carried by General Contractor, Owner and officers or employees shall be excess and non-contributory insurance.

3. If the General Contractor specifies any additional insurance of higher limits than herein specified, Subcontractor shall at its expense procure insurance coverage to comply therewith. Before commencing any work hereunder, Subcontractor shall furnish General Contractor certificates and endorsements from approved insurance companies with AM Best rating A or higher and evidencing that all the foregoing insurance is in force and will not be canceled without thirty (30) days prior written notice to General Contractor. General Contractor may withhold payments otherwise due to Subcontractor until such certificates have been furnished to General Contractor, or after receipt of notice of intent to cancel any policy, until withdrawal of said notice, or the reinstatement of any canceled policy. In the event the coverage evidenced by any such Certificate of Insurance is canceled or refused, Subcontractor shall procure replacement coverage and furnish to General Contractor at least five (5) days before the effective date of such cancellation, a new Certificate of Insurance conforming to the above requirements.

In the event Subcontractor shall fail to provide such new Certificate of Insurance within the time specified, General Contractor shall have the right, but not the obligation, to procure coverage and immediately deduct the cost thereof from any amounts due Subcontractor. The failure to provide evidence of, and to maintain the insurance required herein, shall be deemed a material breach of this Subcontract, and shall entitle General Contractor to the right to withhold any payment due to Subcontractor under this Subcontract Agreement until proof of the required insurance coverage has been provided to General Contractor or to terminate this agreement for default. The requirement for carrying insurance hereunder shall not be in derogation of other provisions of this Subcontract. Subcontractor waives all rights against Contractor, the Owner, separate contractors and all other subcontractors for loss or damage to the extent covered by the Subcontractor's Commercial General Liability insurance policy, except such rights as they may have to the proceeds of such insurance.

4. It is agreed that any insurance carried by General Contractor which may cover any liability insured against by Subcontractor hereunder shall be deemed excess insurance over and above the applicable amounts of the insurance carried by Subcontractor.

5. All policy forms shall contain a) an endorsement naming as additional insureds General Contractor, Owner, and any

INITIAL 

other person or entity that General Contractor is required to insure, defend or indemnify under the Contract Documents; b) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be noncontributing with the coverage provided under this policy."

6. General Contractor and Subcontractor waive all rights against each other, the Owner, separate contractors and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance.

F. **Clean Up.** At the end of each day, remove all trash, debris and excess dirt caused by Subcontractor and broom clean each room in which Work has been performed by Subcontractor in accordance with all applicable laws. All trash and debris and surplus materials resulting from Subcontractor's operations shall be removed to a site or sites to be designated by General Contractor. In the event Subcontractor fails to do so, General Contractor may deduct cleaning costs from the Subcontract price.

G. **Assignment.** Subcontractor shall not assign the Subcontract or any payments due hereunder or sublet any part of the Work without the prior written consent of General Contractor. The only exception will be if an assignment is intended to create a new security interest within the scope of Article 9 of the UCC. If so, the instrument of assignment shall expressly confirm that the assignee's rights shall be subject to the rights granted to General Contractor hereunder and the rights and claims of all persons or entities providing labor, services, materials, or equipment in connection with the Work.

H. **Lien Waivers. Prevention of Liens.** Subcontractor agrees to pay when due all claims for labor, equipment or materials and to prevent the filing of any lien, attachment, garnishment, lis pendens, suit or any other action involving the General Contractor, the Owner, any payment bond provided by General Contractor, or the property upon which the improvements are effected. Subcontractor agrees to satisfactorily resolve any such dispute within ten (10) days after written demand by General Contractor, failing which, the General Contractor shall be authorized to use whatever means it may deem best to cause the lien, attachment or suit to be removed, discharged, comprised, or dismissed and the costs thereof together with interest and reasonable attorney's fees shall immediately become due and payable to General Contractor by Subcontractor. Any payment and satisfaction of any such matter shall be prima facie evidence of the necessity therefor and reasonableness of said payment.

I. **Suppliers and Subcontractors.** All suppliers and subcontractors shall be subject to the approval of General Contractor. All subcontracts and material supply agreements awarded by Subcontractor on the Project shall incorporate and be subject to the terms and conditions of the Contract Documents and this Subcontract.

J. **Taxes.** Subcontractor agrees to pay all taxes, license fees, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from or relating to Subcontractor's Work or the amounts earned under this agreement. Subcontractor warrants that the prices set forth herein include an allowance to cover all such obligations. Subcontractor shall indemnify, defend, and save General Contractor and the Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy any such obligation. Subcontractor shall provide proof that all taxes and other charges are being properly paid upon receiving a written request from General Contractor. If General Contractor directly pays, or is assessed or charged for any taxes, contributions, interest or penalties concerning the Subcontract Work or Subcontractor, General Contractor shall have the right to withhold such amount, plus a markup of 15% for General Contractor's general conditions, from funds due or to become due to Subcontractor.

K. **As Built Drawings; Operations and Maintenance Manuals, Warranties and Guarantees.** Furnish to General Contractor, if so requested, prior to final payment, warranties and guarantees, as built drawings and all Operations and Maintenance Manuals that relate to the Work that General Contractor is required to provide the Owner under the Contract Documents or that is otherwise requested by General Contractor. Subcontractor will maintain as-built drawings in good order and marked currently to record all changes made during construction relating to its Work so that they are acceptable to General Contractor.

L. **Meetings.** Attend all meetings scheduled by General Contractor.

M. **Warranty and Guarantee.** In addition to all requirements and obligations contained in the Contract Documents, Subcontractor unconditionally warrants and guarantees that (1) all materials and equipment shall be new, unless otherwise specified or allowed in the Contract Documents, and that the completed Work and related materials shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. For a period of one (1) year from completion of the Project, or such longer period of time as may be specified in the Contract Documents, Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to the Owner or General Contractor, any defects due to faulty workmanship and/or materials which shall appear or be detected; provided, however, that any equipment and materials having longer warranties shall be warranted for such additional period. Copies of all manufacturer warranties or guarantees will be submitted on or prior to final payment. The Project shall be deemed completed upon final acceptance by the Owner or as otherwise specified in the Prime Contract. This warranty shall be in addition to all other warranties and obligations imposed by law and shall not be in lieu of any other claim or right that General Contractor may have available. Subcontractor's obligation to repair and replace shall not absolve it of any liability to General Contractor for any damages caused by any defective or unacceptable work or materials.

Within 48-hours following receipt by Subcontractor of notice from General Contractor at any time during any applicable warranty period, Subcontractor shall proceed at its own expense with reasonable diligence to repair and replace any Work, materials or equipment which may be defective. In the event that Subcontractor fails to commence such corrective work within said 48-hours day period, or fails to diligently pursue to completion such corrective work then, at its option, General Contractor may perform said corrective work or have the same performed at the expense of Subcontractor, with payment due to General Contractor by Subcontractor upon receipt by Subcontractor of a statement for said expense. Such costs shall include the direct costs to complete and a markup of 20% for General Contractor's general conditions.

N. **Damaged Work.** Subcontractor shall be responsible to General Contractor for any destruction of or damage to the Work, materials, supplies, equipment or property of the Owner, General Contractor, or others on the Project that is caused by the negligence, act or omission of the Subcontractor. In addition to any requirement or obligation imposed under the Contract Documents, all loss or damage to the Work or any of Subcontractor's materials, suppliers, equipment or property resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until the time period specified in the Contract Documents has expired or General Contractor no longer assumes such risk to the Owner. Subcontractor shall at all times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss to all work, labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and material men.

O. **Satisfactory Employees: Disruptive Employees.** Furnish during the progress of the Work skilled employees, adequate and suitable materials and a qualified superintendent or foreman to act as a representative of Subcontractor. Said representative shall have the right and power to obligate Subcontractor and shall at all times be satisfactory to General Contractor. In the event General Contractor should determine that any employee of Subcontractor is in any way impairing the progress of construction of the Project or disrupting or offending any other persons working on the Project, Subcontractor shall remove such employee from the Project upon request. Subcontractor shall not allow any of its employees to possess or consume alcoholic beverages on the Project jobsite.

P. **Discrepancies.** Subcontractor shall notify General Contractor in writing of any discrepancies, errors or omissions discovered by Subcontractor in the plans and specifications, or the physical conditions uncovered or revealed at the worksite differing materially from that indicated, reflected or reasonably inferred from the Contract Documents, and continuation of the Work subsequent to such discovery shall be at Subcontractor's risk. Minor items of Work or material omitted from the plans and specification, but clearly inferable from the information presented or which are called for by accepted trade practice shall be provided and performed by Subcontractor at no additional charge over the original Subcontract price.

5. **Extras and Extension of Time.** Subcontractor shall perform additional work or omit items of work which the General Contractor shall have the right to order in writing without invalidating this agreement. No claim for extra time and/or compensation on account of changed, added or deleted work may be made by Subcontractor unless acknowledged by General Contractor in writing and General Contractor is entitled to and actually receives additional time and/or compensation on behalf of Subcontractor under the Contract Documents from the Owner. General Contractor shall not be liable to Subcontractor for any greater sum than General Contractor receives from the Owner on behalf of Subcontractor, less reasonable overhead and profit due to General Contractor, and any professional or attorney's fees, costs, or other expenses incurred by General Contractor in obtaining said time and/or compensation.

Subcontractor shall give General Contractor written notice of any act, event, condition, or occurrence that would entitle the General Contractor to additional compensation or an extension of time under the Contract Documents promptly and in sufficient time for General Contractor to notify Owner in accordance with the Contract Documents. In no event shall Subcontractor give written notice to the General Contractor more than forty-eight (48) hours after discovery.

Upon receipt of any written or oral directive that Subcontractor believes involves work beyond its original scope of work or that would otherwise constitute a constructive change to this agreement, Subcontractor agrees to provide General Contractor with written notice that it considers the directive a change prior to performing any such work. Failure to so notify General Contractor will constitute a waiver of all such claims. Subcontractor shall be entitled to additional compensation and/or time only if the asserted change is actually recognized by the Owner and additional time and/or compensation is actually received by General Contractor on Subcontractor's behalf.

General Contractor's Superintendent's signature on any Subcontractor work ticket attests to material and labor quantities only, and does not approve Subcontractor's work as being outside the scope of the Subcontract Agreement. Subcontractor's work must be compared to the subcontract requirements to determine if subcontract changes are required. Affixing of a signature to the face of a work ticket voids any wording that may be contained on the backside of the ticket.

Subcontractor agrees to be bound to General Contractor to the same extent that General Contractor is bound to Owner both by the terms and procedures of the Contract Documents, and by any and all decisions or determinations made thereunder by the party, board, court or body authorized to hear or resolve claims or disputes in the Contract Documents. All claims or disputes asserted by Subcontractor concerning the acts or omissions of Owner or its representatives, changes initiated by the Owner, indemnity claims between the General Contractor and Owner, the quality or acceptability of Subcontractor's work, if rejected by Owner, or its representatives, the sufficiency or adequacy of or representations contained in the Contract Documents, or any other basis or event that in General Contractor's sole discretion could entitle General Contractor to additional time and/or compensation under the Contract Documents shall be subject to the procedures set forth in the Contract Documents. General Contractor agrees to present to the Owner, in General Contractor's name, Subcontractor's claims for additional time and/or money and to invoke, on behalf of Subcontractor, those provisions in the Contract Documents for resolving disputes or claims. No invocation of these procedures nor any action or position taken in such proceeding by General Contractor shall be deemed to constitute an admission of any obligation or liability to Subcontractor. Subcontractor agrees that it will not take any other action against General Contractor with respect to any such claims and will not pursue independent litigation or arbitration with respect thereto against General Contractor or its surety, pending a final determination under the procedures set forth in the Contract Documents. Subcontractor agrees to be bound by all decisions entered and determinations made through said procedures. The presentation or prosecution of any claim for or on behalf of Subcontractor shall not affect Subcontractor's obligation to proceed diligently with the Subcontract Work. In no event will Subcontractor be entitled to receive any greater amount from General Contractor or its surety than General Contractor is entitled to and actually does receive from the Owner or other responsible subcontractor(s) on account of Subcontractor's work or claims, less any markups due to General Contractor for costs or professional fees incurred by General Contractor in obtaining such recovery. Said payment to the General Contractor is an express condition precedent to any payment obligation on the part of General Contractor or its surety. Subcontractor agrees that it will accept such amount, if any, received by General Contractor from the Owner or other responsible subcontractor(s) as full satisfaction of all claims. Subcontractor's only claim against General Contractor or its surety will be for payment of any amounts awarded to and actually received by General Contractor from the Owner or other responsible subcontractor(s), on Subcontractor's behalf.

At its option, General Contractor may give Subcontractor the authority to pursue any of its claims against Owner or other responsible subcontractor(s), in the name of General Contractor, if suitable arrangements are made in writing with General Contractor. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear all expenses thereof, including attorneys' fees and costs.

Should a dispute arise between General Contractor, its surety and Subcontractor as to this Subcontract or Subcontractor's Work that concerns only the parties hereto or other subcontractors on the Project, Subcontractor shall give General Contractor written notice within three days after the occurrence of the event giving rise to said claims. Otherwise, such claims will be deemed waived. Only if such claim, demand or issue is not required to be resolved under the procedures of the Prime Contract in accordance with the preceding paragraph, said dispute will be resolved through binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association, which are incorporated herein by this reference. All proceedings, including the selection of the arbitrator(s), shall be in accordance with said rules. The General Contractor shall have the option of joining any other party with whom it has contracted who in General Contractor's judgment may be liable for any damages claimed by Subcontractor. Nothing contained herein shall preclude Subcontractor from perfecting any lien or bond rights, but the merits of the

underlying claims shall be resolved as provided herein.

In any arbitration, action, or proceeding regarding this agreement, the prevailing party shall be entitled to recover its attorneys' and expert fees and costs and to have final judgment entered in any court having jurisdiction over the parties based upon the final award. The parties shall be entitled to conduct discovery in the arbitration proceedings. Before either party may demand arbitration, the parties must jointly participate in an AAA mediation. The parties shall split the cost of the mediation. If the parties are unable to resolve the issues after mediation, they may proceed to arbitration as set forth above.

6. **LABOR AGREEMENTS.** No strike, picketing or labor dispute of any kind involving General Contractor, Subcontractor or its sub-subcontractors or suppliers shall excuse the non-performance of any duty of Subcontractor set forth herein. In the event of a strike, picketing or labor dispute of any kind which, in General Contractor's judgment, has resulted from Subcontractor's presence on the Project, said actions shall constitute a default if not cured within the period after Notice of Default set forth herein and General Contractor shall thereafter have all of the rights and remedies set forth in this Agreement.

7. **SAFETY REQUIREMENTS.** Subcontractor shall be responsible, in the course of the Work, for initiating, maintaining and supervising all safety precautions and programs against injury to persons and property, including without limitation, conforming its work activities to the basic safety policies of General Contractor, and for ensuring that at all times its work is done in full compliance with all applicable environmental requirements that in any way relate to or impact Subcontractor's work. Subcontractor shall also comply fully with all laws, including, without limitation, all orders, citations, rules, regulations, standard guidelines, codes, procedures and statute with respect to occupational safety and health, accident prevention, safety equipment and practices, and environmental requirements. Subcontractor shall also conduct inspections to determine that safe working conditions and equipment exist. Subcontractor assumes sole responsibility for providing a safe place to work for its employees and for employees of all other employers and suppliers exposed to hazards created or controlled by Subcontractor and for ensuring that it has fully complied with the environmental laws or requirements that may impact the work. Subcontractor also assumes sole responsibility for the adequacy of and required use of all safety equipment and for full compliance with all of the aforesaid laws, orders, citations, rules, regulations, standard guidelines, codes, procedures and statutes. Subcontractor shall satisfy and comply with the foregoing as part of this agreement without any additional compensation.

If requested, Subcontractor shall submit a safety or environmental compliance plan for review by General Contractor. General Contractor's review and/or acceptance of any such plan shall not be deemed to release Subcontractor or in any way diminish its indemnity or other liability as assumed under this agreement, nor shall it constitute an assumption of risk or liability by General Contractor.

Subcontractor shall fully indemnify, defend and save harmless General Contractor and any other person, entity or agency that General Contractor is required to defend and indemnify under the Contract Documents, their members, officers, agents and employees, for, from and against any claim, citation, suit, payment, penalty, fine, violation, willful violation, repeat violation, damage, liability, loss, cost and expense, including without limitation any attorney's fees, fines, citations, payment, penalties, losses, violations, willful violations or repeat violations of General Contractor, arising out of, related to, or resulting from any failure or alleged failure of Subcontractor (or any of its subcontractors or sub-subcontractors or any of their agents, employees, members or officers) to comply with any safety or environmental requirements of General Contractor or Owner or any law, order, citation, rule, regulation, standard guidelines, codes, procedures or statute in any way relating to the environmental requirements applicable to Subcontractor's Work or to the occupational health or safety of employees, including but not limited to violations or alleged violations of the Occupational Safety and Health Act of 1970, as amended, or the regulations promulgated thereunder by O.S.H. Administration, or to violations or alleged violations of A.R.S. § 23-401, et seq., the Arizona Division of Occupational Safety and Health Act, or to the use of equipment, hoists, elevator or scaffolds of General Contractor or others, regardless or whether or not caused in part by the failure or alleged failure of General

Contractor, or General Contractor's agents, to so comply and regardless of whether or not caused in part by General Contractor's negligent failure to discover or remedy a dangerous condition, and regardless of whether or not caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 7.

In furtherance thereof, Subcontractor shall obtain whatever environmental permits or licenses are necessary for it to satisfactorily complete its work and to post all necessary danger signs, barricades and other warning devices against hazardous conditions existing, or which might exist, on the jobsite. Subcontractor shall also require all its employees and subcontractors to wear all appropriate and necessary personal protective equipment, including hard hats, shoes and other clothing. Subcontractor shall further institute an ongoing safety program to promote safety at the worksite including supplying, training and using personal safety equipment and taking reasonable precautions to avoid dangerous situations to other parties or to work performed or to be performed by others or property of others in connection herewith. If General Contractor determines that Subcontractor has failed to cure the conditions specified in this paragraph, then General Contractor shall be entitled, in addition to all other available remedies, to assess a daily charge of \$500.00 per day that the condition or practice exists. The amounts that become due under this section will be deducted from the amounts otherwise due or that may become due to Subcontractor.

Regardless of whether any governmental agency or entity has issued any citation or assessed any fines against either of the parties, General Contractor shall have the right, but not the obligation, to provide written notice of any condition or practice that it deems to violate any law, order, rule, regulation, standard, guideline, code, procedure or statute relating to environmental requirements or occupational health or safety. Subcontractor shall take immediate action to remedy the situation.

When so ordered, Subcontractor shall stop any part of the work, which General Contractor deems unsafe until corrective safety measures satisfactory to General Contractor have been taken. In addition to any right to terminate this agreement for default, should Subcontractor neglect to adopt such corrective measures, General Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to General Contractor.

8. **PERFORMANCE BONDS AND SUBGUARD.** At the option of General Contractor, Subcontractor shall furnish to General Contractor a payment bond and/or a labor and material bond and/or faithful performance bond, or a combination of the same in form satisfactory to General Contractor. Said bond or bonds shall be issued by an insurance company or companies approved by General Contractor. The bond premiums

shall be paid by Subcontractor and are included in the Subcontract Price. General Contractor may request such bond or bonds either before or after the commencement of work by Subcontractor pursuant to this Agreement, but, if requested prior to commencement of work, said bond or bonds shall be delivered to General Contractor to be approved and accepted prior to commencement of work by Subcontractor. If such bonds are requested by General Contractor after commencement of the Work, then Subcontractor shall be entitled to a change order to cover the bond premiums up to a maximum of two percent (2%). Any additional charge of two percent (2%) shall be the responsibility of Subcontractor. In the event that Subcontractor shall fail to deliver such bond or bonds to General Contractor within five (5) days after request for same is given to Subcontractor by General Contractor, General Contractor may send a written Notice of Default to Subcontractor, as set forth in Paragraph 10 hereof.

Subguard Insurance Program. Unless Contractor elects to bond Subcontractor, as set forth above, the Subcontractor agrees to participate in the Contractor's Subguard insurance program. Subguard insurance shall be for the exclusive benefit of Contractor and shall in no manner inure to the benefit of the Subcontractor. Subcontractor agrees to provide such financial and other qualification information as may be requested by Contractor to determine Subcontractor's eligibility to participate in the program. There is no cost to the Subcontractor for participation in the Contractor's Subguard insurance program.

9. **DEFAULT AND TERMINATION.** Subcontractor shall be in default on its obligations imposed by this agreement if, in the opinion of General Contractor, Subcontractor (1) fails at any time to supply a sufficient number of properly skilled workmen or materials satisfactory to complete the Subcontract Work; (2) fails to adequately or timely perform the Subcontract Work to the satisfaction of General Contractor or the Owner or in accordance with General Contractor's schedule; (3) becomes insolvent or makes any filing under the Acts of Congress relating to bankruptcy; (4) fails, neglects and/or refuses to comply with the Contract Documents; (5) fails to perform the Subcontract Work in a good and workmanlike manner; (6) causes any stoppage of the work of General Contractor or the other trades on the Project; (7) fails to correct defective work; (8) fails to maintain the insurance required by this agreement; (9) fails to pay its employees, suppliers, or subcontractors; (10) disregards laws, rules, regulations, or orders of any public authority having jurisdiction; (11) fails to comply in any other respect with the terms, conditions and obligations of this agreement; (12) fails to adequately and/or timely complete the punch list work to the satisfaction of General Contractor or the Owner; or (13) fails to provide close-out materials per specifications upon request of General Contractor.

General Contractor shall provide written notice of default to Subcontractor by regular mail, facsimile, or by any means that will provide notice to Subcontractor at the address identified above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail or upon actual receipt by Subcontractor, whichever occurs first.

Subcontractor shall cure or otherwise correct the default within forty-eight (48) hours after written notice by General Contractor. If after forty-eight (48) hours Subcontractor has failed to cure and correct the default in the opinion of General Contractor, General Contractor may, at its sole discretion, provide or contract for any labor, materials or equipment as may be necessary to complete that portion of the Subcontract Work at issue and deduct the cost thereof from any money then due or to become due to Subcontractor. The cost of said work shall include General Contractor's direct cost to complete or remedy the default, plus a 20% mark-up for General Contractor's general conditions. In addition, General Contractor may terminate this agreement for default. The termination shall become effective upon mailing or actual receipt of a second written notice to Subcontractor confirming the failure to cure and General Contractor's decision to terminate this agreement.

Upon termination of this agreement, General Contractor or its replacement subcontractor(s) may enter upon the premises and take control of all materials, tools, equipment, and appliances of Subcontractor, and may employ any other person or entity to finish the Subcontract Work. Subcontractor hereby assigns and transfers to General Contractor all sub-subcontracts, material contracts, or orders, bills of lading for material en route, and any other necessary rights, data or information that may be necessary for the completion of the Subcontract Work. Subcontractor agrees to take whatever steps General Contractor deems necessary to transfer or deliver any information or documentation requested by General Contractor. Following completion of the Subcontract Work, General Contractor shall return to Subcontractor or lawful owner all unused materials, tools, equipment and/or appliances. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor's equipment or materials, nor shall General Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by General Contractor.

In the event Subcontractor has provided a payment or performance bond in connection with this agreement, General Contractor shall send Subcontractor's surety a copy of the forty-eight (48) hour cure notice and General Contractor's notice of termination. If the surety does not provide General Contractor with written assurance within five days after receipt of the termination notice that it will make the arrangements necessary to complete the Subcontract Work in accordance with General Contractor's schedule, then the surety will be deemed to have waived its rights to complete the Work.

If this agreement is terminated for default, Subcontractor shall not be entitled to receive any further payment until General Contractor has received final payment from the Owner. At that time, if the amounts owed for work actually completed by Subcontractor exceed the expenses incurred by General Contractor in finishing Subcontractor's Work and all other damages sustained by General Contractor as a result of the default, such excess shall be paid by General Contractor to Subcontractor with the consent of Subcontractor's surety, if any. If the costs incurred or damages sustained by General Contractor exceed any amounts due to Subcontractor, then Subcontractor and/or its surety shall promptly pay the difference to General Contractor. Until any deficiency is satisfied, General Contractor may hold, sell or otherwise realize upon any of Subcontractor's materials or equipment, or take any other step to collect the deficiency, including making a claim against Subcontractor's surety.

In determining the costs incurred by General Contractor to complete the Subcontract Work, General Contractor shall be entitled to recover all direct and indirect costs incurred by General Contractor, all subcontractor costs, an allowance for the General Contractor's owned equipment at the force account rates specified in the Contract Documents, plus a markup of 20% on all costs to cover General Contractor's general conditions. General Contractor also shall be entitled to recover any expenses, attorneys fees, and costs incurred and any and all other damages sustained by General Contractor by reason of Subcontractor's default.

10. **TERMINATION FOR CONVENIENCE.** In addition to any rights the Owner may have under the Contract Documents and General Contractor's right to terminate this Subcontract for default, General Contractor reserves the right to terminate this agreement for its convenience upon giving Subcontractor fifteen (15) days written notice of its intention to do so. Such notice shall specify the effective date of the termination. Subcontractor's sole recovery shall be the payment for work completed prior to the date of termination at the unit prices specified herein. If there

are not unit prices set forth in the Subcontract, payment for partially completed work shall be based upon the direct project costs incurred by Subcontractor in partially performing said items of work, plus a mark-up of 15% for overhead and profit. Subcontractor shall not be entitled to recover any anticipated profits or unallocated overhead on unperformed work or additional compensation or damages in the event of such termination. The termination of this agreement shall not relieve Subcontractor from any responsibilities for the work that it completed prior to the date of termination or waive any claims that General Contractor may have against Subcontractor under any other provision of this subcontract.

If a court or arbitrator determines that any termination of this agreement for default was wrongful or that Subcontractor was not in default, the prior termination of this agreement will be deemed to be a termination for General Contractor's convenience under this section and Subcontractor's remedies and recovery shall be as specified in this section.

In the event the Prime Contract is terminated by the Owner prior to its commencement or completion, then this agreement will be terminated as well. The termination settlement under this agreement shall be as provided in the Contract Documents. Subcontractor shall not be entitled to receive any greater amount than General Contractor actually receives from the Owner on Subcontractor's behalf for such termination.

11. APPLICABLE LAW. This Subcontract is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principals) shall govern its interpretation and enforcement.

12. INTEREST ON SUMS DUE. All sums due and payable to General Contractor by Subcontractor for any reason, as set forth in this Agreement shall bear interest at the rate of eighteen percent (18%) per annum, commencing as of the date any such obligation becomes due.

13. ENTIRE AGREEMENT. This Agreement contains the entire agreement between General Contractor and Subcontractor and supersedes all prior proposals, conversations and negotiations between the parties on the subject matter of this Agreement. General Contractor and Subcontractor agree that, except as specifically provided herein, neither party has made any representations, warranties or agreements as to any matters concerning the subject matter of this Agreement.

14. AUTHORITY. Each person signing this or other contract documents in a representative capacity represents that he has full authority to act in such capacity. Each of the persons named in the attached Job Schedule as authorized agents shall have full authority during the term of this Agreement to act on behalf of Subcontractor and to sign any lien waivers presented by or requested by General Contractor unless and until Subcontractor has given General Contractor written notice substituting a new authorized agent. General Contractor is executing this Agreement as a Prime General Contractor.

15. NOTICES. Subcontractor shall at all times during normal business hours make available an authorized employee to answer the phone at the number listed in this Agreement. Except as specifically provided herein to the contrary, General Contractor may give notice to Subcontractor by contacting such employee by telephone or by giving verbal notice to any employee of Subcontractor at the Project or to one of the authorized agents listed in the Job Schedule or by mailing or delivering a notice at the address of Subcontractor set forth above. All notices to General Contractor shall be in writing and delivered at the address of General Contractor set forth above. Written notices required hereunder shall be deemed given as of the time of receipt of the notice, however sent. In the event that more than one method of sending notice is used, the notice shall be deemed given as of the time of receipt of the first notice received. In the event that either General Contractor or Subcontractor shall change addresses during the period that this Agreement is in effect, such change of address shall be sent to the other party pursuant to the foregoing provisions.

16. INSPECTION AND APPROVALS.

A. At all times, General Contractor and/or the Owner shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the Project site, or any intermediate point.

B. Any Subcontract Work or material furnished that fails to meet the requirements or specifications of the Contract Documents or the Subcontract shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of General Contractor or the Owner, it would not be economical or expedient to correct or remedy all or any part of the rejected Subcontract Work or materials, then General Contractor at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in General Contractor's sole judgment represents the difference between the fair value of the rejected Subcontract Work and materials and its value had it been performed in full compliance with the Contract Documents; or (b) such reductions in price as are provided for or determined for this purpose under the Contract Documents by the Owner.

17. MISCELLANEOUS.

A. All sub-subcontracts, purchase orders, payrolls and other commitments necessary for the performance of the Work shall be done in the name of Subcontractor and remain its sole responsibility.

B. This Subcontract Agreement has been drafted by counsel for General Contractor as a matter of convenience only and shall not be construed for or against any party as a result of this fact.

C. Time is of the essence of this Agreement. The term "day" as used herein and in any instructions to Subcontractor shall mean "calendar day". In the event a time for performance notice, approval or any other matter occurs on a Sunday or legal holiday, the time therefor shall be extended to the next day not a Sunday or legal holiday.

D. For all purposes of this Agreement, Subcontractor is an independent contractor and is not an agent, employee of or otherwise associated with General Contractor.

E. In the event that any provision hereof is found to be void or unenforceable, all of the remaining provisions of this Agreement shall be fully effective and shall not be affected by the void or unenforceable provision or provisions.

F. Subject to the clause prohibiting assignment, this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of each of the parties hereto.

INITIAL A B

G. Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims make for infringement of any patent rights involved in the Subcontract Work.

H. In the event that Subcontractor is a sole proprietorship, or a partnership, and in the further event of the death of Subcontractor or of one of the partners thereof during the performance of this Agreement, such death, at the sole option of General Contractor, may terminate this Agreement, except as to any rights or privileges that shall have accrued prior to said death.

I. Whenever the context of this Agreement shall require, the masculine shall include the neuter and feminine, the neuter the masculine and feminine, the singular the plural, and the plural the singular.

J. This Agreement shall be construed as a whole in accordance with its fair meaning, the captions being for the convenience of the parties only. The captions are not intended to fully describe or define the provisions of this Agreement to which they pertain.

K. In the event that General Contractor shall at any time provide equipment to be used by Subcontractor in the performance of this Agreement, Subcontractor's use thereof shall be at Subcontractor's own risk and Subcontractor shall hold General Contractor harmless from any claims and/or expenses, including but not limited to Attorney's fees and court costs, resulting from the use of such tools and equipment by Subcontractor. In the event Subcontractor rents, borrows, or otherwise uses any of General Contractor's equipment, scaffolding, or other appliances, Subcontractor agrees to accept such items "as is." Any such use shall be at the sole risk of Subcontractor, who hereby agrees to defend, hold harmless and indemnify General Contractor against any and all claims, losses, or damages arising from such use.

L. At no time prior to the expiration of any warranty period required by the Contract Documents shall Subcontractor perform any work directly for or deal directly with the Owner or its representatives concerning the Project unless otherwise directed in writing by General Contractor.

M. General Contractor's waiver of any of the provisions of the Subcontract, or General Contractor's failure to exercise any options or legal remedies provided herein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.

N. To be effective, all modifications or amendments to the Subcontract must be in writing.

O. This agreement is not effective until signed by the General Contractor and delivered or mailed to Subcontractor.

18. MODIFICATION: This agreement may only be modified upon the written agreement of the General Contractor and the Subcontractor.

SUBCONTRACTOR: 

GENERAL CONTRACTOR:

JEFFREY C. STONE, INC. dba SUMMIT BUILDERS

BY: Evan M. Gee

BY: 

ITS: C.O.O.

ITS: VP

DATED: 8/15/06

DATED: 9/5/06

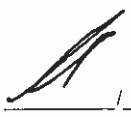
Corporation Partnership Individual/Sole Proprietorship

FEDERAL TAX IDENTIFICATION #: _____

The above number is our:

 Social Security Number Employer Identification Number

I hereby certify that the above information is correct to the best of my knowledge.

INITIAL  BD



3333 E. Camelback Road Suite 122
Phoenix, AZ 85018
Phone: 602-840-7700
Fax: 602-840-6897

PROJECT: Ten Lofts
PROJECT NO 05-00258

DATE: 09/11/2006

RE: SUBCONTRACT AGREEMENT-EXECUTEI

TO: Wescor General Inc.
3922 E University, Suite E-6
Phoenix AZ 85034
ATTN: Chris Escarcega
PHONE: 602-414-0030
FAX: 602-414-0050

WE ARE SENDING:	SUBMITTED FOR:	ACTION TAKEN:
<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Approval	<input type="checkbox"/> Approved as Submitted
<input type="checkbox"/> Letter	<input checked="" type="checkbox"/> Your Use	<input type="checkbox"/> Approved as Noted
<input type="checkbox"/> Prints	<input type="checkbox"/> As Requested	<input type="checkbox"/> Returned After Loan
<input type="checkbox"/> Change Order	<input type="checkbox"/> Review and Comment	<input type="checkbox"/> Resubmit
<input type="checkbox"/> Plans	<input type="checkbox"/> Other:	<input type="checkbox"/> Submit
<input type="checkbox"/> Samples	SENT VIA:	<input type="checkbox"/> Returned
<input type="checkbox"/> Specifications	<input checked="" type="checkbox"/> Attached	<input type="checkbox"/> Returned for Corrections
<input checked="" type="checkbox"/> Other: SUBCONTRACT AGREEMENT/EX	<input type="checkbox"/> Sent Via:	<input type="checkbox"/> Due Date:

Item	Package	Code	Rev.	Copies	Date	Description	Status
01				1	09/11/2006	SUBCONTRACT AGREEMENT/EXECUTED	

Remarks:

Executed subcontract agreement for your records.

Signed: _____
Lorraine Mercado

CC: SUMMIT BUILDERS-Don Mellow
SUMMIT BUILDERS-Field Copy
SUMMIT BUILDERS-File Copy

Project Manager: 01, Don Mellow

Canyon Country Invoice 8389

EXHIBIT 7

Canyon Country Contracting, Inc.
 1452 East Alameda Road
 Phoenix, AZ 85024

Voice: 602-867-7777
 Fax: 623-582-9777



Invoice
 Invoice Number: 8389
 Invoice Date: Aug 15, 2006
 Page: 1

Sold To: SUMMIT BUILDERS
 3333 E CAMELBACK #122
 PHOENIX, AZ 85018

Ship to: SCOTTSDALE & OSBORN

Customer ID	Customer PO	Payment Terms	
sum		Net 25th of Next Month	
JOB #	Shipping Method	Ship Date	Due Date
06-1561	BELLY DUMPS, 10'S	7/26/06	9/25/06

Quantity	Item	Description	Unit Price	Extension
54.82	TONS	TRACKOUT ROCK-07/27/06	14.40	789.41
4.50	HOURS	TRUCKING SERVICE TO HAUL ROCK-07/27/06 (10 Wheelers)	72.00	324.00
2.00	HOURS	TRUCKING SERVICE TO HAUL ROCK-07/27/06 (Belly Dumps)	81.00	162.00

PAID

ACCTG PERIOD _____ INV. AMT 1,275.41

VENDOR TYPE _____ PHASE CODE 02300

VENDOR 03010021 TYPE 07

JOB # 05-00258 U.L. ACCT# _____

INVOICE # 8389 I.M. APPROVAL RM 9/21

INV. DATE 08/15/06 SUPPLY APPROVAL D.C.S

Cost for 2nd set of rock entrances needed to access the project.

Subtotal 1,275.41
 Sales Tax
 Total Invoice Amount 1,275.41
 Payment Received 0.00
TOTAL 1,275.41

Check No:

Preliminary 20-Day Notice

EXHIBIT 8

ARIZONA PRELIMINARY TWENTY DAY LIEN NOTICE

VAN RYLIN ASSOCIATES, INC.
P.O. BOX 36953
TUCSON, AZ 85740-8953
(520) 797-0797 FAX (520) 742-0200

IN ACCORDANCE WITH SECTION 33-992.01 AND 33-992.02 ARIZONA REVISED STATUTES, THIS IS NOT A LIEN, THIS IS NOT A REFLECTION ON THE INTEGRITY OF ANY CONTRACTOR OR SUBCONTRACTOR
SUMMIT BUILDERS DBA SUMMIT BUILDERS EXPRESS

NOTICE # 533894

3333 E CAMELBACK ROAD #122
PHOENIX AZ 85018

DH

YOU ARE HEREBY NOTIFIED THAT they have furnished or will furnish labor, materials, machinery, fixtures, tools or professional services of the following general description:

Job #: 05-00256

The name and address of the person or firm who contracted for the purchase of such labor, materials, machinery, fixtures, tools or professional services is:

GENERAL CONTRACTING SERVICES

OWNER OR REPUTED OWNER
OSBORN III PARTNERS, LLC
8500 E IRONWOOD SQUARE DRIVE #201
SCOTTSDALE AZ 85258

In the construction, alteration or repair of the building, structure or improvement located at
7128 E OSBORN ROAD
and situated upon that certain lot(s) parcel(s) of land in SCOTTSDALE, MARICOPA County, Arizona, LEGALLY described as follows:

TEN LOFTS

CONSTRUCTION LENDER
MORTGAGES LTD
55 E THOMAS ROAD
PHOENIX AZ 85012

An estimate of the total price of the labor, materials, machinery, fixtures, tools or professional services furnished or to be furnished is:

\$27,588,000.00 \$0.00 (=) \$27,588,000.00 Total

PLEASE PROVIDE BONDING INFORMATION

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, materials, machinery, fixtures, tools or professional services furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings of all or part of your property being improved may be placed against the property. You may wish to protect yourself against this consequence by either:

- 1. Requiring your contractor to furnish a conditional waiver and release pursuant to Arizona Revised Statutes Section 33-1008, Subsection D, Paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.
2. Requiring your contractor to furnish an unconditional waiver and release pursuant to Arizona Revised Statutes Section 33-1008, Subsection D, Paragraphs 2 and 4 signed by the person or firm giving you this notice or you make payment to your contractor.
3. Using any other method or device that is appropriate under the circumstances.

WITHIN TEN DAYS OF THE RECEIPT OF THIS PRELIMINARY TWENTY DAY NOTICE THE OWNER OR OTHER INTERESTED PARTY IS REQUIRED TO FURNISH ALL INFORMATION NECESSARY TO CORRECT ANY INACCURACIES IN THE NOTICE PURSUANT TO ARIZONA REVISED STATUTES SECTION 33-992.01, SUBSECTION 1 OR LOSE AS A DEFENSE ANY INACCURACY OF THAT INFORMATION.

WITHIN TEN DAYS OF THE RECEIPT OF THIS PRELIMINARY TWENTY DAY NOTICE IF ANY PAYMENT BOND HAS BEEN RECORDED IN COMPLIANCE WITH ARIZONA REVISED STATUTES SECTION 33-1003, THE OWNER MUST PROVIDE A COPY OF THE PAYMENT BOND INCLUDING THE NAME AND ADDRESS OF THE SURETY COMPANY AND BONDING AGENT PROVIDING THE PAYMENT BOND TO THE PERSON WHO HAS GIVEN THE PRELIMINARY TWENTY DAY NOTICE. IN THE EVENT THAT THE OWNER OR OTHER INTERESTED PARTY FAILS TO PROVIDE THE BOND INFORMATION WITHIN THAT TEN DAY PERIOD, THE CLAIMANT SHALL RETAIN LIEN RIGHTS TO THE EXTENT PRECLUDED OR PREJUDICED FROM ASSERTING A CLAIM AGAINST THE BOND AS A RESULT OF NOT TIMELY RECEIVING THE BOND INFORMATION.

DATE: 8/2/2008
BY: [Signature]
LIMITED AGENT FOR: SUMMIT BUILDERS DBA SUMMIT BUILDERS EXPRESS

NOTICE # 533894

ACKNOWLEDGMENT OF RECEIPT OF PRELIMINARY TWENTY-DAY NOTICE

(Arizona Revised Statutes Section 33-992.01 and 33-992.02)

Upon receipt of this notice, please detach and sign this Acknowledgment and return same to:

VAN RYLIN ASSOCIATES, INC.
P.O. BOX 36953, Tucson, AZ 85740-8953

This acknowledges receipt on [DATE] of a copy of this Preliminary Twenty-Day notice at [DATE]

(Name of person or firm receiving notice and the address where the notice was received)

(Date this acknowledgment is executed)

(Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person)

(Address or description of job site as stated above)

20081054737

CERTIFICATE OF MAILING

Notice 533894

533894

DH

OWNER OR REPUTED OWNER

OSBORN II PARTNERS,LLC
8500 E IRONWOOD SQUARE DRIVE #201
SCOTTSDALE AZ 85258

CONSTRUCTION LENDER

MORTGAGES LTD
55 E THOMAS ROAD
PHOENIX AZ 85012

****PLEASE PROVIDE BONDING INFORMATION**

Unofficial Document



Canyon Country Invoice 8393

EXHIBIT 9

Canyon Country Contracting, Inc.
 1452 East Alameda Road
 Phoenix, AZ 85024

Invoice
 Invoice Number: 8393
 Invoice Date: Aug 25, 2006
 Page: 1

Voice: 602-867-7777
 Fax: 623-582-9777

Sold To: WESCOR GENERAL
 3922 E. UNIVERSITY DRIVE
 PHOENIX, AZ 85034

Ship to: SCOTTSDALE & OSBORN

Customer ID		Customer PO		Payment Terms	
wes				Net 25th of Next Month	
JOB #		Shipping Method		Ship Date	Due Date
06-1556		BELLY DUMPS		8/2/06	9/25/06
Quantity	Item	Description	Unit Price	Extension	
145.00	LOADS	HAULING OF EXPORT FILL MATERIAL-08/02/06	134.00	19,430.00	
23.12	TONS	TRACKOUT ROCK-08/02/06	12.00	277.44	
151.00	LOADS	HAULING OF EXPORT FILL MATERIAL-08/03/06	134.00	20,234.00	
144.00	LOADS	HAULING OF EXPORT FILL MATERIAL-08/04/06	134.00	19,296.00	
152.00	LOADS	HAULING OF EXPORT FILL MATERIAL-08/07/06	134.00	20,368.00	
134.00	LOADS	HAULING OF EXPORT FILL MATERIAL-08/08/06	134.00	17,956.00	
165.00	LOADS	HAULING OF EXPORT FILL MATERIAL-08/09/06	134.00	22,110.00	
109.00	LOADS	HAULING OF EXPORT FILL MATERIAL-08/10/06	134.00	14,606.00	

1000

Subtotal 134,277.44
 Sales Tax
 Total Invoice Amount 134,277.44
 Payment Received 0.00
TOTAL 134,277.44

Check No:

PAID
10/31/06

Magnus Title Disbursement Summary

EXHIBIT 10

T&S LOANS

DISBURSEMENT SUMMARY
Delay-Flex® Mortgage Line

Loan Number: 851106

August 14, 2006

"Borrower" (individually and collectively):
Osborn III Partners, LLC, an Arizona limited liability company

Gross Loan:	\$41,400,000.00
Prepaid Commitment Fee:	<u>\$207,000.00</u>
Total:	\$41,607,000.00

LESS DEDUCTIONS:

[Loan Costs]

Construction Administration Fee	\$269,127.00*
Courier Fee	\$100.00*
Loan Discount	\$1,764,625.00*
Rev Op Fee	\$371,500.00*
Partial Non-Recourse Fee	\$314,000.00*
Processing Fee	\$185,750.00*
Property Inspection Fee	\$1,250.00*
Servicing Setup Fee	\$750.00*
Tax Service Fee	\$8,324.00*

[Impounds]

Mortgages Ltd. Impound Trust Account	\$14,917.44*
6 months Tax Impound @ \$2,486.24 per month	
Delay-Flex® Portion to be Delayed Funded:	\$28,300,000.00**
[In accordance to the below Delayed Funding Schedule]	
Irwin Union Bank - Construction Impound Account	\$3,755,337.00*
FBO 851106 Tax ID# 20-1613580	
Irwin Union Bank - Payment Impound Account	\$475,000.00*
3+ months Payment Impound @ \$144,430.91 per month	

[Other]

Secretary of State - UCC-1 Filing Fee	\$7.00*
Payoff Mortgages Ltd. Loan No. 848506 -	
Good Through August 17, 2006	\$5,610,374.41*

[Title Company]

Title Policy 2006017	\$44,924.00*
Escrow Fee	\$2,500.00*
Recording Fees	\$200.00*
Net Proceeds to Escrow	\$488,314.15*

Any and all proceeds remaining after all items have been paid in connection with the loan, including but not limited to all outstanding property taxes, are to be returned to Mortgages Ltd. FBO Irwin Union Bank - Construction Impound Account.

LESS TOTAL DEDUCTIONS: \$41,607,000.00

NET AMOUNT TO BORROWER: \$0.00

* Monies to be disbursed in the Initial Funding at the Close of Escrow.
** Monies to be delayed and funded in accordance to the below Delayed Funding Schedule.

CONTINUED ON NEXT PAGE



© 2006 Mortgages Ltd

DISBURSEMENT SUMMARY
Delay-Flex[®] Mortgage Line

Loan Number: 851106

August 14, 2006

"Borrower" (individually and collectively):
 Osborn III Partners, LLC, an Arizona limited liability company

Gross Loan:	\$41,400,000.00 ✓
Prepaid Commitment Fee:	\$207,000.00 ✓
Total:	\$41,607,000.00

LESS DEDUCTIONS:

[Loan Costs]

Construction Administration Fee	\$269,127.00* ✓
Comider Fee	\$100.00* ✓
Loan Discount	\$1,764,625.00* ✓
Rev Op Fee	\$371,500.00* ✓
Partial Non-Recourse Fee	\$314,000.00* ✓
Processing Fee	\$185,750.00* ✓
Property Inspection Fee	\$1,250.00* ✓
Servicing Setup Fee	\$750.00* ✓
Tax Service Fee	\$8,324.00* ✓

[Impounds]

Mortgages Ltd. Impound Trust Account	\$14,917.44* ✓
6 months Tax Impound @ \$2,486.24 per month	
Delay-Flex [®] Portion to be Delayed Funded:	\$28,300,000.00** ✓
[In accordance to the below Delayed Funding Schedule]	
Irwin Union Bank - Construction Impound Account	\$3,755,337.00** ✓
FBO 851106 Tax ID# 20-1613580	
Irwin Union Bank - Payment Impound Account	\$475,000.00** ✓
3+ months Payment Impound @ \$144,430.91 per month	

[Other]

Secretary of State - UCC-1 Filing Fee	\$7.00* ✓
Payoff Mortgages Ltd. Loan No. 848506 -	
Good Through August 17, 2006	\$5,610,374.41* ✓

[Title Company]

Title Policy 2006017	\$44,474.00* ✓
Escrow Fee	\$2,950.00* ✓
Recording Fees	\$200.00* ✓
Net Proceeds to Escrow	\$488,314.15*

Any and all proceeds remaining after all items have been paid in connection with the loan, including but not limited to all outstanding property taxes, are to be returned to Mortgages Ltd. FBO Irwin Union Bank - Construction Impound Account.

LESS TOTAL DEDUCTIONS:	\$41,607,000.00
NET AMOUNT TO BORROWER:	\$0.00

* Monies to be disbursed in the Initial Funding at the Close of Escrow.
 ** Monies to be delayed and funded in accordance to the below Delayed Funding Schedule.

CONTINUED ON NEXT PAGE



© 2006 Mortgages Ltd

Second DOT

EXHIBIT 11

OFFICIAL RECORDS OF
**Unofficial
Document**

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012

Jy7 02006017

Magnus Title Agency

**DEED OF TRUST, ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

Loan No. 851106 **August 14, 2006**
Secured Loan Amount: 341,400,000.00

"Trustor" (Individually and collectively):

Osborn III Partners, LLC, an Arizona limited liability company
9500 E. Ironwood Square Dr., Ste. 201
Scottsdale, AZ 85258

"Trustee":

Scott M. Coles, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

"Beneficiary":

Mortgages Ltd., an Arizona Corporation
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust"), is made by and among Trustor, Trustee and Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the "Note"), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the "Loan Documents." Trustor understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Beneficiary's behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor's present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in Maricopa County, Arizona, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Real Property"), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the "Improvements");
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the "Property Income");
- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;
- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;
- f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;



© 2006 Mortgages Ltd

**DEED OF TRUST
 ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
 Loan No. 851106
 August 14, 2006
 Page 2**

g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;

h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;

i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and

j. All proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S WARRANTIES

Trustor hereby warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever, subject, however, to the following:

a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and

b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;

b. Payment of all sums due under the Note, which include, but are not limited to, the principal amount of the 'Initial Funding' of \$41,400,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;

c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);

d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;

e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including, without limitation, taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by the guarantor or guarantors of the Note, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 851106
August 14, 2006
Page 3

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; and

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** In the event that the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within ninety (90) days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that ninety (90) day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within thirty (30) days of each request. If such updated appraisal is not received by Beneficiary within that thirty (30) day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.

c. **Insurance and Casualty.** Trustor shall keep all improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the improvements, and shall maintain and evidence liability insurance in the minimum amount of \$1,000,000 or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies along with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. **Litigation.** If an event of default occurs under the Loan Documents, then Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes, but is not limited to, Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including, but not limited to, all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. **Property Payments.** Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 851106
August 14, 2006
Page 4

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; and
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including, but not limited to, all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. Right to Cure. Should Trustor fail to make any payment or to do any act as required hereby, then Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to hereto jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.

g. Expenditures. Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, along with interest thereon, shall become a part of the debt secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. Impounds. Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds shall be held by Beneficiary and may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change in the circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

l. Financial Statements. Trustor shall furnish in form and substance satisfactory to Beneficiary: (a) within ninety (90) days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within ninety (90) days after the end of each calendar year, financial statements for such year from Trustor and all Guarantors of the loan; (c) within thirty (30) days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and all Guarantors of the loan; and (e) such other financial information concerning the Trust Property, Trustor, or Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Estate at any time, upon reasonable notice to Trustor.

j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including, without limitation, substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor nor any employees, agents, tenants, contractors or subcontractors of Trustor or any other persons occupying or present upon the Trust Property shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor.



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
Loan No. 831106
August 14, 2006
Page 5**

(iii) Trustor shall be solely responsible for, and shall indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including, without limitation: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Law; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. **Equity-Flex®.** In the event that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, the Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$41,400,000.00 up to the Secured Loan Amount of \$41,400,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: In the event Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Paragraph 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

b. **Delay-Flex®.** In the event that this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. The funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:

- (i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;
- (ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;
- (iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;
- (iv) Beneficiary may further condition any delayed funding on endorsements to the Beneficiary's Title Policy insuring the continued validity and priority of the Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;
- (v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and
- (vi) Funding the total Delay-Flex portion of the loan is not to exceed nine (9) months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.

Notice: In the event Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Paragraph 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 851106
August 14, 2006
Page 6

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, then notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

In the event any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.

8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, except a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or
- f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor hereby grants to Beneficiary, as secured party, a security interest in all personal property, if any, described on Exhibit B attached hereto. Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's covenants and warranties contained in this Paragraph are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.



© 2006 Mortgage Ltd

**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 851106
August 14, 2006
Page 7

10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. At any time, when Trustor is not in default under the Loan Documents, Beneficiary will execute or direct the Trustee to execute and deliver a Partial Deed of Release and Reconveyance, subject to any prepayment provisions contained in the Note, as follows: (i) The release price for the initial ten (10) sales on the first floor shall be the greater of 100% of net sale proceeds or \$316.00 per square foot (par - calculated below). Net sale proceeds shall be the selling price less standard industry sales expenses related to the sale, namely sales commissions, title and escrow fees. The release price for the next ten (10) sales on the first floor shall be the greater of 100% of net sales proceeds or \$330.00 per square foot. The release price for the remaining sales on the first floor shall be the greater of 100% of net sales proceeds or \$340.00 per square foot. The release price for units on all remaining floors shall be a minimum of 130% of par plus one-half (1/2) of any unit premium. Par will be based on a dollar per square foot basis and will be calculated as follows: Loan amount of \$41,400,000.00 divided by net sellable square footage of 130,989 = \$316.00 per square foot. Premiums will be determined prior to release and according to approved price list furnished by Trustor and approved by Beneficiary. Release prices are at the sole and absolute discretion of the Beneficiary (APN No.(s) 130-13-048, 130-13-049, 130-13-052, 130-13-054, 130-13-056, 130-13-057), (ii) Upon payment of a Release Fee of \$75.00 per unit released, (iii) Upon payment of any prepayment penalties, if any, due pursuant to the Note, (iv) Upon Mortgages Ltd.'s receipt and approval of a Partial Release Endorsement to title policy if required by Beneficiary, (v) Upon payment of all applicable ALTA title policy endorsement and recording costs.

c. Upon Trustor's written request to Servicing Agent stating that all sums secured hereby have been paid in full, then Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantees in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and Note, Trustor hereby absolutely transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, ~~licenses~~ other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (the "Leases"); and

b. All income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").

So long as there shall not have occurred an event of default under this Deed of Trust or any of the Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Trust Property, second to maintenance of insurance policies upon the Trust Property required hereby, third to the expenses of the operation of the Trust Property, including maintenance and repairs required hereby, fourth to the payment of that portion of the indebtedness secured hereby then due and payable, and fifth, the balance, if any, to or as directed by Trustor. In furtherance of this assignment and not in lieu hereof, Beneficiary may require a separate assignment of rents and leases and/or separate specific assignments of rents and leases covering one or more of the Leases. In the event of any conflict between the terms of such separate assignment and this Section 11, the terms of such separate assignment shall control. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of the Trustor, collect the Trust Property income by any method authorized by law and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time.

12. DEFAULT AND REMEDIES

a. **Default.** Among other things constituting default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor fails to perform any obligation required by and in accordance with the Loan Documents;
- (3) Trustor becomes insolvent;



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 851106
August 14, 2006
Page 8

- (4) Trustor fails to pay Trustor's debts as they mature;
- (5) Trustor admits in writing that Trustor is unable to pay Trustor's debts as they mature;
- (6) Trustor is not paying Trustor's debts as they become due;
- (7) Trustor, any endorser of the Note or any guarantor of the Note files or has filed against them, collectively or individually, any proceeding under the federal bankruptcy laws now or hereafter existing or any similar statute now or hereafter in effect;
- (8) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor or the Note's endorser or guarantor; or
- (9) In the event that Jonathan Vento and Donald Zelezak has secured or secures additional loans through Mortgages Ltd, personally or through any entity in which they possess an ownership interest, the "Additional Loans", (including but not limited to Loan No.(s) 839706, 849406, 849506, 849606, and 852406), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loan(s) or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loan(s), only as to the interest of Jonathan Vento and Donald Zelezak as individuals and/ or members of the borrowing entity to the extent of their ownership.

b. **Acceleration.** Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects.

c. **Trustee's Sale.** Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to the Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession ^{of the Trust Property} and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees incurred therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including, but not limited to, the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and the Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. **Deficiency Judgment.** To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. **Foreclosure and Other Remedies.** In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including, but not limited to, all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.

f. **Appointment of Receiver or Mortgagee in Possession.** If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.



**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**
Loan No. 851106
August 14, 2006
Page 9

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following without prior written consent of Beneficiary or its Servicing Agent:

- a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including, but not limited to, any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;
- b. If Trustor is a corporation and the controlling interest in Trustor is sold, conveyed or transferred;
- c. If Trustor is a limited liability company and any interest in Trustor is sold, conveyed or transferred; or
- d. If Trustor is a partnership and any general partnership interest in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. GENERAL

- a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.
- b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds the Trustor, Trustee and Beneficiary (collectively, the "Parties") and their agents, representatives, heirs, legatees, devisees, successors and assigns. All liability created hereunder shall be joint and several.
- c. **Execution by Third Parties.** Any Trustor signing this Deed of Trust as an accommodation party or surety, or who has otherwise subjected property to this Deed of Trust to secure the debt of another, hereby acknowledges and agrees that Trustor has received good and valuable consideration for that extension of credit and the execution of this Deed of Trust, and hereby waives the benefits of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Sections 12-1566, 33-814, 44-142, 47-3605 and Rule 17(F) of the Arizona Rules of Civil Procedure.
- d. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.
- e. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is Trustor's Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of the Beneficiary.
- f. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.
- g. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.
- h. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.
- i. **Jury Trial Waiver.** Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary nor any person acting on behalf of Beneficiary has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.



© 2006 Mortgages Ltd

**DEED OF TRUST
 ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
 Loan No. 851106
 August 14, 2006
 Page 10**

- j. Promotion.** Mortgages Ltd. shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including, but not limited to, photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, internet releases and public presentations. Mortgages Ltd. shall not be held liable to Trustor for the release of Promotional Information.
- k. Modification.** This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.
- l. Waiver.** The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.
- m. Waiver of Statute of Limitations.** Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.
- n. Waiver of Homestead and Redemption.** Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.
- o. Life Insurance.** Trustor hereby agrees to obtain a life insurance policy for Jonathan Vento and Donald Zalesnak in the amount of \$10,000,000.00 each naming Mortgages Ltd. and/ or its successors and assignees as additional obligee. Failure to obtain said policy and provide a copy to Mortgages Ltd. within 90 days after close of escrow may constitute a default under the terms of the Loan Documents.
- p. Construction Retainage.** Trustor agrees that Beneficiary will withhold for retainage, ten percent (10%) of all draw requests for hard cost line items in the approved construction budget.
- q. Construction Impound.** The construction budget is based on a minimum of 82 units, or the equivalent of 130,989 S.F. of sellable square footage. Any adjustment in the unit number or sellable square footage will affect the budget and Beneficiary's loanable amount toward construction. Any shortfall in the construction budget is to be brought in by the Trustor prior to any disbursements from the Construction Impound Account.

SEE ATTACHED SIGNATURE AND NOTARY PAGES



© 2006 Mortgages Ltd.

DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
Loan No. 851106
August 14, 2006
Page 11

DEED OF TRUST ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
SIGNATURE AND NOTARY PAGE

IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

TRUSTOR:

Osborn III Partners, LLC, an Arizona limited liability company


By: Osborn Condominiums, LLC, an Arizona limited liability company
Its: Sole Member

By: Osborn Lofts Investors, LLC, an Arizona limited liability company
Its: Sole Member

By: Vento Investments, LLC, an Arizona limited liability company
Its: Managing Member


By: Jonathon Vento
Its: Authorized Member

By: RJZ Associates, L.L.C., an Arizona limited liability company
Its: Member


By: Ryan Zelezak
Its: Sole Member

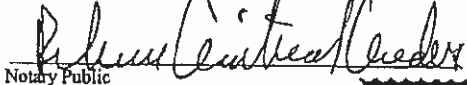
STATE OF AZ)
COUNTY OF MARICOPA)

Unfiled Document

Date of acknowledgement 8/16/06

Acknowledgement of Jonathon Vento

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.


Notary Public My commission expires 2/10/2007

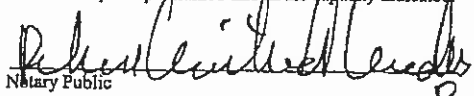


STATE OF AZ)
COUNTY OF MARICOPA)

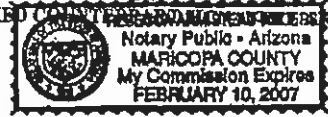
Date of acknowledgement 8/16/06

Acknowledgement of Ryan J. Zelezak

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.


Notary Public My commission expires 2/10/2007

SEE ATTACHED COUNTY RECORD MARRIAGE RECEIPT AND NOTARY PAGE



DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
Loan No. 851106
August 14, 2006
Page 12

DEED OF TRUST ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS
COUNTERPART SIGNATURE AND NOTARY PAGE

TRUSTOR:

Osborn III Partners, LLC, an Arizona limited liability company

By: Osborn Condominiums, LLC, an Arizona limited liability company
Its: Sole Member

By: Osborn Leasing Investors, LLC, an Arizona limited liability company
Its: Sole Member

By: Zeltor, LLC, a Nevada limited liability company
Its: Managing Member

Donald J. Zeleznak
By: Donald J. Zeleznak
Its: Member

By: Z-Don, Inc., a Nevada corporation
Its: Member

Donald J. Zeleznak
By: Donald J. Zeleznak
Its: President

STATE OF AZ)
COUNTY OF MARICOPA)

Witness
Date of acknowledgement 8/17/06

Acknowledgement of Donald J. Zeleznak

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

Rebecca Armstrong-Anders
Notary Public

My commission expires 2/10/2007



EXHIBIT "A"

Loan No.: 851106
Borrower: Osborn III Partners, LLC, an Arizona limited liability company

Parcel No. 1:

Lot 8, ORANGE ACRES, a subdivision recorded in Book 31 of Maps, Page 14, records of Maricopa County, Arizona;

EXCEPT the North 22.00 feet; and

EXCEPT the South 40.00 feet thereof.

Parcel No. 2:

Lot 6, ORANGE ACRES, a subdivision recorded in Book 31 of Maps, Page 14, records of Maricopa County, Arizona;

EXCEPT the following described property:

BEGINNING at the Northwest corner of said Lot 6;

THENCE South along the West line of said Lot 6, a distance of 22.00 feet to a point;

THENCE East along a line 22.00 feet South of and parallel with the North line of said Lot 6, a distance of 16.66 feet to the beginning of a tangent curve concave Southwesterly and having a radius of 70.00 feet;

THENCE Southeasterly along the arc of said curve, through a central angle of 90 degrees 56 minutes 41 seconds, a distance of 111.1 feet to a point of tangency with a line lying 22.00 feet West of and parallel with the East line of said Lot 6;

THENCE South along said parallel line, a distance of 161.07 feet to the beginning of a tangent curve concave Northwesterly and having a radius of 15.00 feet;

THENCE Southwesterly along the arc of said curve, through a central angle of 89 degrees 04 minutes 00 seconds, a distance of 23.3 feet to a point of tangency with a line lying 40.00 feet North of and parallel with the South line of said Lot 6;

THENCE West along said parallel line to a point on the West line of said Lot 6;

THENCE South along the West line of Lot 6 to the Southwest corner thereof;

THENCE East along the South line of said Lot 6 to a point of intersection with the East line of the West 24.18 feet of said Lot 6;

Loan No.: 851106
Borrower: Osborn III Partners, LLC, an Arizona limited liability company

THENCE North along said East line, a distance of 33.00 feet to a point;

THENCE East along a line 33.00 feet North of and parallel with the South line to a point on the East line of said Lot 6;

THENCE North along the East line of said Lot 6 to the Northeast corner thereof;

THENCE West along the North line of said Lot 6 to the Northwest corner thereof and the TRUE POINT OF BEGINNING; and

EXCEPT the South 33.00 feet of the South half of Lot 6, ORANGE ACRES, except the West 24.18 feet thereof.

Parcel No. 3:

Lot 10, ORANGE ACRES, a subdivision recorded in Book 31 of Maps, Page 14, records of Maricopa County, Arizona;

EXCEPT the South 40.00 feet thereof; and

EXCEPT the North 22.00 feet thereof.

Parcel No. 4:

The West half of Lot 12, ORANGE ACRES, a subdivision recorded in Book 31 of Maps, Page 14, records of Maricopa County, Arizona;

EXCEPT the North 22.00 feet; and

Use/Title Comment

EXCEPT the North 7.00 feet of the South 40.00 feet thereof.

Parcel No. 5:

The East half of Lot 12, ORANGE ACRES, a subdivision recorded in Book 31 of Maps, Page 14, records of Maricopa County, Arizona;

EXCEPT the North 22.00 feet; and

EXCEPT the South 40.00 feet thereof.

**APN(s): Parcel 1: 130-13-052, Parcel 2: 130-13-048 & 130-13-049,
Parcel 3: 130-13-054, Parcel 4: 130-13-057, and Parcel 5: 130-13-056**

Exhibit "B"

to

Deed of Trust

Borrower Name: Osborn III Partners, LLC, an Arizona limited liability company
 Loan No.: 851106

DESCRIPTION OF PERSONAL PROPERTY

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in Paragraph (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof.

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof including, without limitation, all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

(e) Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in Paragraph (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;



© 2006 Mortgages Ltd

- (f) All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;
- (g) All water stock or water rights relating to the Real Property;
- (h) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of the Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;
- (i) All proceeds from the sale or other disposition of any of the collateral described above;
- (j) All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;
- (k) All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the improvements;
- (l) All of Trustor's rights in any impound account held by or on behalf of Beneficiary; and
- (m) All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

All defined terms used in this Exhibit B to Deed of Trust not defined herein shall have the same meaning as ascribed to such term in the Deed of Trust to which this Exhibit B is attached.

Unfiled Document

OFICIAL RECORDS OF
**Unofficial
Document**

Recording at the request of:
Magnus Title Agency

When recorded, mail to:
Mortgages Ltd.
55 East Thomas Road
Phoenix, AZ 85012

7/17
Order No. 2006017

Magnus Title Agency

Subordination Agreement

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT, made this 16th day of August, 2006, by

Osborn III Partners, LLC, an Arizona limited liability company

Owner of the land hereinafter described and hereinafter referred to as "Owner/Optionor",
and

Ten Lofts, LLC, an Arizona limited liability company

Present owner and holder of the Rolling Option Agreement first hereinafter described and hereinafter referred to as "Optionee"

WITNESSETH:

THAT, WHEREAS,

Osborn III Partners, LLC, an Arizona limited liability company

did execute a Rolling Option Agreement dated March 23, 2006 to Ten Lofts, LLC, an Arizona limited liability company, covering

SEE ATTACHED LEGAL DESCRIPTION

A memorandum of which was recorded March 27, 2006, in Recording No. 2006-0404192, Official Records of said County; and

WHEREAS, Owner/Optionor has executed or is about to execute, a deed of trust and note in the sum of \$41,400,000.00 dated August 14, 2006, in favor of Mortgages Ltd. hereinafter referred to as "Lender", payable with interest and upon the terms and conditions described therein, which deed of trust is to be recorded concurrently herewith; and

WHEREAS, it is a condition precedent to obtaining said loan that said deed of trust last above mentioned shall unconditionally be and remain at all times a lien or charge upon the land hereinabove described, prior and superior to the lien or charge of the Rolling Option Agreement first above mentioned; and

WHEREAS, Lender is willing to make said loan provided the deed of trust securing the same is a lien or charge upon the above described property prior and superior to the lien or charge of the Rolling Option Agreement first above mentioned and provided that Optionee will specifically and unconditionally subordinate the lien or charge of the Rolling Option Agreement first above mentioned to the lien or charge of the deed of trust in favor of the Lender; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make such loan to Owner; and Optionee is willing that the deed of trust securing the same shall, when recorded, constitute a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the Rolling Option Agreement first above mentioned and

WHEREAS, it is understood by the parties executing this agreement that any loan proceeds obtained by the Owner/Optionor may be unconditionally expended for any purpose.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledge, and in order to induce lender to make the loan above referred to, it is hereby declared, understood and agreed as follows:

1. That said deed of trust securing said note in favor of Lender, and any renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the lien or charge of the Rolling Option Agreement first above mentioned;
2. That Lender would not make its loan above described without this subordination agreement; and
3. That this agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Rolling Option Agreement first above mentioned to the lien or charge of the deed of trust in favor of Lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the deed of trust and Rolling Option Agreement hereinbefore specifically described, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the rolling option agreement first above mentioned, which provide for the subordination of the lien or charge thereof to a deed of trust or to another mortgage or mortgages.

Optionee declares, agrees, and acknowledges that:

- a) Optionee consents to and approves (i) all provisions of the note and deed of trust in favor of Lender above referred to, and (ii) all agreements, including but not limited to, any loan or escrow agreements between Owner/Optionor and Lender for the disbursement of the proceeds of Lender's loan;
- b) Lender in making disbursements pursuant to any such agreement, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;
- c) Optionee intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Rolling Option Agreement first above mentioned in favor of the lien or charge upon said land of the deed of trust in favor of Lender above referred to, and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made, and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, ALL OF WHICH MAY BE UNCONDITIONALLY EXPENDED FOR ANY PURPOSE WHATSOEVER.

SEE ATTACHED SIGNATURE AND NOTARY PAGES

SUBORDINATION AGREEMENT SIGNATURE AND NOTARY PAGE

Optionee:


Ten Lofts, LLC, an Arizona limited liability company

**By: Osborn III Partners, LLC, an Arizona limited liability company
Its: Sole Member**

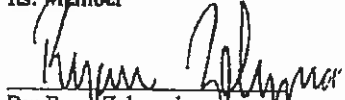
**By: Osborn Condominiums, LLC, an Arizona limited liability company
Its: Sole Member**

**By: Osborn Lofts Investors, LLC, an Arizona limited liability company
Its: Sole Member**

**By: Vento Investments, LLC, an Arizona limited liability company
Its: Managing Member**


By: Jonathon Vento
Its: Authorized Member

**By: RJZ Associates, L.L.C., an Arizona limited liability company
Its: Member**


By: Ryan Zeleznak
Its: Sole Member



State of Arizona)
) ss. Date of Acknowledgment 8/16/06
County of Maricopa)

Acknowledgment of Jonathon Vento

This instrument was acknowledged before me this date by the persons above-subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

My commission expires: 2/10/2007 
Notary Public

State of Arizona)
) ss. Date of Acknowledgment 8/16/06
County of Maricopa)

Acknowledgment of Ryan Zeleznak

This instrument was acknowledged before me this date by the persons above-subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

My commission expires: 2/10/2007 
Notary Public

SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE

**SUBORDINATION AGREEMENT COUNTERPART
SIGNATURE AND NOTARY PAGE**

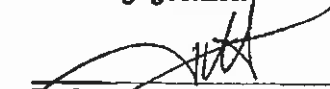
OWNER/OPTIONOR:

Osborn III Partners, LLC, an Arizona limited liability company


By: Osborn Condominiums, LLC, an Arizona limited liability company
Its: Sole Member

By: Osborn Lofts Investors, LLC, an Arizona limited liability company
Its: Sole Member

By: Vento Investments, LLC, an Arizona limited liability company
Its: Managing Member


By: Jonathon Vento
Its: Authorized Member

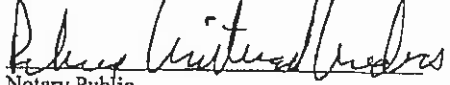
By: RJZ Associates, L.L.C., an Arizona limited liability company
Its: Member

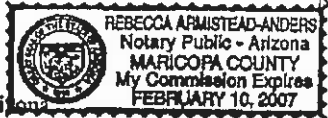

By: Ryan Zeleznak
Its: Sole Member

State of Arizona)
County of Maricopa) ss. Date of Acknowledgment 8/16/06

Acknowledgment of Jonathon Vento

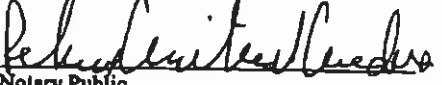

This instrument was acknowledged before me this date by the persons above-subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

My commission expires: 2/10/2007 
Notary Public


State of Arizona)
County of Maricopa) ss. Date of Acknowledgment 8/16/06

Acknowledgment of Ryan Zeleznak

This instrument was acknowledged before me this date by the persons above-subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

My commission expires: 2/10/2007 
Notary Public

Rebecca Armistead-Anders

SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE

**SUBORDINATION AGREEMENT COUNTERPART
SIGNATURE AND NOTARY PAGE**

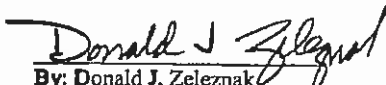
Ten Lofts, LLC, an Arizona limited liability company

By: Osborn III Partners, LLC, an Arizona limited liability company
Its: Sole Member

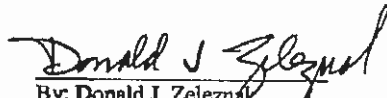
By: Osborn Condominiums, LLC, an Arizona limited liability company
Its: Sole Member

By: Osborn Lofts Investors, LLC, an Arizona limited liability company
Its: Sole Member

By: Zeltor, LLC, a Nevada limited liability company
Its: Managing Member


By: Donald J. Zeleznak
Its: Member

By: Z-Don, Inc., a Nevada corporation
Its: Member


By: Donald J. Zeleznak
Its: President

State of Arizona)
) ss. Date of Acknowledgment 8/17/06
County of Maricopa)

Acknowledgment of Donald J. Zeleznak

This instrument was acknowledged before me this date by the persons above-subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

My commission expires: 2/10/2007 
Notary Public



SEE ATTACHED COUNTERPART SIGNATURE PAGE


**SUBORDINATION AGREEMENT COUNTERPART
SIGNATURE AND NOTARY PAGE**

Osborn III Partners, LLC, an Arizona limited liability company
Its: Sole Member

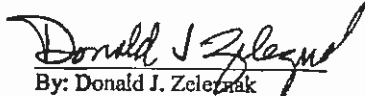
By: Osborn Condominiums, LLC, an Arizona limited liability company
Its: Sole Member

By: Osborn Loft Investors, LLC, an Arizona limited liability company
Its: Sole Member

By: Zeltor, LLC, a Nevada limited liability company
Its: Managing Member


By: Donald J. Zeleznsak
Its: Member

By: Z-Don, Inc., a Nevada corporation
Its: Member


By: Donald J. Zeleznsak
Its: President

State of Arizona)
) ss. Date of Acknowledgment 8/17/06
County of Maricopa)

Acknowledgment of Donald J. Zeleznsak

This instrument was acknowledged before me this date by the persons above-subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

My commission expires:
2/10/2007

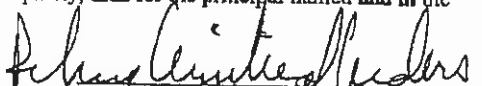

Notary Public



EXHIBIT "A"

Lot 6 of the property assemblage in the City of Scottsdale, as recorded in Book 791 of Maps, Page 34, records of Maricopa County, Arizona, located in a portion of the Northeast quarter of Section 27, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Use/Print Document

Lien

EXHIBIT 12

Unofficial Document

UPON RECORDATION, PLEASE RETURN TO:

Ken Royer
Summit Builders
3333 E. Camelback Rd., Suite 122
Phoenix, AZ 85018

M
20

CLAIMANT)
JEFFREY C. STONE, INC. dba) (A.R.S. 33-993 (A))
SUMMIT BUILDERS CONSTRUCTION) NOTICE AND CLAIM OF
COMPANY) MECHANIC'S AND
) MATERIALMAN'S LIEN
v.)
)
PROJECT OWNER)
OSBORN III PARTNERS, LLC)
GRACE CAPITAL, LLC)
GRACE COMMUNITIES)

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

THE UNDERSIGNED, being first duly sworn upon his oath deposes and states that I (Paul Stiak, Chief Operating Officer of Jeffrey C. Stone, Inc.) have knowledge of and have provided the facts as contained herein on behalf of Jeffrey C. Stone, Inc. dba Summit Builders Construction Company ("Claimant"). That to the best of my knowledge and belief and with the information as provided, I make this affidavit for and on behalf of Claimant and claim a lien upon the property described in this Notice and Claim of Lien for work, materials or equipment furnished, or to be furnished, for the improvement of the property:

- 1. The amount of the original contract is \$24,000,000.
2. The total amount of all additional or changed work, materials or equipment, is a contract addition of \$869,825.87.
3. The total amount of all payments received to date are \$ 22,825,575.17.
4. The amount of the lien after deducting all just credits and offsets is \$ 2,044,250.70.
5. The name of the owner of the property is OSBORN III PARTNERS, LLC, 9500 East Ironwood Square Drive, Scottsdale, AZ 85238.

22

6. The name of the person by whom the lien claimant was employed, or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is OSBORN III PARTNERS, LLC, and GRACE CAPITAL, LLC, pursuant to a contract dated April 24, 2006. (copy attached)

7. Lien claimant believes that they first supplied their materials and labor on or about August 1, 2006. A Certificate of Occupancy was issued on May 9, 2008.

8. Lien claimant believes that not more than One Hundred Twenty (120) days has elapsed since final completion of the improvements on the above referenced property pursuant to A.R.S. 33-993.

9. A brief statement of the terms of payment of the lien claimant's contract is: The owner was required to pay lien claimant monthly progress payments no later than the last day of each month for Payment Applications received by the Architect and the Owner no later than the tenth day of the same month. Final payment including retention was to be paid no later than 30 days after the Architects final certification for payment, after full completion of all work, including the completion of punch list pursuant to applicable Arizona Revised Statutes and the parties contract.

10. A description of the real property to be charged with the lien is:

Unofficial Document

Ten Lofts
7126 East Osborn Road
Scottsdale, AZ 85251

Legal Description: Lot 6 of the Property Assemblage in the City of Scottsdale, as Recorded in Book 791 of Maps, page 34 Records of Maricopa County, Arizona, located in a Portion of the Northeast Quarter of Section 27, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, State of Arizona.

DATED this 2nd day of July, 2008.

JEFFREY C. STONE, INC., d/b/a
SUMMIT BUILDERS

By: 
Name : Paul Stiak
Title : Chief Operations Officer

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss:

PAUL STIAK, being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof, and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

JEFFREY C. STONE, INC., d/b/a
SUMMIT BUILDERS

By: *Paul Stiak*
Name : Paul Stiak
Title : Chief Operations Officer

SUBSCRIBED and SWORN TO before
me this 2nd day of July, 2008.

Allison Cavan
Notary Public, State of Arizona



EXHIBIT A
APN LEGAL DESCRIPTION

APN 130-13-234	Ten Lofts Condominium MCR 892-05 Unit 1002
APN 130-13-235	Ten Lofts Condominium MCR 892-05 Unit 1003
APN 130-13-236	Ten Lofts Condominium MCR 892-05 Unit 1004
APN 130-13-237	Ten Lofts Condominium MCR 892-05 Unit 1005
APN 130-13-238	Ten Lofts Condominium MCR 892-05 Unit 1006
APN 130-13-239	Ten Lofts Condominium MCR 892-05 Unit 1007
APN 130-13-240	Ten Lofts Condominium MCR 892-05 Unit 1008
APN 130-13-241	Ten Lofts Condominium MCR 892-05 Unit 1009
APN 130-13-242	Ten Lofts Condominium MCR 892-05 Unit 1010
APN 130-13-243	Ten Lofts Condominium MCR 892-05 Unit 1011
APN 130-13-244	Ten Lofts Condominium MCR 892-05 Unit 1012
APN 130-13-245	Ten Lofts Condominium MCR 892-05 Unit 1013
APN 130-13-246	Ten Lofts Condominium MCR 892-05 Unit 1014
APN 130-13-247	Ten Lofts Condominium MCR 892-05 Unit 1015
APN 130-13-248	Ten Lofts Condominium MCR 892-05 Unit 1017
APN 130-13-249	Ten Lofts Condominium MCR 892-05 Unit 1018
APN 130-13-250	Ten Lofts Condominium MCR 892-05 Unit 1019
APN 130-13-251	Ten Lofts Condominium MCR 892-05 Unit 1020
APN 130-13-252	Ten Lofts Condominium MCR 892-05 Unit 1021
APN 130-13-253	Ten Lofts Condominium MCR 892-05 Unit 1022
APN 130-13-254	Ten Lofts Condominium MCR 892-05 Unit 1023
APN 130-13-255	Ten Lofts Condominium MCR 892-05 Unit 1024
APN 130-13-256	Ten Lofts Condominium MCR 892-05 Unit 1025
APN 130-13-257	Ten Lofts Condominium MCR 892-05 Unit 1026
APN 130-13-258	Ten Lofts Condominium MCR 892-05 Unit 1027
APN 130-13-259	Ten Lofts Condominium MCR 892-05 Unit 1028
APN 130-13-260	Ten Lofts Condominium MCR 892-05 Unit 1029
APN 130-13-261	Ten Lofts Condominium MCR 892-05 Unit 1030
APN 130-13-262	Ten Lofts Condominium MCR 892-05 Unit 2002
APN 130-13-263	Ten Lofts Condominium MCR 892-05 Unit 2003
APN 130-13-264	Ten Lofts Condominium MCR 892-05 Unit 2004
APN 130-13-265	Ten Lofts Condominium MCR 892-05 Unit 2005
APN 130-13-266	Ten Lofts Condominium MCR 892-05 Unit 2006
APN 130-13-267	Ten Lofts Condominium MCR 892-05 Unit 2007
APN 130-13-268	Ten Lofts Condominium MCR 892-05 Unit 2008
APN 130-13-269	Ten Lofts Condominium MCR 892-05 Unit 2009
APN 130-13-270	Ten Lofts Condominium MCR 892-05 Unit 2010
APN 130-13-271	Ten Lofts Condominium MCR 892-05 Unit 2011
APN 130-13-272	Ten Lofts Condominium MCR 892-05 Unit 2012
APN 130-13-273	Ten Lofts Condominium MCR 892-05 Unit 2013
APN 130-13-274	Ten Lofts Condominium MCR 892-05 Unit 2014
APN 130-13-275	Ten Lofts Condominium MCR 892-05 Unit 2015
APN 130-13-276	Ten Lofts Condominium MCR 892-05 Unit 2017
APN 130-13-277	Ten Lofts Condominium MCR 892-05 Unit 2018
APN 130-13-278	Ten Lofts Condominium MCR 892-05 Unit 2019

EXHIBIT A
APN LEGAL DESCRIPTION (Con't)

APN 130-13-279	Ten Lofts Condominium MCR 892-05 Unit 2020
APN 130-13-280	Ten Lofts Condominium MCR 892-05 Unit 2021
APN 130-13-281	Ten Lofts Condominium MCR 892-05 Unit 2022
APN 130-13-282	Ten Lofts Condominium MCR 892-05 Unit 2023
APN 130-13-283	Ten Lofts Condominium MCR 892-05 Unit 2024
APN 130-13-284	Ten Lofts Condominium MCR 892-05 Unit 2025
APN 130-13-285	Ten Lofts Condominium MCR 892-05 Unit 2026
APN 130-13-286	Ten Lofts Condominium MCR 892-05 Unit 2027
APN 130-13-287	Ten Lofts Condominium MCR 892-05 Unit 2028
APN 130-13-288	Ten Lofts Condominium MCR 892-05 Unit 2029
APN 130-13-289	Ten Lofts Condominium MCR 892-05 Unit 2030
APN 130-13-290	Ten Lofts Condominium MCR 892-05 Unit 3001
APN 130-13-291	Ten Lofts Condominium MCR 892-05 Unit 3002
APN 130-13-292	Ten Lofts Condominium MCR 892-05 Unit 3003
APN 130-13-293	Ten Lofts Condominium MCR 892-05 Unit 3004
APN 130-13-405	Ten Lofts Condominium 1 st AMD MCR 976-37 Unit 3005
APN 130-13-295	Ten Lofts Condominium MCR 892-05 Unit 3006
APN 130-13-296	Ten Lofts Condominium MCR 892-05 Unit 3007
APN 130-13-297	Ten Lofts Condominium MCR 892-05 Unit 3008
APN 130-13-298	Ten Lofts Condominium MCR 892-05 Unit 3009
APN 130-13-299	Ten Lofts Condominium MCR 892-05 Unit 3010
APN 130-13-300	Ten Lofts ^{Amended Document} Condominium MCR 892-05 Unit 3011
APN 130-13-407	Ten Lofts Condominium 1 st AMD MCR 976-37 Unit 3012
APN 130-13-302	Ten Lofts Condominium MCR 892-05 Unit 3013
APN 130-13-303	Ten Lofts Condominium MCR 892-05 Unit 3016
APN 130-13-304	Ten Lofts Condominium MCR 892-05 Unit 3019
APN 130-13-408	Ten Lofts Condominium 1 st AMD MCR 976-37 Unit 3020
APN 130-13-306	Ten Lofts Condominium MCR 892-05 Unit 3021
APN 130-13-307	Ten Lofts Condominium MCR 892-05 Unit 3022
APN 130-13-308	Ten Lofts Condominium MCR 892-05 Unit 3023
APN 130-13-309	Ten Lofts Condominium MCR 892-05 Unit 3024
APN 130-13-310	Ten Lofts Condominium MCR 892-05 Unit 3025
APN 130-13-311	Ten Lofts Condominium MCR 892-05 Unit 3026
APN 130-13-406	Ten Lofts Condominium 1 st AMD MCR 976-37 Unit 3027
APN 130-13-313	Ten Lofts Condominium MCR 892-05 Unit 3028
APN 130-13-314	Ten Lofts Condominium MCR 892-05 Unit 3029
APN 130-13-315	Ten Lofts Condominium MCR 892-05 Unit 3030

ARIZONA PRELIMINARY TWENTY DAY LIEN NOTICE

VAN RYLYN ASSOCIATES, INC.

P.O. BOX 36953
TUCSON, AZ 85740-6953
(520) 797-0797

NOTICE # 533684

DH

The name and address of the person or firm who contracted for the purchase of such labor, materials, machinery, fixtures, tools or professional services is:

OWNER OR REPUTED OWNER
OSBORN III PARTNERS,LLC
9500 E IRONWOOD SQUARE DRIVE #201
SCOTTSDALE AZ 85258

CONSTRUCTION LENDER
MORTGAGES LTD
55 E THOMAS ROAD
PHOENIX AZ 85012

IN ACCORDANCE WITH SECTION 33-992.01 AND 33-992.02 ARIZONA REVISED STATUTES, THIS IS NOT A LIEN, THIS IS NOT A REFLECTION ON THE INTEGRITY OF ANY CONTRACTOR OR SUBCONTRACTOR

SUMMIT BUILDERS DBA SUMMIT BUILDERS EXPRESS

3333 E CAMELBACK ROAD #122

PHOENIX AZ 85018

YOU ARE HEREBY NOTIFIED THAT they have furnished or will furnish labor, materials, machinery, fixtures, tools or professional services of the following general description:

Job #: 05-00258

GENERAL CONTRACTING SERVICES

In the construction, alteration or repair of the building, structure or improvement located at:
7128 E OSBORN ROAD
and situated upon that certain lot(s) parcel(s) of land in SCOTTSDALE
MARICOPA County, Arizona, LEGALLY described as follows:

TEN LOFTS

An estimate of the total price of the labor, materials, machinery, fixtures, tools or professional services furnished or to be furnished is:

\$27,588,000.00 (=) \$27,588,000.00 Total

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, materials, machinery, fixtures, tools or professional services furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings of all or part of your property being improved may be placed against the property. You may wish to protect yourself against this consequence by either:

1. Requiring your contractor to furnish a conditional waiver and release pursuant to Arizona Revised Statutes Section 33-1008, Subsection D, Paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.
2. Requiring your contractor to furnish an unconditional waiver and release pursuant to Arizona Revised Statutes Section 33-1008, Subsection D, Paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.

3. Using any other method or device that is appropriate under the circumstances.

WITHIN TEN DAYS OF THE RECEIPT OF THIS PRELIMINARY TWENTY DAY NOTICE THE OWNER OR OTHER INTERESTED PARTY IS REQUIRED TO FURNISH ALL INFORMATION NECESSARY TO CORRECT ANY INACCURACIES IN THE NOTICE PURSUANT TO ARIZONA REVISED STATUTES SECTION 33-992.01, SUBSECTION 1 OR LOSE AS A DEFENSE ANY INACCURACY OF THAT INFORMATION.

WITHIN TEN DAYS OF THE RECEIPT OF THIS PRELIMINARY TWENTY DAY NOTICE IF ANY PAYMENT BOND HAS BEEN RECORDED IN COMPLIANCE WITH ARIZONA REVISED STATUTES SECTION 33-1003, THE OWNER MUST PROVIDE A COPY OF THE PAYMENT BOND INCLUDING THE NAME AND ADDRESS OF THE SURETY COMPANY AND BONDING AGENT PROVIDING THE PAYMENT BOND TO THE PERSON WHO HAS GIVEN THE PRELIMINARY TWENTY DAY NOTICE. IN THE EVENT THAT THE OWNER OR OTHER INTERESTED PARTY FAILS TO PROVIDE THE BOND INFORMATION WITHIN THAT TEN DAY PERIOD, THE CLAIMANT SHALL RETAIN LIEN RIGHTS TO THE EXTENT PRECLUDED OR PREJUDICED FROM ASSERTING A CLAIM AGAINST THE BOND AS A RESULT OF NOT TIMELY RECEIVING THE BOND INFORMATION.

DATE: 8/2/2006
BY: 
LIMITED AGENT FOR: SUMMIT BUILDERS DBA SUMMIT BUILDERS EXPRESS



**PLEASE PROVIDE BONDING INFORMATION

NOTICE # 533684

ACKNOWLEDGMENT OF RECEIPT OF PRELIMINARY TWENTY-DAY NOTICE

(Arizona Revised Statutes Section 33-992.01 and 33-992.02)

Upon receipt of this notice, please detach and sign this Acknowledgment and return same to:

VAN RYLYN ASSOCIATES, INC
P.O. BOX 36953, Tucson, AZ 85740-6953

This acknowledges receipt on _____ of a copy of this Preliminary Twenty-Day notice at _____

(Name of person or firm receiving notice and the address where the notice was received)

(Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person)

(Address or description of job site as stated above)

(Date this acknowledgment is executed)

Jan Loft

ALP

COPIY

AIA Document A111™ – 1997

Standard Form of Agreement Between Owner and Contractor
where the basis for payment is the **COST OF THE WORK PLUS A FEE** with a negotiated
Guaranteed Maximum Price

AGREEMENT made as of the Twenty-fourth day of April in the year Two Thousand and Six

(In words, indicate day, month and year
(In words, indicate day, month and year)

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

Osborn III Partners, LLC
9500 East Ironwood Square Drive, Suite 201
Scottsdale, AZ 85258
Telephone Number: 480.767.3162

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

Jeffrey C. Stone, Inc. dba Summit Builders
3333 East Camelback Road, Suite 122
Phoenix, AZ, 85018
Telephone Number: 602.840.7700
Fax Number: 602.840.6897

Unofficial Document

The Project is:
(Name and location)

Ten Lofts
7126 East Osborn Road
Scottsdale, AZ 85251

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

Todd & Associates, Inc.
4019 North 44th Street
Phoenix, AZ 85018
Telephone Number: 602.952.8280
Fax Number: 602.952.8995

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America

AIA Document A111™ – 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 05/06/2006 under Order No. 1000219551_1 which expires on 2/2/2007, and is not for resale.
User Notes:



ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications-Drawings (See Exhibit "G"), Specifications (See Exhibit "F"), Addenda issued (See Exhibit "C") issued prior to execution of referenced in this Agreement, other documents listed in Article 15 of this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

§ 2.1 The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Contractor's staff shall be persons agreed upon with the Owner and identified in the "Schedule of Key Personnel" attached hereto and incorporated herein as Exhibit "B".

§ 2.2.1 During the performance of the Work, the Contractor shall keep a competent construction manager at the Project site fully authorized to act on behalf of the Contractor for the construction activities at the project. Notice from the Owner or the architect to Contractor's Construction Manager in connection with defective Work or instructions for performance of the Work, shall be considered notice of such issues to the Contractor. Owner shall rely on the design expertise of the Architect to ensure that any value-engineering proposal is suitable for use on the Project. In no event will Contractor be responsible for the adequacy or suitability of any design recommendation made to the Architect, who shall retain all such responsibility.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Owner shall rely on the design expertise of the Architect to ensure that any value-engineering proposal is suitable for use on the Project. In no event will Contractor be responsible for the adequacy or suitability of any design recommendation made to the Architect, who shall retain all such responsibility.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner to the Contractor, which shall be issued no less than seven (7) days prior to the Owner's date of commencement.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall occur on the date when all of the following conditions have been satisfied:

1. Owner obtains and pays for all necessary permits (site, grading, off-site, foundation, building) and delivers same to Contractor;
2. Contractor has received a Notice to Proceed from the Owner once item 1 above has been completed;
3. Owner has provided Contractor satisfactory evidence of financing and insurance;
and
4. Owner and Contractor have agreed upon the budgeted GMP for the project.

In the event the Permits, City approvals, financing, insurance, or the budgeted GMP are not timely received in order to permit Contractor to proceed with the Work in a continuous and uninterrupted manner, the Contract Amount will be adjusted by the extended General Conditions and other impacted costs, and the Contract Time will be adjusted by

AIA Document A111™ - 1997. Copyright © 1820, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 06/06/2006 under Order No 1000219651_1 which expires on 2/2/2007, and is not for resale
User Notes:

(31187830)



like number of delay days that resulted from Owner's delay in obtaining the required Permits, City approvals, financing, insurance or budgeted GMP.

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

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 579 days (See Exhibit "E") after days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion date
-----------------	-----------------------------

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

§4.3.1 Owner and Contractor agree that actual damages suffered by Owner as a result of unexcused Contractor delay are difficult to ascertain. Accordingly, if Contractor fails to achieve Substantial Completion of the Work (as defined in § 9.8 of the contract General Conditions) within the Contract Time, as adjusted, Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, \$ 500.00 per day commencing upon the first day following expiration of the Contract Time and ^(Unofficial Document) of the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work, which are not substantially completed prior to the Contractual Completion date.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

§4.3.2 Notwithstanding anything to the contrary contained in Article 4.3.1, in no event will Contractor's liability for any breach of this Agreement, indemnity, liquidated damages, or any alleged duty for any uninsured loss exceed the amount of Contractor's fee as established in Article 5.1.2. To the extent an item of Owner's damage is covered by applicable insurance, Owner's recovery is limited to the amounts Owner and/or Contractor actually receive as a result of such coverage.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

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

§ 5.1.2 The Contractor's Fee is:

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

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work Work, Twenty-Four Million Dollars (\$24,000,000.00), and the Contractor's Fee is guaranteed by the Contractor not to exceed Four and a Half Percent (4.5%) (\$ 1,080,000.00) (with exception to shared savings provision of § 5.2.2), subject to additions and deductions by Change Order as provided

AIA Document A111™ - 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and international Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 06/05/2006 under Order No. 1000219651_1 which expires on 2/2/2007, and is not for resale.

User Notes:

(31157830)



in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. The Guaranteed Maximum Price is subject to adjustment for change orders, authorized in accordance with the requirements of the Contract Documents. The difference, as of the date of final completion, between (i) the total aggregate sum of the Cost of the Work, plus the Contractor's Fee, and (ii) the Guaranteed Maximum Price upon final completion of the Work (such differences equals the "Savings"), shall be shared 70%/30% by Owner and Contractor respectively; provided, however, that the Contractor shall not be entitled to receive any Savings until the date of final payment. For purposes of the presentation of the Application of Payment, the Contractor may reallocate savings in one or more line items to overruns attributable to any other line items in Contractor's Exhibit "H" & "I" Cost Breakdown, in order to determine the net savings.
(Insert specific provisions if the Contractor is to participate in any savings.)

~~§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:~~

~~§ 5.2.2 The GMP shall not include a line item designated as "Contingency." There is no contingency fee. The amount of said "contractor's contingency" is \$200,000.00.~~
~~a. costs incurred due to excusable delays but not reimbursed by Change Order;~~
~~b. costs of the Work not included in the GMP budget but arguably inferable from the construction documents;~~
~~c. costs of completing the work of a defaulted or bankrupt Subcontractor in excess of the subcontract price.~~

Any amounts left shall be distributed between Owner (70%) and Contractor (30%).

~~§ 5.2.23 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
 (State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)~~

~~§ 5.2.4 Unit prices, if any, are as follows:~~

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

Unit prices if any, will be set forth in a separate addendum to the prime contract.

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

~~§ 5.2.4 Allowances, if any, are as follows~~

~~§ 5.2.5 Allowances, if any, are as follows:~~

~~(Identify and state Allowances for the amounts of any allowances, work shall be set forth and state whether they include labor, materials, or both, agreed upon by Change Order to this Agreement.)~~

Allowance	Amount (\$ 0.00)	Included Items
-----------	------------------	----------------

~~§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:~~

~~§ 5.2.56 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:~~

Refer to Exhibit "D" identified as Contractor's Clarifications, Qualifications, Assumptions and Exclusions, Clarifications, Qualifications, Assumptions and Exclusions to the Work, which is incorporated herein by reference.

AIA Document A111™ - 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 05/05/2006 under Order No 1000219551_1 which expires on 2/2/2007, and is not for resale

User Notes:

(31187930)


COPY

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

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

ARTICLE 6 CHANGES IN THE WORK

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

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

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

§ 6.4 ^{Unofficial Document} If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. In addition, Contractor shall be entitled to either a percentage markup or a per diem cost to account for Contractor's general conditions, plus applicable taxes, bond premium, insurance and contractors fee.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

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

§ 7.2 LABOR COSTS

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

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval, plus those individuals stationed at the Contractor's principal or other offices as described in Exhibit "B". The wages to be reimbursed shall include Vice President of Operations, Construction Director, Project Manager, Project Engineer, Project Coordinator, Project Accountant, Miscellaneous Project Staff (payroll, accounts payable, MIS, cost accountant), Options Coordinator and Safety Consultant, regardless of whether they are physically on site. Office personnel will be prorated according to a percentage of their time allocated to this job.

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

AIA Document A111™ - 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 06/06/2006 under Order No 1000219651_1 which expires on 2/2/2007, and is not for resale.

User Notes: (31187930)



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

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

7.2.5 Reasonable costs of labor, material, and equipment required for handling, placing, and storing Owner-furnished equipment.

§ 7.3 SUBCONTRACT COSTS

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

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

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

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

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

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

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

§ 7.5.3 Costs of removal of debris from the site.

§ 7.5.4 Costs of document reproductions, reproductions shall be reimbursed as a direct project expense. Contractor shall make every effort possible to contain and/or reduce document reproduction costs. Cost of facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

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

§ 7.6 MISCELLANEOUS COSTS

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

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



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

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

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

~~§ 7.6.6 Data processing costs related to the Work.~~

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

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

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

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work ^{Unofficial Document} and to the extent approved in advance in writing by the Owner.

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

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

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office, except as specifically provided in Articles 7.2.2 and 14.7.

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

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

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

AIA Document A111™ - 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software on 13:31:25 on 06/05/2006 under Order No 1000219651_1 which expires on 2/2/2007, and is not for resale
User Notes: (31187930)



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

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

§ 8.1.8 Costs, other than costs included in Change Orders approved by the Owner, or emergency repairs referenced in paragraph 7.7.2 or defense of any patent infringement as discussed in subparagraph 7.5.6, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 ~~Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured. Trade discounts, cash discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall be deducted from the Cost of the Work and considered savings subject to sharing per Paragraph 5.2.2.~~

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

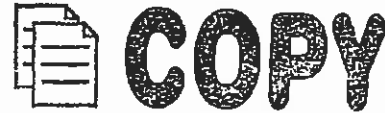
§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain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

§ 10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the ~~subcontract or other agreement actually signed with the person or entity designated by the Owner attributable to such alternate subcontractor proposal recommended by Owner. If the parties are unable to obtain subcontractor bids for a particular trade or scope that is within the budgeted pricing, despite Contractor's reasonable efforts, then the GMP shall be adjusted to reflect the price increase.~~

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

ARTICLE 11 ACCOUNTING RECORDS

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



ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or ~~as follows: twice monthly as agreed upon between Owner and Contractor.~~

§ 12.1.3 ~~Provided that an~~ Unless a different time period is required by applicable law, and provided an Application for Payment is received by the Owner and the Architect not later than the last day of a each month, the Owner shall make payment to the Contractor not later than the Twenty-First day of the month following month provided all required back-up documentation listed below is provided prior to funding. If items are missing from the application, the twenty-one day turnaround time will start on the date all needed documentation is received. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~(—twenty-one(21)~~ days after the Architect receives the Application for Payment.

§ 12.1.4 With each Application for Payment, the Contractor shall submit cost reports detailing such expenses as payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Contractor cost reports, including applicable supporting documentation, referenced herein shall be delivered to Owner within seven (7) days from the beginning of the following month for which the cost reports relate.

In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Arizona:

- (i) Duly executed conditional waivers for current pay period and unconditional lien waivers for prior pay period and claim forms from the Contractor and all relevant Subcontractors, establishing payment or satisfaction of the payment requested by the Contractor in the Application for Payment; and
- (ii) Such other information, documentation, and materials as the Owner or the Architect may reasonably require in accordance with customary industry standards.

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

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

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

AIA Document A111™ - 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 06/06/2008 under Order No 1000219651_1 which expires on 2/2/2007, and is not for resale
User Notes: (31187930)



- 1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- 2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- 3 add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 4 subtract the aggregate of previous payments made by the Owner;
- 5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- 6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997, A201-1997 and other amounts properly held by the Owner at the time of each progress payment.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors. No retention will be withheld from the excavation contractor. The ten percent (10) retention shall be reduced to five percent (5%) when fifty percent (50%) of the total contract or subcontract value is achieved unless otherwise noted herein.

~~Excavation Contractor: five percent (5%) on labor; zero percent (0%) on materials onsite or stored.
 Masonry: five percent (5%) on labor; zero percent (0%) on materials onsite or stored.
 Electrical: five percent (5%) on labor; zero percent (0%) on materials onsite or stored.
 Plumbing: five percent (5%) on labor/materials.
 HVAC: five percent (5%) on labor/materials.~~

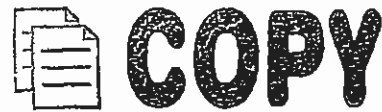
§ 12.1.8.1 Upon mutual written agreement between Owner and Contractor, payment in full may be made to the Subcontractor whose work is fully and satisfactorily completed during the early stages of the Project, provided that the Subcontractor has complied with all requirements for final payment in accordance with the Contract Documents.

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

§ 12.1.10 With the exception of Paragraph 12.1.8, the Owner shall be entitled to withhold as retainage ten percent (10%) of all Cost of the Work items included in each Application for Payment. The Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any exercise of this option, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor, or (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity. Retention will be reduced to five

AIA Document A111™ - 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 05/05/2006 under Order No 1000219551_1 which expires on 2/2/2007, and is not for resale.
 User Notes: (31187830)

10



percent (5%) at substantial completion.

§ 12.1.11 Notwithstanding the Owner's option to reduce retainage in certain circumstances as provided in paragraph 12.1.10, Owner shall not hold retention on the following: Taxes, General Conditions, Contractor's Fee, Insurance and Bond Premiums, Field Staking Services, Temporary facilities not included in General Conditions costs (such as Temporary Power infrastructure) and other Purchase Order items for which the Contractor cannot withhold retention in the normal course of construction purchasing.

§ 12.2 FINAL PAYMENT

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

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

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

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the ~~Contractor's~~ ^{Architect's} final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 ~~120~~ days after the Contractor's receipt of a copy of the Architect's final Certificate for ~~for~~ Payment; failure to demand arbitration within this ~~30-day-30~~ ^{120-day} period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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


ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

AIA Document A111™ - 1997, Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and international Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 05/05/2006 under Order No 1000219651_1 which expires on 2/2/2007, and is not for resale.

User Notes:

(31187930)


COPY

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

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

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

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

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. Owner shall be responsible for all payments therefor that are due after the assignment and will defend and indemnify Contractor from any claims for payment for such items that may be asserted against Contractor.

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

Unofficial Document

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located of 10% per annum.
(Insert rate of interest agreed upon, if any.)

per annum

§ 14.3 A Warranty Escrow Allowance in the amount of Zero Dollars (\$0.00) will be included in the Guaranteed Maximum Price.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:

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

§ 14.4 The Contractor's representative is:

Jonathon Vento

AIA Document A111™ - 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1983, 1987, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 05/05/2008 under Order No 1000219851_1 which expires on 2/2/2007, and is not for resale
User Notes: (31187830)

12



9500 East Ironwood Square Drive
Suite 201
Scottsdale, AZ 85258
Telephone Number: 480.767.3162
Fax Number: 480.767.3168
Mobile Number: 602.510.3329

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

Jeffrey C. Stone, President
Jeffrey C. Stone, Inc. dba Summit Builders
3333 E. Camelback Rd. Ste. 122
Phoenix, AZ 85018
p. 602.840.7700
f. 602.840.6897

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

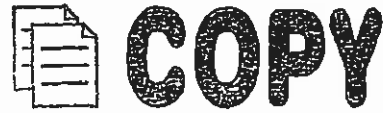
§ 14.67 Other provisions:

§14.7.1 The Owner and Contractor represent and warrant the following (in addition to any other representations and warranties contained in the Contract Documents), to each other as a material inducement to the execution of this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

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

- 1 The Owner and Contractor are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all their respective obligations hereunder.
- 2 The Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so:
- 3 The Owner and Contractor are authorized to do business in the State of Arizona and are properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the Project; and
- 4 The Owner's and Contractor's execution of this Agreement and performance thereof is within the Owner's and Contractor's duly authorized powers.
- 5 The Owner's and Contractor's duly authorized representatives have visited the site of the Project, are familiar with the local conditions under which the Work is to be performed, and have correlated observations with the requirements of the Contract Documents; and
- 6 The Contractor is a large, sophisticated contractor who 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 involving, among other things, the construction of these mid-rise, high quality, condominiums, and will perform the Work with care, skill, and diligence of such a contractor.

AIA Document A111™ - 1997, Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:21:25 on 06/05/2006 under Order No 1000219651_1 which expires on 2/2/2007, and is not for resale.
 User Notes: (31157830)



§ 14.7.2 The Contractor acknowledges that the Owner is financing the Work with a loan from the Lender. In order to perform under the Contract Documents, the Owner must reasonably comply with certain terms and conditions embodied in the Lender's construction loan agreement, provided that such Lender requirements are commercially reasonable for the location of the Project. The Contractor agrees to use its best efforts to comply with the requirements of the Lender that bear upon the performance of the Work. The Contractor shall also:

- (i) Make the site of the Work available at reasonable times for inspection by the Lender or the Lender's representatives;
- (ii) Consent to and execute all documents reasonably required by the Owner in connection with the assignment of this Agreement and the Drawings and Specifications to the Lender for collateral purposes. Such assignment shall provide that the Contractor agrees that notwithstanding a default by the Owner under the provisions of this Agreement that would give the Contractor the right to terminate this Agreement, the Contractor will continue to perform its obligations hereunder (on the same terms and conditions as are set forth herein) for and on account of the Lender if the Lender shall agree to pay the Contractor all amounts due and owing the Contractor under the Agreement and shall agree in writing to perform all obligations of the Owner hereunder accruing from and after the date of such default by the Owner; and
- (iii) Promptly furnish the Owner with information, documents, and materials that the Owner may reasonably request from time to time in order to comply with the requirements of the Lender, provided that such Lender requirements are commercially reasonable for the location of the Project.

§ 14.7.3 In the event any dispute arises between the Owner and the Contractor which results in arbitration, the prevailing party shall be fully compensated for all attorneys' fees, costs, expert fees, and arbitration fees paid for incurred in good faith in such proceedings.

§ 14.8 See Exhibit "B" that identifies wage rates for certain personnel stationed at Contractor's principal or other offices, which said wages shall be included in the cost of the Work.

§ 14.8 Other provisions:

§ 14.9 Where the price of material, equipment, or energy increases significantly during the term of the contract through no fault of the Contractor, the materials cost shall be increased accordingly, or the contract sum shall be equitably adjusted by change order as provided in Article 7 of the AIA A201 General Conditions. A significant price increase means a change in price from the date of the contract execution to the date of performance by an amount exceeding five (5%) percent. Such price increases shall be documented by vendor quotes, invoices, catalogs, receipts or other documents of commercial use.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows: follows and contained in Exhibit A-1:

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

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

§ 15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated [redacted] and are as follows: identified in Exhibit "F" of this Agreement.

Document	Title	Pages
----------	-------	-------

AIA Document A111™ – 1997. Copyright © 1920, 1925, 1951, 1956, 1961, 1963, 1987, 1974, 1978, 1997 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:21:25 on 05/06/2008 under Order No 1000218651_1 which expires on 2/2/2007, and is not for resale
User Notes: (31187830)



§ 15.1.4 The Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows:
See Exhibit "F" to this Agreement.

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
<u>Title of Specifications exhibit:</u>		

§ 15.1.5 The Drawings are as follows, and are dated unless a different date is shown below: See Exhibit "G" to this Agreement.

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
<u>Title of Drawings exhibit:</u>		

§ 15.1.6 The Addenda, if any, are as follows: See Exhibit "C" to this Agreement.

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

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

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Unofficial Document

§ 15.1.8 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner and Contractor. No person is authorized on behalf of Owner and Contractor to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Owner's and Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent shall be limited to the specific matters stated in writing signed by Owner and Contractor, and shall not relieve Owner and Contractor of any other duties and obligations under the Contract Documents.

ARTICLE 16 INSURANCE AND BONDS

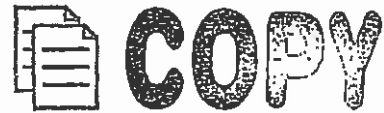
(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

Type of Insurance	Limit of liability (\$ 0.00)
-------------------	------------------------------


§ 16.1 Owner will purchase a mutually acceptable owner controlled insurance policy for the project that includes a Two Million Dollar (\$2,000,000.00) over Five Million Dollar (\$5,000,000.00) Wrap Policy.

§ 16.2 If applicable, Contractor will provide payment and performance bonds, which will be considered reimbursable costs of the Work. Summit will enroll the Project in Subguard Policy for subcontractors over One Hundred Thousand Dollars (\$100,000.00).

AIA Document A1111™ - 1997. Copyright © 1920, 1925, 1951, 1956, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and international Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 06/06/2006 under Order No 1000219651_1 which expires on 2/2/2007, and is not for resale.
 User Notes: (31187930)



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


OWNER (Signature)


CONTRACTOR (Signature)

Jonathon Vento
(Printed name and title)

Jeffrey C. Stone, President
(Printed name and title)

Unofficial Document

AIA Document A111™ - 1997. Copyright © 1820, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 09/06/2008 under Order No.1000219651_1 which expires on 2/2/2007, and is not for resale.
User Notes:

Order Denying ML Summary Judgment

EXHIBIT 13

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

GOULD EVANS ASSOCIATES L C, et al.

CHRISTOPHER C SIMPSON

v.

TEMPE LAND COMPANY L L C, et al.

SHARON B SHIVELY

EDWARD H BRITT
MARCIA J BUSCHING
ERNEST S BUSTAMANTE
DANIEL CRACCHIOLO
JAMES L CSONTOS
ADAM B DECKER
MARK J GIUNTA
GREGORY J GNEPPER
JEFFERY M HALL
KEITH L HENDRICKS
PAMELA JUDD
MICHAEL R KING
JORDAN A KROOP
JACOB MONT LEWIS
SCOTT A MALM
RICHARD B MURPHY
MARK A NADEAU
KAREN A PALECEK
CATHY L REECE
ROBERT P ROBINSON
JOEL E SANNES
SUN STATE STEEL L L C
4124 W BROADWAY RD
PHOENIX AZ 85041
NANCY K SWIFT
RESCUE AIR SYSTEMS INC
C/O JANSETT BELOVODIA

Docket Code 019

Form V000A

Page 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

751 LAUREL ST #416
SAN CARLOS CA 94070
STERLING R THREET
DENISE J WACHHOLZ
BARRY A WILLITS
JAMES B WRIGHT
CHAD L SCHEXNAYDER

MINUTE ENTRY

The court has had numerous motions for summary judgment under advisement and issues the following rulings.

Facts

A Notice and Claim of Mechanic's Lien is referred to herein as a "LIEN."

- January, 2004. Gould Evans Associates, L. C. ("GEA"), an architectural services firm, entered into an architect agreement with Tempe Land Company ("TLC") dated as of January 1, 2004, for the architectural design of the multi-story Tempe Centerpoint Condominium Towers ("Project") located at 111-121 West 6th Street, Tempe. GEA began work on the architectural and design services in January, 2004.
- Jan. 26, 2004. TLC borrowed \$6,550,000 from Fremont Investment & Loan, ("Fremont") which recorded a deed of trust on the land on which the Project was partially constructed ("Fremont Deed of Trust") in the Maricopa County Recorder's Office at Instrument No. 2004-0075016. (All further references to recordings in the Maricopa County Recorder's Office shall be to the year and instrument number; i.e. "2004-0075016."). The proceeds of this loan were used to purchase the land on which the Project was partially constructed.
- March 31, 2005. SS Residential, LLC. ("SS") subcontracted with TLC.
- June 1, 2005. GEA signed a second architectural contract with TLC for the second phase of the Project.
- Nov. 30, 2005. IES invoiced TCC for electrical work on the Project.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849

09/03/2010

(Consolidated Complex Case)

- Dec. 12, 2005. TLC contracted with Tempe Centerpoint Construction (“TCC”) for construction of the Project to begin on December 12, 2005.
- March 16, 2006. IES Commercial, Inc. (“IES”) subcontracted with TCC for \$8,535,066 of electrical work on the Project.
- March 21, 2006. Ceco Concrete Construction, LLC (“CECO”) began work on Project.
- March 22, 2006. CECO served a Prelim on TLC, TCC and Fremont.
- April 7, 2006. Powers Steel & Wire Products, Inc. (“Powers”) served a Prelim on TLC, and Keybank Real Estate Capital.
- April, 2006. Farnsworth began supplying materials to Danco, a plumbing subcontractor on the Project.
- April 7, 2006. Farnsworth Wholesale Company (“Farnsworth”) served a Prelim on TLC, TCC, and Keybank Real Estate Capital.
- April 11, 2006. GEA took photographs of the Project site, which show that some construction had been performed.
- April 11, 2006. Hajoca Corporation (“Hajoca”) began supplying plumbing materials to the Project.
- April 14, 2006. Hajoca served a Prelim on TLC, TCC, and Keybank Real Estate Capital.
- April 16, 2006. Farnsworth began supplying plumbing materials to the Project.
- April 17, 2006. Allen Window Technologies, Ltd. (“AWT”) subcontracted with TLC.
- May 26, 2006. Powers Steel & Wire Products, Inc. (“Powers”) served a Prelim on TLC, TCC, and Keybank Real Estate Capital.
- June 14, 2006. Mortgages Ltd. (“MTGES LTD”) loaned TLC \$24,000,000 (“MTGES LTD Loan”) for the Project.
- June 14, 2006. MTGES LTD stated in its “Title Fee Request” to Magnus Title Agency (“MTA”) that there was a broken priority in construction on the Project.

Docket Code 019

Form V000A

Page 3

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

- June 19, 2006. MTA hired Crossroads Inspections, L.L.C. ("Crossroads") which inspected the Project, took photos, and reported that work had started on the Project, materials had been delivered to the Project and recent improvements were made to the Project.
- June 30, 2006. MTGES LTD recorded its first deed of trust on the Project at 2006-0881938 to secure the \$24,000,000 MTGES LTD Loan to TLC.
- Aug. 4, 2006. As part of the MTGES LTD Loan closing, \$6,598,682.85 was paid from the loan proceeds to Fremont to pay off the Fremont Deed of Trust. A deed of release and reconveyance of the Fremont Deed of Trust was recorded at 2006-1043235.
- Sept. 15, 2006. Performance Contracting, Inc. ("PCI") subcontracted with TCC.
- Nov. 16, 2006. MTGES LTD loaned TLC \$46,000,000 secured by its second deed of trust on the Project.
- Nov. 21, 2006. MTGES LTD recorded its second deed of trust at 2006-1527714 securing the \$46,000,000 loan to TLC. This loan paid off the \$22,775.083.26 balance on MTGES LTD's original loan. MTGES LTD released its first deed of trust on the Project.
- Dec. 30, 2006. Powers began to supply labor and materials to the Project.
- Jan. 8, 2007. Total Metals ("Total") subcontracted with TCC for sheet metal work at the Project.
- Feb. 6, 2007. Central Cabinet subcontracted with TCC for cabinetry in the Project.
- Feb. 13, 2007. Total served a Prelim on TLC and MTGES LTD.
- March, 2007. Safeguard Security and Communications, Inc. ("Safeguard") subcontracted with TCC for work at the Project and served a Prelim.
- March 20, 2007. MTGES LTD loaned TLC \$130,200,000 which was secured by its third deed of trust on the Project.

Docket Code 019

Form V000A

Page 4

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849

09/03/2010

(Consolidated Complex Case)

- March 22, 2007. MTGES LTD recorded its \$130,200,000 third deed of trust at 2007-0340687. This loan paid off and released MTGES LTD's \$45,000,000 second deed of trust on the Project.
- April 4-5, 2007. GEA served a Prelim for \$541,077 on TLC, TCC, and MTGES LTD.
- April 15, 2007. Central Cabinet served a Prelim for \$2,538,707 on TLC, TCC, and Fremont.
- Sept. 21, 2007. Venus Manufacturing Company ("Venus") subcontracted with TCC for shower enclosures and cabinets at the Project.
- Oct. 8, 2007. Heritage Interiors, Inc. ("Heritage") supplied labor and materials to the Project. (Condo Tower).
- Oct. 24, 2007. IES subcontracted with TLC for \$1,347,695 of electrical work at the Marketplace.
- Dec. 8, 2007. W.J. Maloney served a Prelim.
- Dec. 21, 2007. Heritage served a Prelim on TLC and MTGES LTD.
- March 26, 2008. Assignments of interests in MTGES LTD's Third Deed of Trust to ML Partners were recorded.
- April 8, 2008. GEA recorded a LIEN at 2008-0308283 and served TLC,
- June 4, 2008. Venus served a Prelim on TCC and TLC.
- June 9, 2008. Venus served an Amended Prelim on TCC and TLC.
- June 11, 2008. W.J. Maloney recorded a \$182,774.10 LIEN at 2008-0515217.
- June 20, 2008. Powers recorded a \$883,601 LIEN at 2008-0551313.
- June 23, 2008. General Electric Company ("GE") recorded a LIEN at 2008-0552258.
- June 24, 2008. Heritage recorded a \$1,252,455.40 LIEN on the Tower at 2008-0560152 and a \$511,399.76 LIEN on the Marketplace at 2008-0560151.
- June 26, 2008. AWT served a Prelim on TCC, TLC, and MTGES LTD.

Docket Code 019

Form V000A

Page 5

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

July 8, 2008. Builders Service Group ("BSG") recorded a LIEN at 2008-0598390.

July 14, 2008. Hajoca recorded a \$342,985.46 LIEN at 2008-0611097.

July 15, 2008. GEA recorded a \$392,691.77 Amended LIEN at 2008-0615571 and served TLC.

July 24, 2008. GEA recorded a second LIEN at 2008-0647578 and served TLC.

Aug. 7, 2008. Central Cabinet recorded a \$404,747.47 LIEN at 2008-0691697.

Aug. 14, 2008. Farnsworth recorded a \$102,994.19 LIEN at 2008-0710284.

Aug. 22, 2008. PCI recorded a \$3,251,739.75 LIEN at 2008-0734289.

Sept. 10, 2008. IES recorded a \$3,412,336.95 LIEN on the Tower at 2008-0785037 and a \$518,650 LIEN on Marketplace at 2008-0785060.

Sept. 26, 2008. AWT recorded a \$369,493 LIEN at 2008-0833816.

Sept. 30, 2008. CECO recorded a \$2,604,108.15 LIEN.

Oct. 8, 2008. GEA filed this action to foreclose its LIEN for the reasonable value of \$392,691.76.

Oct. 10, 2008. GEA recorded a Notice of Lis Pendens at 2008-0882053.

Oct. 17, 2008. Safeguard recorded a LIEN at 2008-0897835.

Oct. 28, 2008. SS recorded a \$709,525.78 LIEN at 2008-0927146.

Nov. 12, 2008. Environmental Mechanical Equipment ("EME") recorded a LIEN at 2008-0967036.

Jan. 20, 2009. Venus recorded a \$201,544.18 LIEN at 2009-0044097.

Feb. 20, 2009. Total recorded a \$256,532.90 LIEN at 2009-0148675.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

Feb. 24, 2009. HACI Mechanical Contractors and HACI Service, LLC. ("HACI") recorded a \$2,799,966.60 LIEN at 2009-0255227.

March 13, 2009. Frazee Industries, Inc. ("Frazee") recorded a LIEN at 2009-0226586.

Nov. 5 & 6, 2009. GEA recorded 2 additional Lis Pendens at 2009-1026409 & 2009-1027873.

Rulings

1. MTGES LTD's Motion for Summary Judgment against All Claimants Based on Equitable Subrogation is DENIED.
2. MTGES LTD's Consolidated Motion for Summary Judgment against All LIEN Claimants That Did Not File Or Join in a Motion for Summary Judgment on LIEN Validity and Priority is DENIED.
3. MTGES LTD and Prior Investors' Motion To Dismiss Prior Investors is DENIED.
4. MTGES LTD's Motion for Rule 56(f) Continuance is GRANTED. MTGES LTD shall have until October 15, 2010, to submit any challenges to the reasonableness of the amounts claimed by the mechanics' LIEN claimants.
5. GEA's Motion for Partial Summary Judgment against MTGES LTD and Prior Investors ("MTGES LTD") Re: Validity of Architect's \$392,691.77 LIEN Claim is GRANTED.

MTGES LTD's Cross-Motion for Summary Judgment against GEA for failure to apportion GEA's LIEN among the 380 parcels in the project and for failure to record an acknowledged lis pendens is DENIED.

6. CECO's Motion for Partial Summary Judgment Re: LIEN Validity and Preference to MTGES LTD's LIEN is GRANTED as to the validity of its LIEN and DENIED as to preference.
7. IES Commercial Inc's Motion for Summary Judgment on Breach of Contract and LIEN Foreclosure claims is GRANTED as to its breach of contract claim and the validity of its LIEN and DENIED as to the remainder.

MTGES LTD's Cross-Motion for Summary Judgment against IES for failure to comply with Prelim requirements and failure to apportion is DENIED.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

8. Heritage Interiors, Inc's Motion for Summary Judgment Re: LIEN Validity and Priority is GRANTED as to the validity of its LIEN and DENIED as to its claim for preference/subrogation.
9. Total Metals, LLC's Motion for Summary Judgment Re: LIEN validity and priority is GRANTED as to the validity of its LIEN and DENIED as to its preference/subrogation.

MTGES LTD's Cross-Motion for Summary Judgment against Total Metals, LLC for failure to allocate is DENIED.

10. BSG, EME, and GE's Motion for Summary Judgment Re LIEN and AWT's joinder is GRANTED as to the validity of the LIENS and DENIED as to their priority.

MTGES LTD's Cross-Motion for Summary Judgment against BSG as to the priority of its LIEN, for failure to allocate, its claim that no lis pendens was recorded, and for late filing of foreclosure is DENIED.

MTGES LTD's Cross-Motion for Summary Judgment against EME for failure to allocate, its claims that a Prelim was not served on MTGES LTD and that its LIEN is incomplete is DENIED.

MTGES LTD's Cross-Motion for Summary Judgment against GE for failure to allocate, Prelim not having acknowledgement of receipt; incomplete LIEN, and no copy of agreement is DENIED.

11. Central Cabinet's Motion for Partial Summary Judgment Re: the validity of its LIEN is GRANTED.

MTGES LTD's Cross-Motion for Summary Judgment against Central Cabinet is DENIED as to improper LIEN recording; no Prelim to construction lender; and no acknowledgement on Prelim attached to LIEN.

12. Powers' Motion for Partial Summary Judgment re LIEN validity and preference is GRANTED as to its validity and DENIED as to preference/subrogation.

MTGES LTD's Cross-Motion for Summary Judgment against Powers for failure to allocate is DENIED.

13. Hajoca's Motion for Partial Summary Judgment is GRANTED as to its LIEN validity and DENIED as to its priority.

Docket Code 019

Form V000A

Page 8

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

MTGES LTD's Cross-Motion for Summary Judgment against Hajoca for failure to allocate and improper LIEN recording is DENIED.

14. HACI's Motion for Partial Summary Judgment Re LIEN is GRANTED as to its validity and DENIED as to its foreclosure.

MTGES LTD's Cross-Motion for Summary Judgment against HACI for failure to allocate and the claim that the Prelim was invalid for lack of a legal description of the Project is DENIED.

15. Safeguard Security's Motion for Partial Summary Judgment and Schindler Elevator's joinder are GRANTED as to their LIEN validities and DENIED as to their statutory priority.

MTGES LTD's Cross-Motion for Summary Judgment against Safeguard Security is DENIED as to failure to allocate and incomplete Prelims.

16. PCI's Motion for Partial Summary Judgment on Foreclosure Claim is GRANTED as to its LIEN validity and DENIED as to preference/subrogation.

17. Farnsworth's Motion for Partial Summary Judgment re its LIEN validity is GRANTED and DENIED as to its priority.

MTGES LTD's Cross-Motion for Summary Judgment against Farnsworth for failure to allocate; improper LIEN recording, no description of contract; and no Prelim to construction lender is DENIED.

18. Frazee's Motion for Partial Summary Judgment is GRANTED as to its LIEN validity and DENIED as to its preference.

MTGES LTD's Cross-Motion for Summary Judgment against Frazee for failure to allocate and improper LIEN recording is DENIED.

19. SS's Motion for Summary Judgment on Foreclosure Claim is GRANTED as to its LIEN validity and DENIED as to its preference.

MTGES LTD's Cross-Motion for Summary Judgment against SS for failure to serve MTGES LTD with amended Prelim; no acknowledgement of receipt of first Prelim, and defect in recording LIEN is DENIED.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

20. Venus' Motion for Summary Judgment and AWT's joinder Re: LIENS are GRANTED as to their validity and DENIED as to their preference/subrogation.

MTGES LTD Cross-Motion for Summary Judgment against AWT for failure to allocate and improper LIEN recording is DENIED.

Issues

The motions involve the resolution of the following issues;

1. Whether MTGES LTD is entitled to equitable subrogation to the Fremont Deed of Trust as to all LIEN claimants and if so, to what amount.
2. Whether MTGES LTD is entitled to priority as to all LIEN claimants who did not file motions for summary judgment.
3. Whether the LIENS filed by the claimants who did not allocate their LIEN claims among the individual units in the Project are invalid.
4. Whether any of the LIENS filed by the individual claimants are entitled to a preference over MTGES LTD's claims.
5. Whether some or all of MTGES LTD is entitled to priority over certain individual LIEN claimants against which it has asserted defects in their LIEN filing process.

Discussion

General Principles

Arizona's lien statutes are remedial in nature. *Performance Funding, L.L.C. v. Ariz. Pipe Trade Trust Funds*, 203 Ariz. 21, 24, ¶10, 49 P.3d 293, 296 (App. 2002); *Kerr-McGee Oil Industries, Inc. v. McCray*, 89 Ariz. 307, 311, 361 P.2d 734, 736 (1961); *Leeson v. Bartol*, 55 Ariz. 160, 169, 99 P.2d 485, 489 (1940); and *Gene McVety, Inc. v. Don Grady Homes, Inc.*, 119 Ariz. 482, 486, 581 P.2d 1132, 1136 (1978).

Lien statutes are liberally construed to effectuate their primary purpose of protecting professional service providers and materialmen who enhance the value of another's property. *Ranch House Supply Corp. v. Van Slyke*, 91 Ariz. 177, 181, 370 P.2d 661, 664 (1962).). Lien

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

statutes are to be interpreted consistent with the “realities of the construction industry;” *Bonus Elec., Inc., v. Slosser*, 141 Ariz. 381, 384, 687 P.2d 389, 392 (App. 1984).

Although the statutory requirements must be strictly followed to perfect a mechanic’s lien, a lien claim will not be invalidated for failure to follow statutory procedures unless the noncompliance would effectively deprive the property’s owner of constructive notice of the claim. *MLM Constr. v. Pace Corp.*, 172 Ariz. 226, 229, 836 P.2d 439 (App. 1992).

1. MTGES LTD’s Equitable Subrogation Claim.

In *Lamb Excavation, Inc. v. Chase Manhattan Mort. Corp.*, 208 Ariz. 478, 95 P.3d 542 (2004) the court of appeals discussed doctrine of equitable subrogation:

“The doctrine of equitable subrogation permits the substitution of one lienholder into the lien-priority position of a prior lienholder. Subrogation is “an equitable remedy designed to avoid a person’s receiving an unearned windfall at the expense of another.” *Restatement (Third) of Property (Mortgages)* (hereinafter “*Restatement*”) § 7.6 cmt. a. In general, previously recorded liens have priority over subsequent mechanics’ liens recorded after labor has begun or materials have been furnished. The mechanics’ liens then have priority over later-recorded encumbrances. See A.R.S. § 33-992; *E. Sav. Bank v. Pappas*, 829 A.2d 953 (D.C. 2003); see generally *Restatement* § 7.6. But application of the doctrine of equitable subrogation allows a subsequent lender who supplies funds used to pay off a primary and superior encumbrance to be substituted into the priority position of the primary lienholder, despite the recording of an intervening lien ...

Thus, under the *Restatement*, a subsequent mortgagee’s negligence in failing to discover an existing lien does not preclude application of the doctrine so long as the intervening lienholders are not prejudiced. And, notice is not a consideration. Rather, the question is whether a subsequent mortgagee reasonably expected a security interest with the same priority as that of the mortgage being discharged...

The rationale behind the *Restatement’s* approach is that the intervening lienholder suffers no prejudice because its lien maintains the same position it occupied before the subsequent lender satisfied the pre-existing obligation. *Restatement* § 7.6 cmt. a. (“The holders of intervening interests can hardly complain about this result, for they are no worse off than before the senior obligation was discharged. If there were no subrogation, such junior interests would be promoted in priority, giving them an unwarranted and unjust windfall.”).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

As this court stated in *Herberman v. Bergstrom*, 168 Ariz. 587, 590, 816 P.2d 244, 247 (App. 1991), “[f]or equitable subrogation to apply, there must be an agreement, either express or implied, that the subsequent lender will be substituted for the holder of the prior encumbrance.” See also *Peterman-Donnelly*. In addition, the subsequent mortgagee must not be a volunteer. *Id.* Because subrogation is a creature of equity, “its application may be defeated by intervening rights which would be prejudiced by the substitution.” *Id.* at 326, 408 P.2d at 846. As an equitable construct, “[i]t rests upon the principle that substantial justice should be attained, regardless of form.”

Arizona's approach to equitable subrogation appears consistent with the Restatement: the doctrine will apply when there is an express or implied agreement to subrogate, which is concordant with a party's having a reasonable expectation of receiving a security interest, and when an intervening lien claimant suffers no prejudice ... 208 Ariz. 478, 480-482. And,

“We fail to comprehend the nature of the perceived prejudice or inequity, as it appears the lienholders would remain in the same position they occupied before subrogation if that doctrine were applied. To the contrary, without subrogation, the lienholders would receive a windfall if elevated to a higher priority status. See Restatement § 7.6 cmt. a. The record establishes that when the lienholders agreed to perform work on the property they understood that CFB, not they, had a superior position. They therefore accepted the risk that the Torrejons would not pay them and would not pay the first lienholder, thereby defeating their liens. See *E. Boston Sav. Bank v. Ogan*, 428 Mass. 327, 701 N.E.2d 331 (1998). Furthermore, although the lienholders emphasize Chase's alleged negligence, they offer no concrete example of how subrogation would prejudice their interests other than characterizing themselves as “truly innocent intervening lienholders” who, if subrogation is denied, “will be paid for the work they have already performed and nothing else.” Lamb's contentions rest solely on theoretical policy arguments and fail to demonstrate how applying the criteria stated in *Mosher* and *Peterman-Donnelly* supports the trial court's grant of summary judgment in its favor.” *Id.* at 483.

There is no dispute that the Fremont Deed of Trust was recorded before any work was done on the Project and the closing statement issued by Magnus Title shows that \$6,598,682.85 was disbursed to Fremont from the proceeds of the \$24,000,000.00 MTGES LTD Loan.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

A.R.S. § 33-992(A) governs the priority issue, stating that a perfected mechanic's lien has priority over all subsequently recorded encumbrances:

The priority of a recorded lien relates back to the date the general contractor (or any of the general contractor's subcontractors or suppliers) first furnished labor or materials to the project.

If a contractor first furnishes labor or material to a project before a mortgage is recorded, all liens arising from the contractor-owner agreement attach to the property before the mortgage attaches and all liens have priority over the mortgage. *Wylie v. Douglas Lumber Co.*, 39 Ariz. 511, 8 P.2d 256 (1932) ("if the laborer or materialman performs labor or furnishes material to the contractor under the contract ... his right to a lien attached 'at the time when the labor was commenced' by the contractor").

"Broken priority" occurs when construction commences before the construction lender's mortgage or deed of trust is recorded on the property. In that situation, the lender's interest in the property is junior to all mechanics' liens, except any mortgage or deed of trust given as security for a loan made by a "construction lender" which is recorded within ten days after labor was commenced or the materials were commenced to be furnished. A.R.S. § 33-992.

This 10-day grace period does not apply here because MTGES LTD's deed of trust was recorded more than one year after labor was commenced and materials began to be furnished to the Project. MTGES LTD can only obtain priority through equitable subrogation.

Lamb, supra, held that a party seeking equitable subrogation must show there is an express or implied agreement to subrogate and "because subrogation is a creature of equity, its application may be defeated by intervening rights which would be prejudiced by the substitution. *Peterman-Donnelly, supra* at 326.

In *Lamb*, the Court concluded that an agreement to subrogate between the borrower and refinancing lender was reflected in the loan documents and escrow closing instructions. See also *Engineers & Contractors Corp. v. First National Bank of Arizona*, 2 Ariz. App. 321, 326, 408 P.2d 841, 846 ("[N]o formal assignment of the prior mortgage to [the Bank] was executed, but it is implicit that the parties [the original mortgage debtor Apache Junction Chamber of Commerce and its successor Association] intended the [Bank] to have the security attached to the prior mortgage").

This mechanic's lien case differs from the usual case where both the subcontractors and the owner are innocent parties because a general contractor made off with funds intended to pay suppliers and laborers. In this case, neither the lender nor the owner has paid for the labor and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

materials furnished by the mechanic's lien claimants. Rather the lien claimants seek relief because the construction lender failed to fully fund its construction loan and now seek a priority over those who improved the Project, which requires the fact finder to carefully consider the equities involved.

MTGES LTD certainly could be found to have been aware before making the June 14, 2006, loan that construction had started and any mechanics' lien claimants might be in first position as a result of this broken priority. The effect of the following facts must be considered:

- A. The June 26, 2006 email to MTGES LTD's title agency, acknowledging a broken priority: "I will send over the Construction Contract and Financials today for Broken Priority."
- B. MTGES LTD's title insurer required TLC and several of its owners individually to sign an "Indemnification Agreement for Mechanics' and Materialmen's Liens" as a result of the broken priority before issuing a lender's policy of title insurance. That Agreement states that the title company "would not issue its policy insuring over the liens unless the Indemnitors indemnify" it.
- C. MTGES LTD's June 14, 2006 "Title Fee Request" to its title agent regarding the TLC loan expressly stated "[t]o the best of our knowledge there is ... Broken Priority Construction on this property."
- D. The June 14, 2006 Title Fee Request further stated: "Title company is hereby instructed that Lender requires Broken Priority Indemnification and to be insured in a first lien position in the event of any Broken Priority Construction."
- E. MTGES LTD's June 13, 2006, "Escrow Order Instructions twice stated that: "Title company is hereby instructed that Lender requires Broken Priority Indemnification and to be insured in a first lien position in the event of any broken Priority Construction." The Escrow Instructions further provide: "To the best of our knowledge there is ... Broken Priority Construction on this property."
- F. An inspection report from Crossroads dated June 9, 2006 stated that work has started; materials have been delivered to the property; and that the "southern portion of Lot one is under construction" with attached photos showing construction equipment and work being performed.
- G. Emails between MTGES LTD's title agent and the title insurance company in June 2006 show that they were aware of the broken priority.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

Unlike the facts in *Lamb*, MTGES LTD's loan documents acknowledge the broken priority and the title company appears to have issued insurance based on the individual indemnitors.

These actions raise issues of fact as to whether MTGES LTD should to be subrogated to Fremont's priority position. There are also issues regarding whether an express or implied agreement to subrogate existed when MTGES LTD made the June 14, 2006, loan.

The fact finder has to consider the effect of the borrower, TLC's, statement that there was no subordination agreement. Kenneth Losch, one of the managers of TLC involved in negotiating the June 2006 loan, testified: "Prior to the funding of this loan, there was no agreement, either expressed or implied, regarding MTGES LTD being subrogated to the position of the prior acquisition lender, Fremont Investment & Loan."

Nechelle Wimmer's statement, to the extent that it is admissible, demonstrates that there is an issue of fact as to whether MTGES LTD intended and expected to be subrogated to the Fremont Deed of Trust.

Contractors, subcontractors, and materialmen expect to be paid. Our legislature, though the mechanic's lien statutes has acted to protect this expectation.

Equitable subrogation – like any other equitable remedy – is subject to the sound discretion of the court. *Glad Tidings Church of America v. Hinkley*, 71 Ariz. 306, 226 P.2d 1026 (1957). Whether equitable subrogation applies depends on the particular facts and circumstances of each case. *Mosher v. Conway*, 45 Ariz. at 468, 46 P.2d at 112; *Sun Valley Financial Services of Phoenix, L.L.C. v. Guzman*, 212 Ariz. 495, 134 P.3d 400 (App. 2006).

Defendants argue that MTGES LTD is not entitled to equitable relief because MTGES LTD's inequitable actions and inaction created the underlying default that prevented the Project from being completed and resulted in the recording of mechanics' and materialmen's liens.

During construction, MTGES LTD's funding became erratic. MTGES LTD principals Scott Coles and Laura Martini told Kenneth Losch personally that the failure to provide funding was entirely MTGES LTD's fault and they admitted on multiple occasions that MTGES LTD had defaulted under its loan agreement with TLC.

MTGES LTD's failure to fund the loan caused construction to stall. Numerous subcontractors and material suppliers ceased work or threatened to stop work. There is evidence that Ms. Martini reassured subcontractors and suppliers that loan funds were forthcoming; and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

they should continue working in light of these assurances. As a result of Ms. Martini's representations, work on the Project continued for an additional period of time. But no additional loan funds were ever paid.

The amounts claimed by LIEN Claimants relate to labor and materials furnished during the last months of the Project. If MTGES LTD had not induced subcontractors and suppliers to continue working by representing that additional loan funds were forthcoming, LIEN Claimants would be owed less money.

The court cannot find as a matter of law on the current state of the record that MTGES LTD intended, expected, and is equitably entitled to the benefit of the Fremont Deed of Trust's priority.

2. MTGES LTD's Consolidated Motion for Summary Judgment Against All LIEN Claimants That Did Not File Or Join in a Motion for Summary Judgment on LIEN Validity and Priority.

There is no court order that requires LIEN claimants to file a motion for summary judgment. Also, it is elementary that all mechanic's lien claimants stand on equal footing with each other. The court has no authority to grant this motion.

3. MTGES LTD's Motion for Rule 56(f) Continuance.

MTGES LTD shall have until October 15, 2010 to submit any challenges to the reasonableness of the "undisputed" amounts claimed by the mechanic's LIEN claimants. All rulings regarding the validity of the LIENS are intended as rulings on the technical steps taken to perfect the LIENS and as to the alleged necessity to allocate the LIEN claims to individual units in the Project. The rulings will become final as to the amounts claimed if MTGES LTD fails to challenge and create a genuine issue of material fact as to the reasonable value of labor or materials supplied by each individual LIEN claimant by October 15, 2010.

4. MTGES LTD and Prior Investors' Motion to Dismiss Prior Investors is DENIED.

Some LIEN claimants, but not all, agree that the individual investors should be dismissed. TCC and TLC object to any dismissal. MTGES LTD acknowledges that its motion is too broad and not all defendants it sought to dismiss should be dismissed. Therefore, on the current state of the record the court cannot grant the motion.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

5. MTGES LTD's Claims Against LIEN Claimants Who Did Not Allocate Their LIENS to Units.

In reliance on *Michael Weller, Inc. v. Aetna Casualty and Surety Co.*, 126 Ariz. 323, 614 P.2d 865 (App. 1980), MTGES LTD takes the position that nearly all of the LIENS filed by subcontractors and materialmen are invalid because they did not allocate the amount of their work to the specific portions of the property upon which the work was performed.

MTGES LTD argues that the LIENS must be allocated among the 380 condominium units in the Towers.

In *S.K. Drywall, Inc. v. Developers Financial Group, Inc.*, 169 Ariz. 345, 819 P.2d 931 (App. 1991), the court of appeals found that a condominium project constituted a "single project" for mechanics' lien statute purposes. See also, *CS & W Contractors, Inc. v. Southwest Sav. & Loan Ass'n*, 180 Ariz. 167, 169, 883 P.2d 404 (App. 1994).

Weller is distinguishable because each of the 48 homes was on a separate city lot and had a separate building permit which is not the case here.

MTGES LTD relies on the California court of appeals opinion in *ECC Const., Inc. v. Ganson*, 82 Cal. App. 4th 572, 98 Cal. Rptr.2d 292 (2000) where a condominium association hired a contractor to repair common areas and individual units after an earthquake. That case is distinguishable because the units in the California condominium project had been sold and were individually owned prior to the recording of the lien. That is not the case here, as no units have been sold or closed.

6. MTGES LTD LIEN Defect Claims.

A. GEA: Failure to record an acknowledged lis pendens.

MTGES LTD's reliance on *HCZ v. First Franklin Financial Corporation*, 199 Ariz. 361, 18 P.3d 155 (App. 2001) is not persuasive because in *HCZ* the lis pendens was not filed within the five days required by A.R.S. § 12-1198(A) which was fatal to the lien foreclosure. Here a lis pendens was timely filed, but MTGES LTD argues that A.R.S. §§ 33-998 and 33-411(B) required it to be acknowledged to be deemed "lawfully recorded" and because it was not the LIEN is invalid.

The court disagrees. A.R.S. § 33-411(A) states that an instrument that is not lawfully recorded does not give notice to subsequent purchasers for value. MTGES LTD is not a subsequent purchaser for value as to GEA because it had actual notice of GEA's work on the Project and its LIEN claim. See also, *Larkin v. Hagan*, 14 Ariz. 63, 126 P. 268 (1912).

Docket Code 019

Form V000A

Page 17

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

Further, A.R.S. § 33-411(C) states:

“For purposes of this section, an instrument affecting real property containing any defect, omission, or informality in the certificate of acknowledgement and which has been recorded for longer than one year in the office of the county recorder of the county in which the property is located shall be deemed to have been lawfully recorded on and after the date of its recording.”

B. IES: Failure to serve copy of Prelim regarding its second subcontract (the Marketplace) on MTGES LTD as a prerequisite to recording its second LIEN.

IES contends that MTGES LTD knew that IES was the electrical subcontractor on both parts of the Project and its own internal reports, containing all the information that would have been in a Prelim, confirmed this. IES relies on *Kim v. JF Enterprises*, 50 Cal Rptr. 141, 145 (Cal. App. 1996). The court finds that a genuine issue of material fact exists as to whether MTGES LTD knew that IES was the electrical contractor on the Marketplace.

C. BSG: Failure to record a lis pendens and the late filing of foreclosure.

BSG recorded its LIEN on July 8, 2008. TLC filed a Chapter 11 petition in bankruptcy on December 5, 2008, which prevented BSG from filing an action to foreclose its LIEN. BSG did file a Notice of Lien Perfection and Preservation and Intent to Enforce pursuant to 11 U.S.C. § 362(b)(3) and § 546(b) on January 7, 2009, which preserved its LIEN.

D. EME: Failure to serve a Prelim on MTGES, LTD and that the LIEN is incomplete.

EME's Statement of Facts reflects that it served its Prelim on Fremont on June 26, 2007. EME has created an issue of fact regarding compliance with the Prelim statute, A.R.S. § 33-992.01(I) and (J), because it served Fremont, which had been identified as the construction lender, and no correction was made. *Peterman-Donnelly Engineers & Contractors Corp. v. First National Bank of Arizona*, 2, Ariz. App. 321, 323, 408 P.2d 841 (1965). EME's LIEN substantially complied with the statutory requirements because it described the terms of its contract and attached invoices.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

E. GE: Failure to have the acknowledgment of receipt of its Prelim and its failure to include contract terms in its LIEN.

The court finds that the U.S. Postal Service return receipts attached to GE's Prelim more than substantially comply with the statutory requirement and because it appears that the appliances may have been sold on an open account, the statement of the terms of the contract in the LIEN is sufficient. *Peterman-Donnelly Engineers & Contractors Corp. v. First National Bank of Arizona*, 2, Ariz. App. 321, 323, 408 P.2d 841 (1965).

F. Central Cabinet: No Prelim Served on MTGES LTD as Construction Lender; No Acknowledgment on Prelim Attached to LIEN; and Improper LIEN Recording.

On April 15, 2007, Central Cabinet served a Prelim on TLC, TCC and Fremont. Central Cabinet has created an issue of fact regarding compliance with the Prelim statute, A.R.S. § 33-992.01(I) and (J) because it served Fremont, which had been identified as the construction lender and no correction was made. *Peterman-Donnelly Engineers & Contractors Corp. v. First National Bank of Arizona*, 2, Ariz. App. 321, 323, 408 P.2d 841 (1965).

G. Hajoca: Improper LIEN Recording; No Statement of Contract Terms.

The court finds that Hojoca, a plumbing materials supplier, had an open account with Danco Plumbing, Inc. based on an 18 year-old credit agreement. Because the materials were sold on an open account, the statement of the terms of the contract in the LIEN is sufficient. *Peterman-Donnelly Engineers & Contractors Corp. v. First National Bank of Arizona*, 2, Ariz. App. 321, 323, 408 P.2d 841 (1965).

H. HACI: Invalid Prelim; No Legal Description.

The court finds that HACI's Prelim substantially complied with A.R.S. § 33-992.01(C)(4) because it sufficiently described the location of the Project. *James Weller, Inc. v. Hansen*, 21 Ariz. App. 217, 220-221, 517 P.2d 1110 (App. 1973).

I. Safeguard Security: Incomplete Prelims.

The court finds that Safeguard Security's Prelim substantially complied with A.R.S. § 33-992.01(C)(4) because it sufficiently described the Project by its name and the correct street it is located on in Tempe. *James Weller, Inc. v. Hansen*, 21 Ariz. App. 217, 220-221, 517 P.2d 1110 (App. 1973).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024849
(Consolidated Complex Case)

09/03/2010

J. Farnsworth: Improper LIEN Recording, No Description of Contract; and No Prelim to Construction Lender.

The court finds that Farnsworth, a plumbing materials supplier, had an open account with Danco Plumbing, Inc. based on a 2 year-old credit agreement. Because the materials were sold on an open account, the statement of terms of the contract in the LIEN is sufficient. Farnsworth has created an issue of fact regarding compliance with the Prelim statute, A.R.S. § 33-992.01(I) and (J), because it served Key Bank, which was identified as the construction lender and no correction was made. *Peterman-Donnelly Engineers & Contractors Corp. v. First National Bank of Arizona*, 2, Ariz. App. 321, 323, 408 P.2d 841 (1965).

K. Fraze: For Improper LIEN Recording.

The court finds that Frazee, a painting contractor, supplied labor and materials on an open account based on a credit agreement. Because the labor and materials were furnished on an open account, the statement of terms of the contract in the LIEN is sufficient. *Peterman-Donnelly Engineers & Contractors Corp. v. First National Bank of Arizona*, 2, Ariz. App. 321, 323, 408 P.2d 841 (1965).

L. SS: Failure to Serve Amended Prelim on MTGES LTD; No Acknowledgement of Receipt of First Prelim, and Defect in Recording.

SS more than substantially complied with the mechanic's lien statute. *Peterman-Donnelly Engineers & Contractors Corp. v. First National Bank of Arizona*, 2, Ariz. App. 321, 323, 408 P.2d 841 (1965) and *Matcha v. Wachs*, 132 Ariz. 378, 646 P.2d263 (1982). When the original Prelim was served on Fremont, it was the lender on the Project.

Because there are questions of fact as to the effect of MTGES LTD's actions before it made the June 14, 2006, loan and whether *Lamb, supra*, entitles MTGES LTD's to recover on a subrogation theory, MTGES LTD's motion for summary judgment on its LIEN priority must be denied.

Construction Contract

EXHIBIT 2 – Part 1

COPY

AIA[®] Document A111[™] – 1997

Standard Form of Agreement Between Owner and Contractor

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

AGREEMENT made as of the Twenty-fourth day of April in the year Two Thousand and Six
(In words, indicate day, month and year)
(In words, indicate day, month and year)

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

Osborn III Partners, LLC
9500 East Ironwood Square Drive, Suite 201
Scottsdale, AZ 85258
Telephone Number: 480.767.3162

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

Jeffrey C. Stone, Inc. dba Summit Builders
3333 East Camelback Road, Suite 122
Phoenix, AZ 85018
Telephone Number: 602.840.7700
Fax Number: 602.840.6897

The Project is:
(Name and location)

Ten Lofts
7126 East Osborn Road
Scottsdale, AZ 85251

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

Todd & Associates, Inc.
4019 North 44th Street
Phoenix, AZ 85018
Telephone Number: 602.952.8280
Fax Number: 602.952.8995

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), ~~Drawings, Specifications, Drawings~~ (See Exhibit "G"), Specifications (See Exhibit "F"), Addenda issued (See Exhibit "C") ~~issued prior to execution of~~ referenced in this Agreement, other documents listed in Article 15 of this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

§ 2.1 The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Contractor's staff shall be persons agreed upon with the Owner and identified in the "Schedule of Key Personnel" attached hereto and incorporated herein as Exhibit "B".

§ 2.2.1 During the performance of the Work, the Contractor shall keep a competent construction manager at the Project site fully authorized to act on behalf of the Contractor for the construction activities at the project. Notice from the Owner or the architect to Contractor's Construction Manager in connection with defective Work or instructions for performance of the Work, shall be considered notice of such issues to the Contractor. Owner shall rely on the design expertise of the Architect to ensure that any value-engineering proposal is suitable for use on the Project. In no event will Contractor be responsible for the adequacy or suitability of any design recommendation made to the Architect, who shall retain all such responsibility.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Owner shall rely on the design expertise of the Architect to ensure that any value-engineering proposal is suitable for use on the Project. In no event will Contractor be responsible for the adequacy or suitability of any design recommendation made to the Architect, who shall retain all such responsibility.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner to the Contractor, which shall be issued no less than seven (7) days prior to the Owner date of commencement.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall occur on the date when all of the following conditions have been satisfied:

1. Owner obtains and pays for all necessary permits (site, grading, off-site, foundation, building) and delivers same to Contractor;
2. Contractor has received a Notice to Proceed from the Owner once item 1 above has been completed;
3. Owner has provided Contractor satisfactory evidence of financing and insurance;
and
4. Owner and Contractor have agreed upon the budgeted GMP for the project.

In the event the Permits, City approvals, financing, insurance, or the budgeted GMP are not timely received in order to permit Contractor to proceed with the Work in a continuous and uninterrupted manner, the Contract Amount will be adjusted by the extended General Conditions and other impacted costs, and the Contract Time will be adjusted by

like number of delay days that resulted from Owner's delay in obtaining the required Permits, City approvals, financing, insurance or budgeted GMP.

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

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 579 days (See Exhibit "E") ~~after days from~~ the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion date
-----------------	-----------------------------

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

§4.3.1 Owner and Contractor agree that actual damages suffered by Owner as a result of unexcused Contractor delay are difficult to ascertain. Accordingly, if Contractor fails to achieve Substantial Completion of the Work (as defined in § 9.8 of the contract General Conditions) within the Contract Time, as adjusted, Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, \$ 500.00 per day commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work, which are not substantially completed prior to the Contractual Completion date.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

§4.3.2 Notwithstanding anything to the contrary contained in Article 4.3.1, in no event will Contractor's liability for any breach of this Agreement, indemnity, liquidated damages, or any alleged duty for any uninsured loss exceed the amount of Contractor's fee as established in Article 5.1.2. To the extent an item of Owner's damage is covered by applicable insurance, Owner's recovery is limited to the amounts Owner and/or Contractor actually receive as a result of such coverage.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

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

§ 5.1.2 The Contractor's Fee is:

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

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the ~~Work-Work~~, Twenty-Four Million Dollars (\$24,000,000.00), and the Contractor's Fee is guaranteed by the Contractor not to exceed Four and a Half Percent (4.5%) (\$)-1,080,000.00) (with exception to shared savings provision of § 5.2.2), subject to additions and deductions by Change Order as provided

in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. The Guaranteed Maximum Price is subject to adjustment for change orders, authorized in accordance with the requirements of the Contract Documents. The difference, as of the date of final completion, between (i) the total aggregate sum of the Cost of the Work, plus the Contractor's Fee, and (ii) the Guaranteed Maximum Price upon final completion of the Work (such differences equals the "Savings"), shall be shared 70%/30% by Owner and Contractor respectively; provided, however, that the Contractor shall not be entitled to receive any Savings until the date of final payment. For purposes of the presentation of the Application of Payment, the Contractor may reallocate savings in one or more line items to overruns attributable to any other line items in Contractor's Exhibit "H" & "I" Cost Breakdown, in order to determine the net savings.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

§ 5.2.2 The GMP shall ~~not~~ include a line item designated as "Contingency." There is no contingency fee. The amount of said "contractor's contingency" is \$200,000.00. *Contractor JCS*

- a. costs incurred due to excusable delays but not reimbursed by Change Order;
- b. costs of the Work not included in the GMP budget but arguably inferable from the construction documents;
- c. costs of completing the work of a defaulted or bankrupt Subcontractor in excess of the subcontract price.

Any amounts left shall be distributed between Owner (70%) and Contractor (30%).

§ 5.2.23 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

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

Unit prices if any, will be set forth in a separate addendum to the prime contract.

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

§ 5.2.4 Allowances, if any, are as follows

§ 5.2.5 Allowances, if any, are as follows:
(Identify and state Allowances for the amounts of any allowances, work shall be set forth and state whether they include labor, materials, or both.) agreed upon by Change Order to this Agreement.

Allowance	Amount (\$ 0.00)	Included items
-----------	------------------	----------------

§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

§ 5.2.56 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

Refer to Exhibit "D" identified as Contractor's Clarifications, Qualifications, Assumptions and Exclusions, Clarifications, Qualifications, Assumptions and Exclusions to the Work, which is incorporated herein by reference.

AIA Document A111™ - 1997. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:31:25 on 06/06/2006 under Order No 1000219651_1 which expires on 2/2/2007, and is not for resale.

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

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

ARTICLE 6 CHANGES IN THE WORK

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

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

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

§ 6.4 If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. In addition, Contractor shall be entitled to either a percentage markup or a per diem cost to account for Contractor's general conditions, plus applicable taxes, bond premium, insurance and contractors fee.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

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

§ 7.2 LABOR COSTS

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

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval, approval, plus those individuals stationed at the Contractor's principal or other offices as described in Exhibit "B". The wages to be reimbursed shall include Vice President of Operations, Construction Director, Project Manager, Project Engineer, Project Coordinator, Project Accountant, Miscellaneous Project Staff (payroll, accounts payable, MIS, cost accountant), Options Coordinator and Safety Consultant, regardless of whether they are physically on site. Office personnel will be prorated according to a percentage of their time allocated to this job.

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

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

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

7.2.5 Reasonable costs of labor, material, and equipment required for handling, placing, and storing Owner-furnished equipment.

§ 7.3 SUBCONTRACT COSTS

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

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

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

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

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

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

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

§ 7.5.3 Costs of removal of debris from the site.

§ 7.5.4 Costs of document reproductions, reproductions shall be reimbursed as a direct project expense. Contractor shall make every effort possible to contain and/or reduce document reproduction costs. Cost of facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

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

§ 7.6 MISCELLANEOUS COSTS

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

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

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

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

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

~~§ 7.6.6 Data processing costs related to the Work.~~

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

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

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

§ 7.7 OTHER COSTS AND EMERGENCIES

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

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

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

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site ~~office~~, office, except as specifically provided in Articles 7.2.2 and 14.7.

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

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

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

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

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

§ 8.1.8 Costs, other than costs included in Change Orders approved by the Owner, or emergency repairs referenced in paragraph 7.7.2 or defense of any patent infringement as discussed in subparagraph 7.5.6, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 ~~Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured. Trade discounts, cash discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall be deducted from the Cost of the Work and considered savings subject to sharing per Paragraph 5.2.2.~~

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

§ 10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner, attributable to such alternate subcontractor proposal recommended by Owner. If the parties are unable to obtain subcontractor bids for a particular trade or scope that is within the budgeted pricing, despite Contractor's reasonable efforts, then the GMP shall be adjusted to reflect the price increase.

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

ARTICLE 11 ACCOUNTING RECORDS

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

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or ~~as follows: twice monthly as agreed upon between Owner and Contractor.~~

§ 12.1.3 ~~Provided that an~~ Unless a different time period is required by applicable law, and provided an Application for Payment is received by the ~~Owner and the~~ Architect not later than the ~~last day of a each~~ month, the Owner shall make payment to the Contractor not later than the ~~Twenty- First~~ day of the ~~month- following month~~ provided ~~all required back-up documentation listed below is provided prior to funding. If items are missing from the application, the twenty-one day turnaround time will start on the date all needed documentation is received.~~ If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~(—twenty-one(21)~~ days after the Architect receives the Application for Payment.

§ 12.1.4 With each Application for Payment, the Contractor shall submit cost reports detailing such expenses as payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Contractor cost reports, including applicable supporting documentation, referenced herein shall be delivered to Owner within seven (7) days from the beginning of the following month for which the cost reports relate.

In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Arizona:

- (i) Duly executed conditional waivers for current pay period and unconditional lien waivers for prior pay period and claim forms from the Contractor and all relevant Subcontractors, establishing payment or satisfaction of the payment requested by the Contractor in the Application for Payment; and
- (ii) Such other information, documentation, and materials as the Owner or the Architect may reasonably require in accordance with customary industry standards.

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

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

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

- .1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 subtract the aggregate of previous payments made by the Owner;
- .5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997-A201-1997 and other amounts properly held by the Owner at the time of each progress payment.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors. No retention will be withheld from the excavation contractor. The ten percent (10) retention shall be reduced to five percent (5%) when fifty percent (50%) of the total contract or subcontract value is achieved unless otherwise noted herein.

- a. Concrete: five percent (5%) on labor, zero percent (0%) on materials onsite or stored.
- b. Masonry: five percent (5%) on labor, zero percent (0%) on materials onsite or stored.
- c. Rough Masonry: five percent (5%) on labor, eight percent (8%) on materials onsite or stored.
- d. Electrical: five percent (5%) on labor/materials.
- e. Plumbing: five percent (5%) on labor/materials.
- f. Drywall: five percent (5%) on labor/materials

§ 12.1.8.1 Upon mutual written agreement between Owner and Contractor, payment in full may be made to the Subcontractor whose work is fully and satisfactorily completed during the early stages of the Project, provided that the Subcontractor has complied with all requirements for final payment in accordance with the Contract Documents.

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

§ 12.1.10 With the exception of Paragraph 12.1.8, the Owner shall be entitled to withhold as retainage ten percent (10%) of all Cost of the Work items included in each Application for Payment. The Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any exercise of this option, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor, or (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity. Retention will be reduced to five

percent (5%) at substantial completion.

§ 12.1.11 Notwithstanding the Owner's option to reduce retainage in certain circumstances as provided in paragraph 12.1.10, Owner shall not hold retention on the following: Taxes, General Conditions, Contractor's Fee, Insurance and Bond Premiums, Field Staking Services, Temporary facilities not included in General Conditions costs (such as Temporary Power infrastructure) and other Purchase Order items for which the Contractor cannot withhold retention in the normal course of construction purchasing.

§ 12.2 FINAL PAYMENT

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

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

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

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within ~~30~~ 120 days after the Contractor's receipt of a copy of the Architect's final Certificate ~~for~~ of Payment; failure to demand arbitration within this ~~30-day~~ 120-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

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

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

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

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

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. Owner shall be responsible for all payments therefor that are due after the assignment and will defend and indemnify Contractor from any claims for payment for such items that may be asserted against Contractor.

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located, of 10% per annum.

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

per annum

§ 14.3 A Warranty Escrow Allowance in the amount of Zero Dollars (\$0.00) will be included in the Guaranteed Maximum Price.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers)

§ 14.3 The Owner's representative is:

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

§ 14.4 The Contractor's representative is:

Jonathon Vento

9500 East Ironwood Square Drive
Suite 201
Scottsdale, AZ 85258
Telephone Number: 480.767.3162
Fax Number: 480.767.3168
Mobile Number: 602.510.3329

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

Jeffrey C. Stone, President
Jeffrey C. Stone, Inc. dba Summit Builders
3333 E. Camelback Rd. Ste. 122
Phoenix, AZ 85018
p. 602.840.7700
f. 602.840.6897

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

§ 14.67 Other provisions:

§14.7.1 The Owner and Contractor represent and warrant the following (in addition to any other representations and warranties contained in the Contract Documents), to each other as a material inducement to the execution of this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

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

- .1 The Owner and Contractor are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all their respective obligations hereunder;
- .2 The Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 The Owner and Contractor are authorized to do business in the State of Arizona and are properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the Project; and
- .4 The Owner's and Contractor's execution of this Agreement and performance thereof is within the Owner's and Contractor's duly authorized powers.
- .5 The Owner's and Contractor's duly authorized representatives have visited the site of the Project, are familiar with the local conditions under which the Work is to be performed, and have correlated observations with the requirements of the Contract Documents; and
- .6 The Contractor is a large, sophisticated contractor who 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 involving, among other things, the construction of these mid-rise, high quality, condominiums, and will perform the Work with care, skill, and diligence of such a contractor.

§ 14.7.2 The Contractor acknowledges that the Owner is financing the Work with a loan from the Lender. In order to perform under the Contract Documents, the Owner must reasonably comply with certain terms and conditions embodied in the Lender's construction loan agreement, provided that such Lender requirements are commercially reasonable for the location of the Project. The Contractor agrees to use its best efforts to comply with the requirements of the Lender that bear upon the performance of the Work. The Contractor shall also:

- (i) Make the site of the Work available at reasonable times for inspection by the Lender or the Lender's representatives;
- (ii) Consent to and execute all documents reasonably required by the Owner in connection with the assignment of this Agreement and the Drawings and Specifications to the Lender for collateral purposes. Such assignment shall provide that the Contractor agrees that notwithstanding a default by the Owner under the provisions of this Agreement that would give the Contractor the right to terminate this Agreement, the Contractor will continue to perform its obligations hereunder (on the same terms and conditions as are set forth herein) for and on account of the Lender if the Lender shall agree to pay the Contractor all amounts due and owing the Contractor under the Agreement and shall agree in writing to perform all obligations of the Owner hereunder accruing from and after the date of such default by the Owner; and
- (iii) Promptly furnish the Owner with information, documents, and materials that the Owner may reasonably request from time to time in order to comply with the requirements of the Lender, provided that such Lender requirements are commercially reasonable for the location of the Project.

§ 14.7.3 In the event any dispute arises between the Owner and the Contractor which results in arbitration, the prevailing party shall be fully compensated for all attorneys' fees, costs, expert fees, and arbitration fees paid for incurred in good faith in such proceedings.

§ 14.8 See Exhibit "B" that identifies wage rates for certain personnel stationed at Contractor's principal or other offices, which said wages shall be included in the cost of the Work.

§ 14.6 Other provisions:

§ 14.9 Where the price of material, equipment, or energy increases significantly during the term of the contract through no fault of the Contractor, the materials cost shall be increased accordingly, or the contract sum shall be equitably adjusted by change order as provided in Article 7 of the AIA A201 General Conditions. A significant price increase means a change in price from the date of the contract execution to the date of performance by an amount exceeding five (5%) percent. Such price increases shall be documented by vendor quotes, invoices, catalogs, receipts or other documents of commercial use.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows: follows and contained in Exhibit A-1:

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

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

§ 15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows: identified in Exhibit "F" of this Agreement.

Document	Title	Pages
----------	-------	-------

§ 15.1.4 The Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows: See Exhibit "F" to this Agreement.

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
<u>Title of Specifications exhibit:</u>		

§ 15.1.5 The Drawings are as follows, and are dated unless a different date is shown below: See Exhibit "G" to this Agreement.

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
<u>Title of Drawings exhibit:</u>		

§ 15.1.6 The Addenda, if any, are as follows: See Exhibit "C" to this Agreement.

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

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

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

§ 15.1.8 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner and Contractor. No person is authorized on behalf of Owner and Contractor to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Owner's and Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent shall be limited to the specific matters stated in writing signed by Owner and Contractor, and shall not relieve Owner and Contractor of any other duties and obligations under the Contract Documents.

ARTICLE 16 INSURANCE AND BONDS

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

Type of insurance	Limit of liability (\$ 0.00)
-------------------	------------------------------

§ 16.1 Owner will purchase a mutually acceptable owner controlled insurance policy for the project that includes a Two Million Dollar (\$2,000,000.00) over Five Million Dollar (\$5,000,000.00) Wrap Policy.

§ 16.2 If applicable, Contractor will provide payment and performance bonds, which will be considered reimbursable costs of the Work. Summit will enroll the Project in Subguard Policy for subcontractors over One Hundred Thousand Dollars (\$100,000.00).

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


OWNER (Signature)


CONTRACTOR (Signature)

Jonathon Vento
(Printed name and title)

Jeffrey C. Stone, President
(Printed name and title)

 **AIA[®] Document A201[™] – 1997****General Conditions of the Contract for Construction****for the following PROJECT:***(Name and location or address):*

Ten Lofts
7126 East Osborne Road
Scottsdale, AZ 85251

THE OWNER:*(Name and address):*

Osborn III Partners, LLC
9500 East Ironwood Square Drive
Suite 201
Scottsdale, AZ 85258

THE ARCHITECT:*(Name and address):*

Todd & Associates, Inc.
4019 North 44th Street
Phoenix, Arizona 85018

This document has important legal consequences
Consultation with an attorney is encouraged with respect to its completion or modification

This document has been approved and endorsed by The Associated General Contractors of America

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ADMINISTRATION OF THE CONTRACT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT

INDEX

(Numbers and Topics in Bold are Section Headings)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, 12.3

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

4.2.3, 10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 4.3.8, 4.4.1, 8.3.1, 9.5.1, 10.2.5, 13.4.2, 13.7, 14.1

Addenda

1.1.1, 3.11

Additional Costs, Claims for

4.3.4, 4.3.5, 4.3.6, 6.1.1, 10.3

Additional Inspections and Testing

9.8.3, 12.2.1, 13.5

Additional Time, Claims for

4.3.4, 4.3.7, 8.3.2

ADMINISTRATION OF THE CONTRACT

3.1.3, 4, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13, 4.5.1

Allowances

3.8

All-risk Insurance

11.4.1.1

Applications for Payment

4.2.5, 7.3.8, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.8.5, 9.10, 11.1.3, 14.2.4, 14.4.3

Approvals

2.4, 3.1.3, 3.5, 3.10.2, 3.12, 4.2.7, 9.3.2, 13.4.2, 13.5

Arbitration

4.3.3, 4.4, 4.5.1, 4.5.2, 4.6, 8.3.1, 9.7.1, 11.4.9, 11.4.10

Architect

4.1

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4, 3.12.7, 4.2, 4.3.6, 4.4, 5.2, 6.3, 7.1.2, 7.3.6, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.8.3, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.3.3, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 4.4, 5.2.1, 7.4, 9.4.2, 9.6.4, 9.6.6

Architect's Additional Services and Expenses

2.4, 11.4.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, **4.2**, 4.3.4, 4.4, 9.4, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.6

Architect's Decisions

4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.4, 4.4.1, 4.4.5, 4.4.6, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4

Architect's Inspections

4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.3, 3.3.1, 4.2.6, 4.2.7, 4.2.8, 7.4.1, 12.1, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12, 4.3.6

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.6, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.3.1, 3.4.2, 3.5.1, 3.7.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 4.3.4, 4.4.1, 4.4.7, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 11.4.7, 12, 13.4.2, 13.5

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.4.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

4.2.2, 4.2.5, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 1.1.7, 5.2.1, 11.5.1

Boiler and Machinery Insurance

11.4.2

Bonds, Lien

9.10.2

Bonds, Performance, and Payment

7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

Certificates of Inspection, Testing or Approval
13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4.1, 3.4.2, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 4.3.4, 4.3.9, 5.2.3, 7.1, 7.2, 7.3, 8.3.1, 9.3.1.1, 9.10.3, 11.4.1.2, 11.4.4, 11.4.9, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

3.11, 4.2.8, 7, 8.3.1, 9.3.1.1, 11.4.9

Claim, Definition of

4.3.1

Claims and Disputes

3.2.3, 4.3, 4.4, 4.5, 4.6, 6.1.1, 6.3, 7.3.8, 9.3.3, 9.10.4, 10.3.3

Claims and Timely Assertion of Claims

4.6.5

Claims for Additional Cost

3.2.3, 4.3.4, 4.3.5, 4.3.6, 6.1.1, 7.3.8, 10.3.2

Claims for Additional Time

3.2.3, 4.3.4, 4.3.7, 6.1.1, 8.3.2, 10.3.2

Claims for Concealed or Unknown Conditions

4.3.4

Claims for Damages

3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4

Claims Subject to Arbitration

4.4.1, 4.5.1, 4.6.1

Cleaning Up

3.15, 6.3

Commencement of Statutory Limitation Period

13.7

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.1, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 4.3.5, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.4.1, 11.4.6, 11.5.1

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract

Administration

3.9.1, 4.2.4

Completion, Conditions Relating to

1.6.1, 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 9.10.4.2, 12.2, 13.7

Compliance with Laws

1.6.1, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6.4, 4.6.6, 9.6.4, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3

Concealed or Unknown Conditions

4.3.4, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 1.1.7, 6.1.1, 6.1.4

Consent, Written

1.6, 3.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.12.8, 4.2.8, 4.3.9, 7.1, 7.3, 9.3.1.1

Construction Schedules, Contractor's

1.4.1.2, 3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

4.3.3

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR

SUSPENSION OF THE

5.4.1.1, 11.4.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.4.6, 11.5.1

Contract Documents, The

1.1, 1.2

Contract Documents, Copies Furnished and Use of

1.6, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.8, 4.3.4, 4.3.5, 4.4.5, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.4.1, 14.2.4, 14.3.2

Contract Sum, Definition of

9.1

Contract Time

4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1.3, 7.3, 7.4, 8.1.1, 8.2, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction Schedules

1.4.1.2, 3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.4.7, 14.1, 14.2.1.1,

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.4.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.4.1.2, 11.4.7, 11.4.8

Contractor's Relationship with the Architect

1.1.2, 1.6, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.3.1, 3.4.2, 3.5.1, 3.7.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 4.3.4, 4.4.1, 4.4.7, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 11.4.7, 12, 13.4.2, 13.5

Contractor's Representations

1.5.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Contractor's Review of Contract Documents

1.5.2, 3.2, 3.7.3

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

4.3.10, 14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.5.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14

Contractual Liability Insurance

11.1.1.8, 11.2, 11.3

Coordination and Correlation

1.2, 1.5.2, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.6, 2.2.5, 3.11

Copyrights

1.6, 3.17

Correction of Work

2.3, 2.4, 3.7.4, 4.2.1, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 13.7.1.3

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.6

Costs

2.4, 3.2.3, 3.7.4, 3.8.2, 3.15.2, 4.3, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.6, 7.3.7, 7.3.8, 9.10.2, 10.3.2, 10.5, 11.3, 11.4, 12.1, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching

6.2.5, 3.14

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 9.2.1.5, 10.2.1.2, 10.2.5, 10.6, 11.1, 11.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.6, 11.4, 12.2.4

Damages, Claims for

3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.4, 4.4.1, 4.4.5, 4.4.6, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4

Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1, 13.7.1.3

Defective Work, Definition of

3.5.1

Definitions

1.1, 2.1.1, 3.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 4.3.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 7.3.6, 8.1, 9.1, 9.8.1

Delays and Extensions of Time

3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2

Disputes

4.1.4, 4.3, 4.4, 4.5, 4.6, 6.3, 7.3.8

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

1.1.1, 1.3, 2.2.5, 3.11, 5.3

Effective Date of Insurance

8.2.2, 11.1.2

Emergencies

4.3.5, 10.6, 14.1.1.2

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.4.7, 14.1, 14.2.1.1

Equipment, Labor, Materials and

1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3, 3.4, 3.5, 3.7,
3.10, 3.12, 3.14, 4.2.2, 4.2.3, 4.3.3, 6.2.2, 7.1.3, 7.3.4,
8.2, 9.5, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3

Extensions of Time

3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3, 7.4.1,
9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2

Failure of Payment

4.3.6, 9.5.1.3, 9.7, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 4.3.2, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1,
11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.5

Fire and Extended Coverage Insurance

11.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials

10.2.4, 10.3, 10.5

Identification of Contract Documents

1.5.1

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, 3.18, 9.10.2, 10.3.3, 10.5, 11.4.1.2, 11.4.7

Information and Services Required of the Owner

2.1.2, 2.2, 3.2.1, 3.12.4, 3.12.10, 4.2.7, 4.3.3, 6.1.3,
6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3,
11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4

Injury or Damage to Person or Property

4.3.8, 10.2, 10.6

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.2,
9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.3, 3.3.1, 3.8.1, 4.2.8, 5.2.1, 7, 12, 8.2.2, 13.5.2

Insurance

3.18.1, 6.1.1, 7.3.6, 8.2.1, 9.3.2, 9.8.4, 9.9.1, 9.10.2,
9.10.5, 11

Insurance, Boiler and Machinery

11.4.2

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 11.1.2

Insurance, Loss of Use

11.4.3

Insurance, Owner's Liability

11.2

Insurance, Project Management Protective

Liability

11.3

Insurance, Property

10.2.5, 11.4

Insurance, Stored Materials

9.3.2, 11.4.1.4

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1, 11.4.1.5

Insurance Companies, Settlement with

11.4.10

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

Interest

13.6

Interpretation

1.2.3, 1.4, 4.1.1, 4.3.1, 5.1, 6.1.2, 8.1.4

Interpretations, Written

4.2.11, 4.2.12, 4.3.6

Joinder and Consolidation of Claims Required

4.6.4

Judgment on Final Award

4.6.6

Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6,
9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1,
13.5.2, 13.6, 14

Liens

2.1.2, 4.4.8, 8.2.2, 9.3.3, 9.10

Limitation on Consolidation or Joinder

4.6.4

Limitations, Statutes of

4.6.3, 12.2.6, 13.7

Limitations of Liability

2.3, 3.2.1, 3.5.1, 3.7.3, 3.12.8, 3.12.10, 3.17, 3.18,
4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.10.4,
10.3.3, 10.2.5, 11.1.2, 11.2.1, 11.4.7, 12.2.5, 13.4.2

Limitations of Time

2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1,
4.2.7, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4,
8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9,
9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5,
13.7, 14

Loss of Use Insurance

11.4.3

Material Suppliers

1.6, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

Materials, Hazardous

10.2.4, 10.3, 10.5

Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.6.1, 3.4, 3.5.1, 3.8.2, 3.8.23, 3.12, 3.13,
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3,
9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
4.4.8
Mediation
4.4.1, 4.4.5, 4.4.6, 4.4.8, 4.5, 4.6.1, 4.6.2, 8.3.1, 10.5
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 4.3.6, 7.1, 7.4
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.7.3, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1,
9.7, 10.3.2, 11.4.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, 12.3
Nonconforming Work, Rejection and Correction of
2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2.1, 13.7.1.3
Notice
2.2.1, 2.3, 2.4, 3.2.3, 3.3.1, 3.7.2, 3.7.4, 3.12.9, 4.3,
4.4.8, 4.6.5, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 11.1.3,
11.4.6, 12.2.2, 12.2.4, 13.3, 13.5.1, 13.5.2, 14.1, 14.2
Notice, Written
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5,
5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6,
12.2.2, 12.2.4, 13.3, 14
Notice of Testing and Inspections
13.5.1, 13.5.2
Notice to Proceed
8.2.2
Notices, Permits, Fees and
2.2.2, 3.7, 3.13, 7.3.6.4, 10.2.2
Observations, Contractor's
1.5.2, 3.2, 3.7.3, 4.3.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.4.1.5
Orders, Written
1.1.1, 2.3, 3.9, 4.3.6, 7, 8.2.2, 11.4.9, 12.1, 12.2,
13.5.2, 14.3.1
OWNER
2
Owner, Definition of
2.1
Owner, Information and Services Required of the
2.1.2, 2.2, 3.2.1, 3.12.4, 3.12.10, 4.2.7, 4.3.3, 6.1.3,
6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3,
11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4
Owner's Authority

1.6, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2,
4.1.3, 4.2.4, 4.2.9, 4.3.6, 4.4.7, 5.2.1, 5.2.4, 5.4.1,
6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1,
9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.1, 11.4.3, 11.4.10,
12.2.2, 12.3.1, 13.2.2, 14.3, 14.4
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.5
Owner's Liability Insurance
11.2
Owner's Loss of Use Insurance
11.4.3
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 12.2.4, 14.2.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to
Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications
and Other Instruments of Service
1.1.1, 1.6, 2.2.5, 3.2.1, 3.11.1, 3.17.1, 4.2.12, 5.3
Partial Occupancy or Use
9.6.6, 9.9, 11.4.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.8, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.8.5,
9.10.1, 9.10.3, 9.10.5, 11.1.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1,
9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
4.3.6, 9.5.1.3, 9.7, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6
Payment, Final
4.2.1, 4.2.9, 4.3.2, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1,
11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5
Payments, Progress
4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8,
14.2.1.2
PCB
10.3.1

Performance Bond and Payment Bond

7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5

Permits, Fees and Notices

2.2.2, 3.7, 3.13, 7.3.6.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF**10****Polychlorinated Biphenyl**

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 4.3.3, 8.2, 9.8, 9.9.1, 14.1.4

Progress Payments

4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3

Project, Definition of the

1.1.4

Project Management Protective Liability**Insurance**

11.3

Project Manual, Definition of the

1.1.7

Project Manuals

2.2.5

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.4

PROTECTION OF PERSONS AND PROPERTY**10****Regulations and Laws**

1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6,

9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1,

13.5.2, 13.6, 14

Rejection of Work

3.5.1, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

1.5.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1,

9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.10, 5.1.1, 5.1.2,

13.2.1

Resolution of Claims and Disputes

4.4, 4.5, 4.6

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1,

10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field**Conditions by Contractor**

1.5.2, 3.2, 3.7.3, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and**Samples by Contractor**

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5.1, 3.15.2, 4.2.6, 4.3.4, 4.5, 4.6, 5.3,

5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3,

12.2.2, 12.2.4, 13.4, 14

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

4.6.2

Safety of Persons and Property

10.2, 10.6

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.6

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules,

1.4.1.2, 3.10, 3.12.2, 4.3.7.2,

6.1.3

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 4.6.4, 6, 8.3.1,

11.4.7, 12.1.2, 12.2.5

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

1.2.2, 3.2.1, 3.3.3, 3.7.1, 4.2, 4.3.4, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of the

1.1.6

Specifications, The

1.1.1, 1.1.6, 1.1.7, 1.2.2, 1.6, 3.11, 3.12.10, 3.17

Statute of Limitations

4.6.3, 12.2.6, 13.7

Stopping the Work

2.3, 4.3.6, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1, 14.3.2
Submittals
1.6, 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Subrogation, Waivers of
6.1.1, 11.4.5, 11.4.7
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 9.10.4.2, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5.1, 7.3.7
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
4.3.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4, 7.1.3, 7.3.6, 8.2, 8.3.1, 9.4.2, 10, 12, 14
Surety
4.4.7, 5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.4
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
4.3.6, 5.4.1.1, 11.4.9, 14
Taxes
3.6, 3.8.2.1, 7.3.6.4
Termination by the Contractor
4.3.10, 14.1
Termination by the Owner for Cause
4.3.10, 5.4.1.1, 14.2
Termination of the Architect
4.1.3
Termination of the Contractor
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5
TIME
8
Time, Delays and Extensions of
3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2
Time Limits
2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14
Time Limits on Claims
4.3.2, 4.3.4, 4.3.8, 4.4, 4.5, 4.6
Title to Work
9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions
4.3.4, 8.3.1, 10.3
Unit Prices
4.3.9, 7.3.3.2
Use of Documents
1.1.1, 1.6, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
4.3.10, 9.10.5, 11.4.7, 13.4.2
Waiver of Claims by the Owner
4.3.10, 9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4
Waiver of Consequential Damages
4.3.10, 14.2.4
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, 11.4.5, 11.4.7
Warranty
3.5, 4.2.9, 4.3.5.3, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1.3
Weather Delays
4.3.7.2
Work, Definition of
1.1.3
Written Consent

1.6, 3.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2,
9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2

Written Interpretations

4.2.11, 4.2.12, 4.3.6

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5,
5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6,
12.2.2, 12.2.4, 13.3, 14

Written Orders

1.1.1, 2.3, 3.9, 4.3.6, 7, 8.2.2, 11.4.9, 12.1, 12.2,
13.5.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, (See Exhibit "G"), Specifications; (See Exhibit "F"), Addenda (See Exhibit "C") issued prior to execution of and referenced in the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements)

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 THE PROJECT MANUAL

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

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

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

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

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or

continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, ~~sequences~~ sequences, or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for and shall defend and indemnify the Contractor from and against any resulting cost, loss or damage, or damage claim, including third party claims.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

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

§ 3.5 WARRANTY

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

§ 3.5.2 The Contractor agrees to assign to the Owner 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.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES AND NOTICES

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

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

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

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

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- 1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 2 ~~Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, and profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;~~
- 3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.
- 4 In addition, Contractor shall be entitled to a mark up of four and one half percent (4.5%) of any increase in the allowance to cover its fee and overhead.

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

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

§ 3.9 SUPERINTENDENT

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, ~~promptly after within two weeks of being awarded the Contract,~~ shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The initial schedule shall not exceed nineteen months duration and time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of

separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Documents for constructability only and not for compliance to design suitability or standards.

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

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

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

§ 3.13 USE OF SITE

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

§3.13.2 Only materials and equipment that 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 stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the 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.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located. Notwithstanding the foregoing, Contractor shall have the right to require that any person on the job site adhere to reasonable rules based on the safety policies and insurance requirements of the particular work area.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, ~~the the~~ Contractor shall defend, indemnify and hold harmless the Owner, Owner's Consultants, Architect, Architect's consultants, and agents and employees of any of them from and against claims, liabilities, demands, damages, losses, losses, costs and expenses, including but not limited to attorneys' fees, fees and costs, arising out of or resulting from performance of the Work, provided that such claim, liability, demand, damage, loss cost 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), itself including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether or not such claim, liability, demand, damage, loss-loss, cost or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§3.18.3 The Contractor shall indemnify and hold harmless Owner from and against any costs and expenses (including reasonable attorney's fees) incurred by Owner in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks for the review and return of submittals or RFI's to Contractor. Notwithstanding the foregoing, the Architect shall respond to RFI's and other non-submittal actions in such time as shall not adversely impact the progress of the Work.

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

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

§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of

the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

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

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

§ 4.3 CLAIMS AND DISPUTES

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

§ 4.3.2 Time Limits on Claims. Claims Except where the Contract Documents provide a different time period, the conditions, acts, or omissions giving rise to a potential Claim must be documented by either party must be initiated within 21 twenty-one (21) days after the occurrence of the event giving rise to such Claim or within 21 days after the

claimant first recognizes the condition giving rise to the Claim. Once the full impacts are known, then formal Claim should be presented within twenty-one (21) days. The claimant shall use its best efforts to furnish the Architect and the other party, 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 Architect 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 that is the cause of such a Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party. A Claim may also be reserved in writing within the time limits set forth in this Subparagraph 4.3.2 if mutually agreed to in writing by both Owner and Contractor. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in Paragraph 4.4 shall not commence until a written notice from the claimant is received by the Architect. 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.

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

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

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

§ 4.3.7.2 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, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within

a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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

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

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents, Documents, or Contractor's extended general conditions or other time-driven costs and damages to the extent not excluded in Paragraph 4.3.10 herein.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

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

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

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

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

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

§ 4.4.6 ~~When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and~~

~~Contractor.~~ If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

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

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

§ 4.5 MEDIATION

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

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

§ 4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof In no event shall any mediator in connection with a Claim be permitted to serve as an arbitrator for that, or any other, Claim that is not resolved pursuant to mediation.

§ 4.6 ARBITRATION

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

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

§ 4.6.3 A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

§ 4.6.4 ~~Limitation on Consolidation or Joinder No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Architect, Contractor, a separate contractor as described in Article 6-6, any Subcontractor, and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Architect, Contractor or or, a separate contractor as described in Article 6-6, or Subcontractor shall be included as an original~~

third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 4.6.6 Judgment on Final Award Except as provided herein elsewhere, a demand for arbitration shall be made within a reasonable time after completion or after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. Nothing contained herein shall preclude the Contractor from taking the steps necessary to perfect its lien rights. To the extent Contractor is required to file litigation to foreclose and/or otherwise protect its lien rights, the litigation shall be stayed until the arbitration referenced in this paragraph has been concluded. If the Contractor is the prevailing party in said arbitration, then the Contractor shall be entitled to foreclose its lien and have the Court confirm the arbitration award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§4.6.7 Procedural Issues. The arbitration shall be held in the State and County where the project is located, unless another location is agreed to by Owner and Contractor. The prevailing party in any arbitration proceeding shall be entitled to recover its reasonable costs, attorneys' fees and expert witness fees. If the amount in dispute exceeds \$25,000.00, it is agreed that the arbitrators shall permit limited discovery, including reasonable interrogations, depositions of key witnesses, production of documents relating to the dispute or that may be used as evidence during the arbitration hearing, and shall require exchange of witness lists, hearing exhibits, and a detailed framing of issues.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract

Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations

and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§6.1.5 The Contractor shall not be required to accept assignment of any purchase orders or other agreements for procurement of materials or equipment entered into by the Owner that do not meet the Contractor's qualification requirements. The Contract Sum and GMP, if applicable, include, without limitation, all costs and expenses in connection with delivery, 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 not apply to any items pre-purchased by the Owner, unless the Contract Documents specifically provide otherwise.

§ 6.2 MUTUAL RESPONSIBILITY

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

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

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of by the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable actual expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for the overhead and profit—profit referenced in the Agreement. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and and field office personnel, and the personnel referenced in paragraph 7.2.2 of the Agreement directly attributable to the change-change or resulting delays.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change

Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

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

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work through ASI procedures not involving adjustment in the Contract Sum or extension of the Contract Time and not that do not result in additional costs to the Contractor or affects the Contract time and such changes shall not be inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, of equipment, materials or other supplies including but not limited to materials made with steel, concrete and foam; unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3. Contractor shall be entitled to recover actual cost increase plus reasonable markup for time issues that impact critical path

schedule relating to an act or neglect of the Owner or Architect (including a Construction Change Directive requested and issued by the Owner or Architect), or of an employee of either, or of a separate contractor employed by the Owner or active Owner interference, Owner changes, unforeseen conditions which could not have been foreseen or controlled by Contractor, Owner's election to suspend performance of all or part of the Work, or any other right granted to Contractor in the Contract Documents. Claims must be submitted with documentation demonstrating impact on critical path plus information supporting increase in cost of work.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Nothing in this Agreement precludes either (i) the Owner's recovery of liquidated damages for any unexcused Contractor delays, or (ii) the Contractor's recovery of extended general conditions and other time related damages by adjustment to the Contract amount or GMP, if applicable, for delays that are beyond its control as permitted by Paragraph 4.3.10.

§8.3.4 Any decision on an award of time is subject to arbitration.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 ~~Before the~~ After mutual agreement of GMP, if applicable, and five (5) days prior to the Contractor's first Application for Payment, Payment pay application, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ~~ten~~ five (5) days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may ~~require,~~ require as required by Paragraphs 12.1.4 of the A111 Agreement, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work ~~which~~ that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in ~~Change Orders.~~ Orders, unless caused by negligence per §7.7.3 of A111 Contract.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay or such amounts will be used to pay address problems, defects or delays in the Subcontractor's work or other claims that Contractor may have against the Subcontractor, unless caused by negligence per 7.7.3 of A111 Contract.

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner upon receipt of payment no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments

received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

- .1 The Contractor further expressly undertakes to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Owner as a result of liens filed against the Work, the site of any of the Work, or the Project site and any improvements thereon (referred to collectively as "liens" in this Subparagraph 9.3.3). The Contractor hereby agrees to indemnify and hold the Owner harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings. These obligations shall only arise if the Owner has made the payments required hereunder to the Contractor.
- .2 Unless the Contractor shall expressly agree to defend and indemnify the Owner, Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made. In order to invoke this right, the Owner must have paid Contractor all amounts due and owing under this Agreement and shall provide the Contractor with written notice of such claim and its intention to pay the claim unless Contractor agrees to defend and indemnify Owner or otherwise bond around such lien per §9.3.3.3 below.
- .3 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien discharge bond which is (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, (3) in an amount not less than One Hundred Fifty percent (150%) of such lien claim, and (4) is recorded in compliance with A.R.S. Section 33-1004 (Arizona's lien discharge statute). By proper recording of the lien discharge bond, however, the Contractor shall not be relieved of any responsibilities or obligations under this Paragraph 9.3 including, without limitation, the duty to defend and indemnify the Owner. The cost of any premiums incurred in connection with such bond and security shall be the responsibility of the Contractor and shall not be a part of, or cause any adjustment to the Contract Sum.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied; work not in conformance with the Contract Documents which is not remedied; or failure to begin remedial action on such work within five (5) days following notification;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.
- .8 Notwithstanding the issuance of a Certificate of Payment, the Owner may withhold payment for the reasons set forth in this Subparagraph.

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner may refuse to make payment on any Certificate of Payment for any default of the Contract, including, but not limited to, those defaults set forth in Subparagraphs 9.5.1.1 through 9.5.1.8. The Owner shall not be deemed in default by reason of withholding payment while any such defaults remain uncured.

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

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. Should Contractor neglect or refuse to cause to be paid promptly any bill or charge legitimately incurred by it for any Subcontractors, suppliers or material men, Owner shall have the right, but not the obligation to pay the bill directly, and Contractor shall immediately reimburse Owner for same, provided Owner notifies Contractor of its intent to pay such bill directly and Contractor fails to provide Owner, within five (5) days following Owner's written notice of an acceptable explanation regarding Contractor's failure to promptly pay the bill or charge legitimately incurred by Contractor. If Contractor does not reimburse Owner, Owner may offset the amount of the bill against amounts owed by Owner to Contractor hereunder, provided owner notifies Contractor of its intent to offset the amount of the bill against amounts owed by Owner to Contractor and Contractor fails to reimburse Owner, within five (5) days following Owner's written notice. Owner shall have the further right to pay sums due to any Subcontractor or vendor by joint check payable to Contractor, and each such Subcontractor and Sub-subcontractor or vendor, provided Owner notifies Contractor of its intent to issue joint checks and Contractor fails to provide Owner, within five (5) days following Owner's written notice of an acceptable explanation regarding Contractor's failure to pay its Subcontractors, material suppliers and

vendors of every tier. Payment in any such manner shall constitute payment hereunder and complete satisfaction of Owner's obligations under the Agreement and the full amount of such payment, whether paid to Contractor, issued jointly or paid directly to the Subcontractors, suppliers, vendors or material men, shall be credited against the Contract Sum set forth in the Agreement. The determination of the manner of payment shall be at the option and discretion of Owner, and Owner shall have no duty or obligation to make payments jointly or directly to third parties, nor shall any Subcontractor, supplier, vendor or material men or Lender of Contractor, or any other party, be or have the rights of a third party beneficiary with respect to the foregoing.

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

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

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

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

§ 9.6.8 With each Application for Payment, Contractor shall furnish a conditional waiver and release of lien for itself, each Subcontractor who furnished labor, equipment, materials or services to the project, and each material man and vendor who furnished materials to the Project during the period covered by the Application for Payment. Upon each payment by Owner, Contractor shall execute and cause all material men, vendors and Subcontractors to execute an unconditional waiver and release of lien acknowledging receipt of all payments due through the period covered by the previous Application of Payment. The conditional and unconditional waivers and lien releases shall be in form as required by Arizona Revised Statutes, Section 33-1008, and Contractor shall deliver the executed unconditional releases to Owner with its next succeeding Application for Payment, including the Final Application for Payment, to assure an effective waiver of mechanic's or material men's liens in compliance with the laws of the State of Arizona. In addition to providing lien releases (provided Owner makes payment as required by Contract), Contractor shall indemnify and hold the Owner and Lender harmless from and against any and all liens and charges of every type, nature, kind or description which may at any time be filed or claimed against the Project, or any portion thereof, or the improvements situated thereon, including attorney's fees, as a consequence, direct or indirect of any act or omission of the Contractor, his agents, servants, employees, suppliers, Subcontractors or any of all of them. From time to time as reasonably required by Owner or Lender, Contractor shall furnish to Owner and Lender an affidavit, subordination and lien waiver agreement executed by Contractor and each Subcontractor which has furnished and supplied or will furnish or supply materials and services in connection with the prosecution of the Work, which agreement shall be in form and substance performed or materials to be furnished pursuant to the Contract documents to the liens and security interest securing payments of any loan made for the Project by Lender, and shall furnish a release of liens for Work performed and materials furnished up to the date of execution of such agreement to the extent of such party has been paid. Further, each such party shall certify that all amounts owing to such party for the Work through the date of such agreement have been paid in full, or if paid in full, such agreement shall set forth such amounts which have not been paid through the date of such agreement.

§ 9.6.9 If Owner has made payment as required by the Contract and the Contractor fails to cause any lien to be removed from the Project or any stop notices to be negated, Owner may employ whatever means it may, in its sole discretion, to cause the lien to be removed and the effect of any stop notices or other notices to be negated. Contractor shall, upon demand, reimburse Owner for all costs, including, without limitation, actual attorney's fees incurred by Owner in connection with any suit, lien, or stop notice. Owner may offset any such costs against amounts otherwise owing to Contractor hereunder.

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, provided however, that as a condition precedent to Substantial Completion, the Contractor has completed all Work necessary for Certificates of Occupancy and any other permits, approval, licenses, and other documents from any government authority having jurisdiction thereof and within Contractor's control necessary to the beneficial occupancy of the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Each item on the list shall be clearly described so that a person not familiar with the Project can understand the corrective Work involved. Each item shall be properly located with interior rooms indicated by name and number, walls by direction (north, south, east or west). Exterior items shall be listed by orientation consistent with the building elevations or other recognizable landmarks. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.2.1 This "List of Items" or "Punch List" shall be prepared by the Contractor and submitted to the Architect, who will review it for general completeness. If both submittals are deemed acceptable to the Architect, and inspection of the Project will be made by the Architect, Owner, Contractor and any consulting engineers and subcontractors who have any interest in items on the "Punch List". The Contractor has the responsibility for organizing, maintaining and providing any multiple "List of Items" or "Punch Lists" to those responsible for performing the corrective Work. All such lists shall be assembled and submitted by the Contractor to the Architect for subsequent attachment to the Certificate of Substantial Completion.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, which shall be within the Contract Time unless extended pursuant to Paragraph 8.3, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 The Contractor, within seven (7) days after completion of the Work as established by the Owner's and Architect's decision that the list of items to be completed or corrected in generally satisfied, shall notify the Architect and Owner, in writing, requesting that a final inspection be made by the Owner and Architect. The Architect and Owner, upon receipt of the Contractor's written request, shall within seven (7) days, notify the Contractor of the exact time and date of the final inspection of the Project will be made. It is mandatory that the Contractor furnish and deliver to the Owner and Architect at the final inspection a complete conditional release of all items arising out of this Contract, or receipt in full and an affidavit that so far as he has knowledge or information, the releases and receipts include all labor and materials for which a lien could be filed. The Contractor shall also furnish at the final inspection all warranties, guarantees, Operation Manuals and As-Builts as specified for the Project. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection as provided in this Paragraph 9.10 and, when the Owner and Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All Operations Manuals and As-Builts, warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and ~~(5),~~ (5) receipt of all operating manuals, as-builts and warranty information, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner or Owner's Lender, (7) the grounds for withholding certification of payment as set forth in Paragraph 9.5.1 have been removed or no longer exist, (8) completion of any punch list work items to the Owner's satisfaction, and (9) evidence of compliance with all

requirements of the Contract Documents; Notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents, including, but not limited to (a) instructions of Owner's representative in the operation of mechanical, electrical, plumbing and other systems, (b) delivery of keys to Owner with keying schedule, master, sub-master, and special keys, (c) delivery to Owner and Architect of Contractor's General Warranty (as described in Paragraph 3.5) and each written warranty, guarantee, Operation Manual and As-Built for the project and assignment thereof prepared in duplicate, certificates of inspections, (d) delivery to Architect of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work, parts lists and special tools for mechanical and electrical work, in approved form, (e) delivery to Owner of an unconditional final lien waiver and release as required by Arizona Revised Statutes, Section 33-1008. In addition to the Owner, foregoing all other submissions required by other articles and paragraphs of the Specifications, shall be submitted to the Architect before approval of Final Payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If Contractor does not provide a lien bond and such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.
- .4 faulty or defective Work appearing after Substantial Completion; or
- .5 latent, faulty or defective Work unknown to Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction

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

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

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

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

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

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

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

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

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from

performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

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

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

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

Prior to the performance of any Work, the Contractor and all Subcontractors shall obtain at their cost and maintain in force the following insurance coverages:

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: Worker's Compensation and Employers' Liability. Workers' compensation insurance shall be in accordance with the statutory requirements of the State where the project is located. Employers' liability insurance shall be at limits not less than:

- .1 — claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 — claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 — claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 — claims for damages insured by usual personal injury liability coverage;
- .5 — claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 — claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 — claims for bodily injury or property damage arising out of completed operations; and
- .8 — claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

(a) \$1,000,000 each accident for bodily injury by accident;

(b) \$1,000,000 for bodily injury by disease; and

(c) \$1,000,000 policy limit for bodily injury by disease.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an

occurrence or claims made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Automobile Liability Insurance. This coverage shall cover all operations of the Contractor pursuant to this Contract involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability. Pollution liability coverage for vehicle overturn and collision will be included.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. Commercial General Liability: Commercial general liability insurance for all of contractor's operations away from the Project site, insuring against bodily injury, personal and advertising injury and property damage and including the following coverages: (i) blanket broad form contractual liability, (ii) broad form property damage, (iii) products and completed operations, with occurrence coverage following Substantial Completion of the Work, (iv) incidental medical malpractice, and (v) and explosion, collapse and underground property damage. The commercial general liability policy shall contain severability of interest provision, and shall have not less than the following limits of liability:

\$1,000,000	<u>General Aggregate Limit (Excluding Products/Completed Operations)</u>
\$1,000,000	<u>Products/Completed Operations Aggregate Limit</u>
\$1,000,000	<u>Personal & Advertising Injury Limit</u>
\$1,000,000	<u>Per Occurrence Limit (Bodily Injury & Property Damage Combined)</u>
\$ 250,000	<u>Fire Damage Limit (Any One Fire)</u>
\$ 2,000	<u>Medical Expense Limit (Per Person)</u>

§ 11.1.4 Contractor and all Subcontractors, as their interests may appear, are responsible for providing "all-risk property insurance" (special form coverage) for materials to be incorporated into the Work that are in their possession at a location other than the job site or designated premises covered by the Owner's Builder's Risk policy. Contractor or subcontractor bears all risk of loss to materials that are being fabricated, stored, assembled, etc. at a site other than the Project Site or designated staging area. Contractor or subcontractor shall bear all risk of physical loss for materials that are in transit to their facilities. Owner's Builder's Risk policy shall be endorsed to cover the risk of loss in transit for materials intended to be incorporated into the project that are in actual transit to the physical site of Work or the designated staging area.

§11.1.5 Excess Liability: Excess liability insurance insuring against bodily injury, personal injury and property damage, with all of the coverages described in Subparagraphs 11.1, 11.2, and 11.1.3, the excess liability policy shall have not less than the following limits of liability:

\$10,000,000	<u>Per Occurrence Limit</u>
\$10,000,000	<u>General Aggregate Limit</u>
\$10,000,000	<u>Products-Completed Operations Aggregate Limit</u>

Excess limits for all subcontractors shall be not less than \$1,000,000 per occurrence/ \$1,000,000 general aggregate limit/ \$1,000,000 products-completed operations aggregate limit.

§11.1.6 Additional Coverages to be provided by the Contractor:

Pollution liability coverage (by Contractor only); and
Employee benefits liability coverage.

§11.1.7 The parties agree and stipulate that the Contractor shall not be under any obligation whatsoever to carry its own general liability insurance for the Project or to provide a certificate for general liability insurance for the Project or to name Owner as an additional insured under Contractor's policies of general liability insurance or to provide

any endorsements thereof to the Owner, except as applicable to the other insurance coverages referenced in Subparagraphs 11.1.1 through 11.1.6. The insurance to be provided by the Contractor in accordance with Subparagraphs 11.1.3 and 11.1.5 shall cover only Work performed at locations other than the Project Site.

§11.1.8 All Subcontractors shall be required to provide insurance policies in amounts and in forms reasonably satisfactory to Owner. Minimum requirements for all Subcontractors shall be as outlined in Contractor's standard form of Subcontract for Commercial General Liability, workers' compensation and employer's liability, and automobile coverages required above.

§ 11.2 OWNER'S LIABILITY INSURANCE Insurance to be Provided by the Owner

§ 11.2.1 The Owner shall procure, maintain, and pay the premiums for an Owner-Controlled Insurance Program (the "OCIP") which shall provide the insurance coverages described in this Subparagraph 11.2.1, and shall name as insureds the Owner, Owner's Consultants, Contractor and Covered Subcontractors (as defined in Subparagraph 11.2.2). Prior to the start of construction, Owner shall pay, or shall make suitable arrangements for payment of, all premiums required for the OCIP to remain in full force and effect for the period specified in Subparagraph 11.4.14. Owner agrees that the OCIP will provide primary general liability insurance coverage to Owner and Contractor for covered claims, demands, losses or damages arising out of Contractor's Work on or relating to the Project. Said OCIP commercial general liability policy shall be provided by _____ pursuant to policy no. _____, effective from _____ through _____, and shall provide limits as follows:

\$2,000,000	General Aggregate Limit (Excluding Products/Completed Operations)
\$2,000,000	Products/Completed Operations Aggregate Limit
\$2,000,000	Per Occurrence Limit (Bodily Injury & Property Damage Combined)
\$2,000,000	Personal/Advertising Injury
\$ 0.00	Medical Expense Limit (Per Person)
\$5,000,000	Excess Liability Policy
\$50,000	Per Occurrence SIR

The OCIP shall not exclude subsidence coverage. Defense costs shall be included inside the policy limits and within the SIR.

Owner shall defend, indemnify and hold harmless Contractor and its Subcontractors and suppliers from any and all claims, losses, third party claims, costs, and damages, that are otherwise covered by the OCIP language but are beyond the then available coverage.

§11.2.2 Each eligible and enrolled Subcontractor shall be deemed a "Covered Subcontractor" and shall be provided the insurance coverages described in Subparagraph 11.2.1, provided that (a) the subject Subcontractor shall have delivered to the OCIP Administrator the enrollment information requested by the OCIP Administrator, in form and detail satisfactory to the OCIP Administrator, and (b) the OCIP Administrator shall have issued a certificate of insurance to the subject Subcontractor.

§11.2.3 The Contractor shall be responsible for requiring that each Subcontractor who is not a covered Subcontractor procure and maintain the insurance coverages described in Subparagraphs 11.1.1 through 11.1.5 inclusive.

§11.2.4 Owner and Contractor agree that the liability of Contractor for any acts, errors, omission, contributions or indemnity arising out of or related to the work to be performed on the Project under the Contract Documents or in any way related to the Project shall be limited as prescribed at Paragraph 4.3.2 of the Contract and Paragraph 12.4.1 herein.

§11.2.5 DBH Resources, Inc. ("the OCIP Administrator") shall be the Owner's representative for purposes of administering the OCIP. The address of the OCIP Administrator is as follows:

3415 S. Sepulveda Blvd. Suite 900
Los Angeles, CA 90034 Toll Free: 877-222-4777

§11.2.6 Compensation payable to the Contractor for performance of the Work shall not include any costs of the insurance coverages described in Subparagraph 11.2.1. The Contractor certifies for itself, and shall use its best

efforts to obtain certificates from each Covered Subcontractor, that no cost for insurance within the coverage and limits of insurance provided by the Owner under the OCIP has been or will be included in any direct cost to be reimbursed or otherwise compensated for under any contract, purchase order, change order or other request for payment in connection with the Work.

§11.2.7 Contractor shall not, by reason of its inclusion in the OCIP, incur any liability for payment of any premiums for the insurance provided by Owner hereunder; however, Contractor shall account to Owner for credits owed from Subcontractors who included insurance costs in their bids for coverage now provided by the OCIP.

§11.2.8 The Contractor shall cooperate with the Owner, the OCIP Administrator and the OCIP Insurers in the adjustment of claims arising out to or in connection with the Work.

§11.2.9 The Contractor shall not violate or knowingly permit to be violated any conditions of the policies of insurance to be furnished by the Owner under the OCIP.

§11.2.10 Intentionally Omitted.

§11.2.11 The parties agree and stipulate that the Contractor shall not be under any obligation whatsoever to carry its own general liability or excess liability insurance for the Project, or to provide a certificate for general liability or excess liability insurance for the Project, or to name Owner as an additional insured under Contractor's policies of general liability or excess liability insurance, or to provide any endorsements thereof to the Owner, except with reference to the insurance coverages for Commercial General Liability, Workers' Compensation, and Auto Liability, as reflected in Section 11.1 above.

§11.3 § 41-2 OWNER'S LIABILITY INSURANCE

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

§ 41.3.1 § 41.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual such liability insurance as Owner believes necessary and prudent for its sole protection.

§ 41.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 41.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 41.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 41.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE

§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" (Special Causes of Loss) or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by

this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

§ 11.4.1.3 If the property insurance requires deductibles, the Owner shall pay advance such deductibles and costs not covered because of such deductibles. Ultimately, the party responsible for the loss shall pay such deductible and costs upon Owner's demand.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. The Builder's Risk policy will only cover materials on the jobsite, designated remote staging area, and at a Temporary Location, such as when the material is in transit to the jobsite. The Builder's Risk policy does not cover the Contractor or Subcontractor owned or rented business premises, nor manufacturing or fabrication sites.

§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to ~~fire or other hazards~~, hazards fire or any hazard, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or ~~other~~ any hazards however caused.

§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permitted by the policy or policies, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.4.6 ~~Before an exposure to loss may occur~~, the Owner shall upon written request file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. ~~Each policy shall contain all~~

generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain Owner shall endeavor to have each policy include a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor. The OCIP Administrator shall make loss runs available to Contractor upon Contractor's reasonable written request.

§ 11.4.7 Waivers Waiver of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, validity. The Contractor and Owner will require all insurance policies in any way related to the Work and secured and maintained by either of them to include clauses stating that each underwriter will waive all rights of recovery, under subrogation or otherwise, against the Owner, the Architect, Contractor, Subcontractors, or their directors, officers, representatives, agents and employees. The Contractor will require of Subcontractors, by appropriate written agreements, similar waivers each in favor of other all parties enumerated herein. herein in this subparagraph. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary in good faith and made payable to the Owner as fiduciary in good faith for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§11.4.9 § 11.4.10 The Owner as fiduciary in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power: if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary in good faith shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§11.4.10 Policy and Carrier Requirements. All policies required of the Contractor or Owner pursuant to this Contract shall be maintained with insurance carriers which are: (a) authorized to do business in the State of Arizona; and (b) rated by A.M. Best Company to be A minus VII or better. Neither party shall cancel or allow such policies to lapse without first giving thirty (30) days prior written notice to the other party, provided that such notification is commercially and reasonably available.

§11.4.11 Certificates of Insurance. The parties shall provide one another Certificates of Insurance from each of their respective insurers. Each certificate shall evidence all requirements set forth in this Article 11, including the amounts of coverage, policy endorsements and coverage renewals as necessary to comply therewith. Each

certificate shall also be endorsed with an acknowledgement that the policy shall not be cancelled or not renewed, without thirty (30) days prior written notice to the Owner and/or Contractor provided that such notification is commercially and reasonably available. A failure to demand such Certificate or other evidence of full compliance with these insurance requirements or failure to identify a deficiency from evidence provided will not be construed as a waiver of either party's obligation to maintain such insurance. The acceptance of delivery of any Certificate of Insurance evidencing the required coverages and limits does not constitute approval or agreement that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements. The Owner will have the right, but not the obligation, of prohibiting the Contractor or any Subcontractor from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Owner. In addition, the Contractor shall not have any obligation to mobilize to the site and start work unless and until the Owner's insurance requirements have been met and satisfactory proof thereof has been provided to Contractor in the form of a certificate of insurance. If the Contractor fails to maintain the insurance as set forth herein, the Owner will have the right, but not the obligation, to purchase said insurance at the Contractor's expense. Alternatively, either party's failure to procure or maintain the required insurance may result in termination of this Contract for default. If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage will be submitted with the Contractor's final invoice.

§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.4.12 Deductibles. If any policy (except Builder's Risk) required to be purchased pursuant to this Contract is subject to a deductible, self-insured retention (SIR) or similar self-insurance mechanism which limits or otherwise reduces coverage, the deductible shall be handled in the following manner. The Contractor shall use its best efforts to collect the applicable deductible from the responsible Subcontractor(s) within thirty (30) days of the Owner's demand therefor. If at the end of such thirty (30) day period the responsible Subcontractor has not paid its applicable deductible for its scope of work, then payment of that Subcontractor's deductible shall be the joint responsibility of the Owner and Contractor to be shared equally (50/50). However, in no event shall Contractor's share exceed \$25,000 for any one occurrence and such payment represents Contractor's sole responsibility for any covered event, claim condition, or loss. Owner shall remain exclusively responsible for any SIR obligations relating to a covered event, claim, condition, or loss and to any deductible applicable to the Builder's risk policy.

§ 11.4.13 Duration. All Automobile Liability and Worker's Compensation insurance required by this Contract shall be kept in force without interruption until final completion of the Work. The Builder's All-Risk Insurance shall remain in force until the Contractor has achieved Substantial Completion of the Work in its entirety. The OCIP insurance program provided by Owner shall ensure coverage and remain in effect for 108 months after Substantial Completion of all Work, and shall provide for two years beyond the 108 month coverage period within which claims may be filed for injury or damage occurring within the coverage period.

§ 11.4.14 Cooperation by the Parties. The Owner and the Contractor shall fully cooperate with each other in connection with the collection of any insurance monies that may be due in the event of a loss. The Owner and the Contractor shall promptly execute and deliver such proofs of loss and other instruments, which may be required for the purpose of obtaining recovery of any such insurance monies.

§ 11.4.15 Primary Insurance. All coverages provided by Owner in the OCIP policy will be primary, except for the automobile and workers' compensation coverage, employer's liability insurance provided by Contractor. It is the intention of the parties that the Owner's OCIP policy shall be primary as to all covered damages in connection with the Work.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 If requested by Owner, Contractor shall obtain a Performance Bond and Labor & Material Payment Bond in the amount of One Hundred Percent (100%) of the applicable Contract Sum prior to the commencement of the work. Contractor shall deliver its required bonds no later than the date of execution of the Agreement, or if the Work is commenced prior thereto in response to a Notice of Proceed, the Contractor shall, prior to commencement of the

Work, submit evidence satisfactory to Owner that such bonds will be issued. The cost of the reference bonds is specified excluded from this contract and a requirement for same must be through a change order. The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§11.5.2 Contractor shall require one hundred percent (100%) enrollment of all subcontractors whose contracts exceed \$100,000.00 in the Subguard Insurance policy.

~~§ 11.5.2~~ §11.5.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make or assert a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

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

§ 12.2.3 The Other than damage or loss insured under the OCIP or Builder's Risk policy, the Contractor shall remove from the site portions of the Work which that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

§ 12.4 RIGHTS AND REMEDIES

§ 12.4.1 Notwithstanding any other provision of the Contract Documents, and for the period after the expiration of Contractor's warranty terms, Contractor's cumulative liability hereunder shall be limited to its Fee for any claim of or liability to the Owner, including liability for claims covered by the OCIP, liquidated damages, latent defect claims, or any other claim in tort, contract, indemnity or at equity which Owner may have against Contractor. Regardless of this limitation on Contractor's ultimate liability, Contractor shall cooperate and work with Owner to assist in recovering against the OCIP policy and/or any responsible Subcontractor and its surety. This limitation shall not relieve Subcontractors, suppliers or their sureties from liability for any losses or claims that relate to their respective scopes of work. If Contractor satisfies any claim or demand within this liability limitation, then Contractor shall retain the right to recover from the OCIP, and/or seek indemnity against a responsible Subcontractor and its surety. If Owner's claims against Contractor exceed the limitation set forth herein, then Contractor and Owner shall share any recovery from the OCIP, the responsible Subcontractor or any surety on a pro rata basis until Contractor has been fully indemnified. Thereafter, Owner shall be entitled to all OCIP recovery.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located located 10% per annum.

§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

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

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if Owner is otherwise guilty of a material breach of a provision of the Contract Documents or if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, and profit and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

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

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 the Contractor becomes the subject of a bankruptcy or similar state law proceeding or becomes insolvent or a trustee, receiver, custodian or agent is appointed to take charge of the property of the Contractor, subject to the surety's exercise of the right to complete the Project; or
- .6 Otherwise does not fully comply with the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor ~~and~~ and, if Contractor fails to take reasonable steps within the seven days to begin to cure such default. The Owner may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. subject to Contractor's rights under 14.1.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, ~~and~~ and all associated costs incurred by reason of such termination, along with a minimum fee of \$500,000.00 for reasonable overhead and profit on the Work not executed. Expenses exceeding \$11,000,000.00, but below \$18,000,000.00, shall be reimbursed to Contractor at a rate of 6% above cost. Expense above \$18,000,000.00 shall be reimbursed, plus a standard fee multiplier of four and a half percent (4.5%).



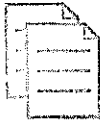
PROJECT: X (TEN) Lofts
 Date
 Created: 1/3/2006
 Updated: 4/20/06 10:18 AM

Exhibit "A"

Value Engineering to the GMP for X Lofts

	Value Engineering	Cost	Accepted	Subcontractor
1	Re-design of gas piping system, not shown on Bid Drawings	VOID		
2	Provide Wirsbo piping in lieu of copper piping. Main lines to remain Copper	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Salt River Plumbing
3	Submetering of water for each Resident unit, including electrical power, and meter prep by plumber. Hardware, Software, & Hook-up by Ista. Excludes applicable taxes.	VOID		
4	Delete Vapor Barrier under garage slab. (Excluded by Concrete Subcontractor)	Not included in Bid	X	
5	Use R11 in lieu of R19 between floors- Base Bid has R19	Deduct from Bid	X	
6	Reduce 200 amp breaker to each unit. 150 amp is standard. This will reduce the gear package also. Change wire from copper to aluminum to sub panels. Verify load calcs. With actual equipment loads.	Deduct from Bid	X	Hilty-Verbal 2-14-06
7	Decrease the amount of sand substrate for brick pavers from 7" to 3" thick. The difference in thickness needs to be changed to ABC or alternate material.	VOID		
10	Delete Independent air balance from base bid	Deduct from Bid	X	HACI
11	Provide Lennox equipment instead of specified Carrier equipment	Deduct from Bid	X	HACI
12	Substitute deck material around pool and spas.	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Central Valley
13	Change toilet spec from Kohler to Toto.	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Salt River Plumbing
15	Delete Spa @ raised deck	Deduct from Bid	X	Hop Cassidy
16	Delete gas piping to ranges and dryers.	Deduct from Bid	X	Salt River Plumbing
17	Colored concrete @ Podium deck in lieu of brick pavers	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Central Valley
18	Delete 3" off of topping slab under resident units.	VOID		
19	Down-size High Roof areas (6 Locations)	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Various Trades
20	Delete landscape pots at Podium deck.	Deduct from Bid	X	Freebird Landscaping
21	Change toilet accessory specifications	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Salt River Plumbing
21a	1/4" shower glass, Taymor Maxwell Accessories-Chrome (Does not include amenity buildings)	Deduct from Bid	X	Cohaco
21b	3/16" shower glass, Taymor Sunglow Accessories-Chrome (Does not include amenity buildings)	VOID		
21c	1/4" Shower glass, Kohler Coralais Accessories- Brushed Chrome (Does not include amenity buildings)	VOID		
21d	3/16" Shower glass, Kohler Coralais Accessories- Brushed Chrome (Does not include amenity buildings)	VOID		
21e	Add Medicine cabinets in 1 bath only of each unit	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Cohaco
21f	Add Wire Shelving at Resident units	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Cohaco
21g	Add Melomine Shelving at Resident units	Add/Deduct from Bid	Pending Pricing & Owner Acceptance	Cohaco
22	Change gypsum drywall finish from level 5 to medium knockdown	VOID		
23	Change Founders block from 4" to 8"	Deduct from Bid	X	Sun Valley Masonry
24	Use 8x4x16 solid gray cmu in place of Arch precast wall caps	Deduct from Bid	X	Sun Valley Masonry
26	Block to 8x8x16 gray cmu (Pool Equip Room, etc.)	Deduct from Bid	X	Sun Valley Masonry
27	Change window to Bronze Paint ILO Bronze Anodize	Deduct from Bid	X	Untouchables
28	Change L copper to Type M copper	Deduct from Bid	X	Salt River Plumbing
29	DOUBLE UP: Change Garbage Disposal to 3/4 HP to 1/2 HP	Deduct from Bid	X	Salt River Plumbing
30	Change all 1 7/8" P-trap to PVC plastic	Deduct from Bid	X	Salt River Plumbing
31	Change C.I. Drain & Vent pipe above 1st floor to PVC - will require much more firestopping material and sound insulation	Deduct from Bid	X	Salt River Plumbing
33	Change cast iron roof drain pipe to PVC drain & Overflow	Deduct from Bid	X	Salt River Plumbing
34	Provide 1/2" duct liner in all rectangular supply ductwork in lieu of duct wrap	Deduct from Bid	X	HACI
35	Use Cook Gemini instead of Cook GC exhaust fans for all EF tags in the condo units	Deduct from Bid	X	HACI
	TOTAL PROPOSED:	Add/Deduct from Bid		
		(\$1,312,723.00)		



 COPY

PROJECT: X (TEN) Lofts
Date
Created: 1/3/2006
Updated: 4/20/06 10:18 AM

Exhibit "B"
Labor Rates included in the GMP for X Lofts


PERSONNEL RATE SCHEDULE-ARIZONA
RATES EFFECTIVE JULY 1,2005

Position	Hourly Rate*
Vice President, Construction	92.78
Construction Director / Project Executive	90.14
Senior Project Manager	81.56
Project Manager	64.56
Assistant Project Manager	52.50
Senior Construction Manager	76.87
Construction Manager	62.35
Assistant Superintendent	42.25
Project Engineer	41.28
Project Accountant	39.04
Project Coordinator	36.84
Project Secretary	20.28
Punch Crew	30.42
General Laborer	21.97
Carpenter	34.97
Intern	20.28

*All rates are increased 5% on July 1 of Each Year

Summit builders AZ G1 Rates 7-1-05



 **COPY**

PROJECT: X (TEN) Lofts

Date Created: 1/3/2006

Updated: 4/21/06 11:23 AM

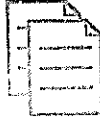
Exhibit "C"

Addendums included in the GMP for X Lofts

Summit Builders has acknowledges the following items in Addendum #1, dated January 16, 2006. Items not included in GMP must be approved by the owner, and will be an addition to the GMP Contract. Due to the timing and receipt of the Addendum, some items were not bid out, and therefore not included in the GMP.


Item #	
1	Included in the GMP
2	Included in the GMP
3	Included in the GMP
4	Included in the GMP
5	Included in the GMP
6	Included in the GMP
7	Included in the GMP, any changes will be included in upgrade pricing
8	NIC
9	Included in the GMP
10	Included in the GMP
11	Included in the GMP
12	Included in the GMP
13	Included in the GMP
14	Included in the GMP
15	Included in the GMP
16	Included in the GMP
17	Included in the GMP
18	Included in the GMP
19	Included in the GMP
20	Included in the GMP
21	Included in the GMP
22	NIC
23	Included in the GMP
24	Included in the GMP
25	Included in the GMP
26	Included in the GMP
27	Included in the GMP
28	Included in the GMP
29	NIC



 COPY


30	Included in the GMP, only details 3,5,6/A1.4 are included as precast. All other locations are CMU or Cast in Place Concrete
31	NIC
32	NIC
33	Included in the GMP
34	NIC
35	Included in the GMP
36	Included in the GMP
37	Included in the GMP
38	Included in the GMP
39	Included in the GMP
40	NIC
41	Included in the GMP
42	Included in the GMP
43	Included in the GMP
44	Included in the GMP
45	Included in the GMP
46	Included in the GMP
47	Included in the GMP
48	Included in the GMP
49	Included in the GMP
50	Included in the GMP
51	Included in the GMP
52	Included in the GMP
53	Included in the GMP
54	Included in the GMP
55	Included in the GMP
56	Included in the GMP
57	Included in the GMP
58	Included in the GMP
59	Included in the GMP
60	Included in the GMP, allowance only due to lack of spec, pending owner selection
61	Included in the GMP
62	Included in the GMP
63	Included in the GMP
64	Included in the GMP
65	Included in the GMP
66	Included in the GMP
67	Included in the GMP
68	Included in the GMP



 COPY

69	Included in the GMP
70	Included in the GMP
71	Included in the GMP
72	Included in the GMP
73	Included in the GMP
74	Included in the GMP
75	Included in the GMP
76	Included in the GMP
77	Included in the GMP
78	Included in the GMP
79	Included in the GMP
80	Included in the GMP
81	Included in the GMP
82	Included in the GMP
83	Included in the GMP
84	Included in the GMP
85	Included in the GMP
86	Included in the GMP
87	Included in the GMP
88	Included in the GMP
89	Included in the GMP
90	Included in the GMP
91	Included in the GMP
92	Included in the GMP
93	NIC
94	NIC
95	Included in the GMP
96	Included in the GMP
97	Included in the GMP
98	Included in the GMP
99	Included in the GMP
100	Included in the GMP
101	Included in the GMP
102	Included in the GMP
103	Included in the GMP
104	Included in the GMP
105	Included in the GMP
106	Included in the GMP
107	Included in the GMP
108	Included in the GMP
109	Included in the GMP



 COPY

110	Included in the GMP
111	Included in the GMP
112	Included in the GMP
113	Included in the GMP
114	Included in the GMP
115	Included in the GMP
116	Included in the GMP
117	Included in the GMP
118	Included in the GMP
119	Included in the GMP
120	Included in the GMP
121	Included in the GMP
122	Included in the GMP
123	NIC
124	Included in the GMP
125	Included in the GMP
126	Included in the GMP
127	NIC, or only as shown on plans and specifications



Architecture/
 Planning/
 Landscape
 Architecture

COPY
RECEIVED

JAN 17 2006

00910 (00 91 13.00) ADDENDUM #001

January 16, 2006

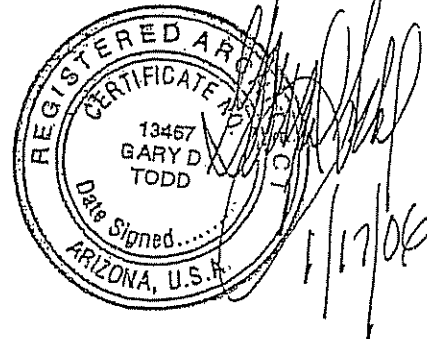
Re: 'X' (Ten) Lofts
 7126 E. Osborn Road
 Scottsdale, Arizona]

T&A Project #04-2085-01

The original Contract Documents dated 12/13/05 are modified or interpreted as stated herein. Receipt of this Addendum shall be acknowledged by inserting its number and date in the space provided on the Bid Form. Failure to acknowledge may subject bidder to disqualification.

GENERAL MODIFICATIONS TO DOCUMENTS

1. See Mechanical Plans and Architectural Detail 4/A8.1.3.
2. Item 1 – Added note for trench drain to north of entrance.
3. Item 2 – Concrete grades have been added to plans.
4. Item 3 – Meters are required to be within the right-of-way or an easement. Ownership has decided that the meters work at their current locations. It is not necessary to move them and have to dedicate an easement for them.
5. Item 4 – Contractor is responsible for the sewer tap.
6. Item 5 – The saw-cut for the utilities is shown and needs to be done by the contractor.
7. Item 6 – Civil plan has been updated and should match the mechanical plans.
8. Item 7 – See Detail 8/A6.3 for typical threshold detail. No special detail required.
9. Item 8 – Electrical to add buzzer to plans.
10. Item 9 – No flagpole note removed.
11. Item 10 – Contractor
12. Item 11 – Contractor
13. Item 12 – See Detail 10/A1.4
14. Item 13 – Refer to Detail 1/A1.3
15. Item 14 – Run drywall behind tubs to maintain fire/sound rating. Detail 21/A7.2 revised.



04-2085-01
 January, 2006

00910 (00 91 13.00)-1

'X' (Ten) Lofts
 Addendum #001

16. Item 15 – Refer to Detail 7/A1.4.
17. Item 16 – Elevator to have HVAC per mechanical. Elevator is also to have lighting, per electrical and have sprinklers at top of shaft.
18. Item 17 – Details reference A8.1.3 and AB.3.1.
19. Item 18 – Color per Detail 15 & 18 on A1.3. Frazee Wild Grasses #B175D.
20. Item 19 – Use one tone for concrete ramp. Owner to pick grey color to contrast.
21. Item 20 – EP 24 Master Bond Inc. Epoxy Grey.
22. Item 21 – Modified plans to correct detail reference. 12/A1.3.
23. Item 22 – Structural to add details. Electrical to provide automatic shut-off switch and timer for fire pit.
24. Item 23 – Bike racks shown on A3.1.0.
25. Item 24 – See attached cut sheets/details for planter drains.
26. Item 25 – Details added to plans.
27. Item 26 – Pool/spa consultant to provide spa detail.
28. Item 27 – 8" wide paver at spa is acceptable with Maricopa County, per Landscape Consultant.
29. Item 28 – Contractor to verify spa construction technique with pool/spa contractor.
30. Item 29 – Contractor to supply pots. Specs for pots on Landscape plans; see Sheet L0.1.
31. Item 30 – Modified plans to say cast-in-place seatwall. 6/A1.4.
32. Item 31 – Electrical to provide lighting cut sheet.
33. Item 33 – Framed wall to 4" above top of tub. Glass partition set in sealant on top of low wall.
34. Item 34 – Down lights at bathroom lavatories. See electrical plans.
35. Item 35 – Plans revised.
36. Item 36 – Plans revised.
37. Item 37 – Washer and dryer are owner provided.
38. Item 38 – Double rod and paint grade wood shelf. Mount 3'-4" and 6'-8" a.f.f.
39. Item 39 – Plans revised.
40. Item 40 – Master baths to have dual medicine cabinets. Delete towel bars at medicine cabinet locations.
41. Item 41 – See Item 33.

- 42. Item 42 – Plans revised.
- 43. Item 43 – Refer to Item 126.
- 44. Item 44 – Plans revised.
- 45. Item 45 – Plans revised.
- 46. Item 46 – Plans revised.
- 47. Item 47 – Plans revised.
- 48. Item 48 – (6) adjustable paint grade shelves.
- 49. Item 49 – Disposal to be on dishwasher side – typical.
- 50. Item 50 – Plans revised.
- 51. Item 51 – Plans per design and owner.
- 52. Item 52 – Detail changed to 5/AB.1.1.
- 53. Item 53 – Plans revised.
- 54. Item 54 – Similar to unit 'C' floor plan.
- 55. Item 55 – Plans revised.
- 56. Item 56 – Doors are an option by the buyer upon time of purchase.
- 57. Item 57 – Build per plan.
- 58. Item 58 – Refer to plans. See Keynote 48/A2.5.
- 59. Item 59 – Added 180° hinge note to Door Schedule.
- 60. Item 60 – Selection of glass shower block by owner/interior designer.
- 61. Item 61 – Door is optional per owner.
- 62. Item 62 – Options are per owner.
- 63. Item 63 – Detail reference changed to 5/AB.3.1.
- 64. Item 64 – Keynote 7 referenced to wall below. Detail # added to Keynote 9 referencing Detail 6/AB.2.5. Attic access louvers shown on plans. Referenced louver to 4/AB.2.5. Water heater exhaust symbol removed from symbol list. For Fire Riser Room refer to 15/AB.1.3.
- 65. Item 65 – No sloping in garage, per Owner.
- 66. Item 66 – Plans revised.
- 67. Item 67 – See Item 126.
- 68. Item 68 – Plans revised.

69. Item 69 – Trusses slope away from units per plans and details.
70. Item 70 – No awning per owner.
71. Item 71 – See details 13, 14, 15, 16 & 17 for screen details. Also, see structural plans.
72. Item 72 – For typical brick element heights refer to Sheet A3.1.6.
73. Item 73 – There is to be no gutter at the clubhouse and exercise building.
74. Item 74 – Notes deleted from plans.
75. Item 75 – Modified reference to call out correct detail 4/A8.1.2.
76. Item 76 – Plans revised.
77. Item 77 – Plans revised to reference correct detail 9/A8.2.3.
78. Item 78 – Reference is correct.
79. Item 79 – Plans revised to show correct sections and section cuts.
80. Item 80 – Refer to typical stair details and sections.
81. Item 81 – A security fence is not required around the stand pipe.
82. Item 82 – For block to stud details refer to sheets A8.2.1, A8.2.2, A8.2.3, A8.2.4 and A8.2.5.
83. Item 83 – Abrasive nosing on concrete tread is not required. Note removed from plans.
84. Item 84 – Floor drain required at stair plan 7 & 8 per plumbing sheet P3.1.0. Drain added to detail 3/A5.2.
85. Item 85 – Plans revised.
86. Item 86 – Refer to stair plans for railing locations. Sheet A5.1.
87. Item 88 – Detail 14/A5.4 revised to reflect correct handrail.
88. Item 89 – Floor drain – refer to plumbing Sheet P3.1.0.
89. Item 90 – Metal with Kynar finish, for architectural mesh.
90. Item 91 – Dimensions for railing on Detail 5/A8.1.1 are acceptable.
91. Item 92 – Stucco to run behind CMU. Plans revised to reflect.
92. Item 94 – Vapor barrier to be under garage slab.
93. Item 95 – This is a typical 4" concrete cap with ½" bevel on top edge; similar to Detail 2/A1.4 on top of founders block. See also Detail 9/A8.1.1 which is similar.
94. Item 96 – Column cap added at Detail 1/A8.1.1.
95. Item 97 – Plans revised with added dimensions.

96. Item 98 – Refer to Detail 453/S7.3 for rod connection detail.
97. Item 99 – Refer to Detail 453/S7.3 for rod connection detail.
98. Item 100 – Yes, lead flashing is required. Plans revised.
99. Item 101 – Plans revised to reflect correct detail reference 35/A7.3.
100. Item 102 – Up to 8" is allowable at top of rail.
101. Item 103 – See attached specification and detail.
102. Item 104 – CMU around mailboxes. Paint. Verify paint color with owner.
103. Item 105 – Electrical to add power to plans.
104. Item 106 – See attached Acoustical Surfaces, Inc. specification.
105. Item 107 – Note added to Detail 35/A7.3 "voids created by walls and voids under tub/showers to be pre-gypcreted."
106. Item 108 – Plans revised.
107. Item 109 – See Keynote 7/E2.3. Typical.
108. item 110 – Refer to Shop Drawings.
109. Item 111 – Square beads at all locations.
110. Item 112 – Owner preference to have bedroom doors as options.
111. Item 113 – Plans revised to reference correct doors and windows.
112. Item 114 – Plans dimensioned accurately and completely.
113. Item 115 – Electrical to provide maghold at elevator doors.
114. Item 116 – Todd & Associates to provide color elevations to contractor.
115. Item 117 – See "R"/A6.1.
116. Item 118 – Handrails to be steel.
117. Item 119 – Contractor to provide alternate.
118. Item 120 – Plumbing to revise plans.
119. Item 121 – Foam protection board.
120. Item 122 – See Detail 2/L2.2.
121. Item 123 – Refer to Pot Legend Sheet L0.1.
122. Item 124 – Sheet A1.5 has been added to the set.



123. Item 125 – Refer to sheet A3.1.0 and Detail 15/AB.1.3.

124. Item 126 – Note at top of Keynote states “Not all notes used”. This is typical. In lieu of multiple note strips, this is our desired method.

Kynar metallic/silver finish for all exterior metal roofing, railing and mesh. Roofing to be factory finish. Site finish metal to be electrostatic applied.

ATTACHMENTS:

SD-1, dated 1/9/06

Railing Cable Systems Specification (05 52 20)

Acoustical Surfaces, Inc. – Cut Sheet

Garage and Planting Area Drains – Cut Sheet

Planting Area and Can Washed Drains – Cut Sheet

Prepared By: Ron Alexander, Project Manager

END OF ADDENDUM



3-Part Specification Railing Cable Systems

GENERAL NOTES TO SPECIFIER:

THIS SPECIFICATION SECTION HAS BEEN PREPARED TO ASSIST DESIGN PROFESSIONALS IN THE PREPARATION OF PROJECT OR OFFICE MASTER SPECIFICATIONS. IT FOLLOWS GUIDELINES ESTABLISHED BY THE CONSTRUCTION SPECIFICATIONS INSTITUTE, AND THEREFORE MAY BE USED WITH MOST MASTER SPECIFICATION SYSTEMS WITH MINOR EDITING.

EDIT CAREFULLY TO SUIT PROJECT REQUIREMENTS. MODIFY AS NECESSARY AND DELETE ITEMS THAT ARE NOT APPLICABLE. VERIFY THAT REFERENCED SECTION NUMBERS AND TITLES ARE CORRECT. (NUMBERS AND TITLES REFERENCED ARE BASED ON MASTERFORMAT, 2004 EDITION).

THIS SECTION ASSUMES THE PROJECT MANUAL WILL CONTAIN COMPLETE DIVISION 1 DOCUMENTS INCLUDING 01 25 13-PRODUCT SUBSTITUTION PROCEDURES, SECTIONS 01 33 00-SUBMITTAL PROCEDURES, 01 62 00-PRODUCT OPTIONS, 01 66 00-PRODUCT STORAGE AND HANDLING REQUIREMENTS, 01 74 00-CLEANING AND WASTE MANAGEMENT, 01 77 00-CLOSEOUT PROCEDURES, AND 01 78 00-CLOSEOUT SUBMITTALS. CLOSE COORDINATION WITH DIVISION 1 SECTIONS IS REQUIRED. IF THE PROJECT MANUAL DOES NOT CONTAIN THESE SECTIONS, ADDITIONAL INFORMATION SHOULD BE INCLUDED UNDER THE APPROPRIATE ARTICLES.

THIS IS AN OPEN PROPRIETARY SPECIFICATION ALLOWING USERS THE OPTION OF APPROVING OTHER MANUFACTURERS THAT COMPLY WITH THE CRITERIA SPECIFIED HEREIN.

NOTES TO THE SPECIFIER ARE CONTAINED IN BOXES LIKE THIS ONE AND SHOULD BE DELETED FROM FINAL COPY.

OPTIONAL ITEMS REQUIRING SELECTION BY THE SPECIFIER ARE ENCLOSED WITHIN BRACKETS, E.G. [35] [40] [45]. MAKE APPROPRIATE SELECTIONS AND DELETE OTHERS.

ITEMS REQUIRING ADDITIONAL INFORMATION ARE UNDERLINED BLANK SPACES, E.G. _____.

OPTIONAL PARAGRAPHS REQUIRING SELECTION OF ONE OF THE OPTIONS ARE SEPARATED BY "OR" WITHIN A BOX, E.G:

OR

OPTIONAL PARAGRAPHS AND FEATURES THAT MAY BE SELECTED OR DELETED AS DESIRED ARE SHOWN IN BOLD FACE TYPE. CONVERT THE BOLD FACE TYPE TO REGULAR TYPE WHEN INCLUDING THESE PARAGRAPHS OR FEATURES; DELETE THEM IF NOT REQUIRED FOR THE PROJECT.

REVISE FOOTER TO SUIT PROJECT/OFFICE REQUIREMENTS.

ELECTRONIC VERSIONS OF THIS SPECIFICATION UTILIZE AUTOMATIC PARAGRAPH NUMBERING.

WHEN EDITING IS COMPLETE, DELETE ALL TEXT ON THIS PAGE, THEN REMOVE THE SECTION BREAK AT THE TOP OF THE NEXT PAGE TO REMOVE THIS PAGE FROM THE DOCUMENT.

SPECIFICATION BEGINS ON THE FOLLOWING PAGE.

Initial Issue Date: January 2001
Revision 3: July 2005

SECTION 05 52 20

(MasterFormat 1995 Edition: 05720)

RAILING CABLE SYSTEMS

PART 1 - GENERAL

1.01 SUMMARY

- A. Section Includes: Stainless steel cable and fittings for railing infill.
- B. Related Sections:

INSERT SECTION NUMBER AND TITLE BELOW FOR BASIC RAILING POST AND/OR RAIL SYSTEM TO WHICH CABLES SPECIFIED HEREIN WILL BE ATTACHED. VERIFY THAT THE BASIC RAILING SECTION ALSO CONTAINS A REFERENCE TO THIS SECTION.

1. _____

1.02 SUBMITTALS

- A. Reference Section 01 33 00-Submittal Procedures; submit following items:
 - 1. Product Data.

INFORMATION FOR CABLE SYSTEM SHOP DRAWINGS IS USUALLY SHOWN ON RAILING SHOP DRAWINGS. COORDINATE WITH OTHER SECTIONS AS APPROPRIATE TO ASSURE THAT SHOP DRAWINGS INCLUDE THE NECESSARY INFORMATION. SIMPLE PROJECTS MAY NOT REQUIRE SHOP DRAWINGS.

- 2. Shop Drawings: Indicate materials, sizes, fabrication, anchorage and installation details, and lengths for cable systems on shop drawings prepared by fabricator of cable supporting structure.
 - 3. Samples: Minimum 12 inch (300 mm) length of cable and each fitting and accessory proposed for the Project. Submit items in specified finish.
 - 4. Quality Assurance/Control Submittals:
 - a. Qualifications: Proof of manufacturer's qualifications.
 - b. Manufacturer's Installation Instructions.
- B. Closeout Submittals: Reference Section 01 78 00-Closeout Submittals; submit following items:
 - 1. Maintenance Instructions:
 - a. Manufacturer's recommendation for periodic checking and adjustment of cables to maintain uniform cable tension.
 - b. Manufacturer's recommendation for periodic cleaning to remove accumulated dirt, debris, and stains.

1.03 QUALITY ASSURANCE

- A. Qualifications:
 - 1. Manufacturer Qualifications: Minimum five years experience in producing cable assemblies of the type specified.

1.04 DELIVERY, STORAGE, AND HANDLING

- A. Reference Section 01 66 00--Product Storage and Handling Requirements.
- B. Follow manufacturer's instructions.

1.05 WARRANTY

COMPLETE TEXT OF FOLLOWING WARRANTY IS AVAILABLE FROM FEENEY UPON REQUEST.

- A. Special Warranty: Stainless steel cables and connectors – 10 year limited warranty against defects in materials and workmanship.

PART 2 - PRODUCTS

2.01 MANUFACTURER

- A. Feeney Wire Rope & Rigging
2603 Union St
Oakland, CA 94607
Toll Free: (800) 888-2418
Tel: (510) 893-9473
Fax: (510) 893-9484
E-Mail: sales@feeneywire.com
Website: <http://www.cablerail.com>
- B. Product: CableRail™ cable assemblies and fittings.
- C. Substitutions: Reference Section 01 25 13--Product Substitution Procedures.

2.02 MATERIALS

- A. Cables: Type 316 stainless steel as specified below, polished finish, commercial, dry grade.
- B. Fittings:
 1. Swage Style: Type 316 stainless steel, vibratory/tumbled finish.
 2. QuickConnect-SS™: Type 316 stainless steel body, mill finish.

2.03 COMPONENTS

SELECT FOLLOWING PARAGRAPH A. "CableRail Standard Cable Assemblies" FOR STANDARD INSTALLATIONS WHERE TERMINAL POSTS HAVE AT LEAST A 3 INCH (75MM) CLEARANCE FROM WALLS OR OTHER OBJECTS AND CAN BE FULLY PENETRATED FOR ATTACHMENT OF CABLE FITTINGS. SELECT PARAGRAPH B. "CableRail™ Custom Cable Fittings and Assemblies" FOR CUSTOM INSTALLATIONS REQUIRING OTHER TYPES OR SIZES OF CABLE AND/OR CONNECTING HARDWARE DUE TO LOAD REQUIREMENTS, ORNAMENTAL DESIGN NEEDS, OR SPECIFIC/UNIQUE TERMINATION CONDITIONS.

- A. CableRail™ Standard Cable Assemblies: [1/8 inch (3.2 mm)] [3/16 inch (4.8 mm)] [1/4 inch (6.4 mm)] diameter by length as required, 1x19 construction, Type 316 stainless steel cable with a stainless steel threaded terminal factory attached to one end. Provide 2 [stainless steel] [nylon] flat washers, 1 stainless steel washer-nut, 2 [colored elastomer] [stainless steel] end caps, and 1 stainless steel QuickConnect-SS™ fitting with each assembly.
 1. Accessories: Stainless steel protector sleeves, rubber grommets, beveled washers and additional accessories as recommended by manufacturer for installation conditions.
- B. CableRail™ Custom Cable Fittings and Assemblies:

CABLE SELECTION GUIDELINES:
SELECT CABLE BASED ON LOAD REQUIREMENTS, DECORATIVE APPEARANCE AND/OR FLEXIBILITY NEEDS.

CABLE DIAMETER IS SELECTED BASED ON THE LOAD LIMIT REQUIRED FOR THE INSTALLATION AS DETERMINED BY THE PROJECT ENGINEER. FEENEY WIRE ROPE AND RIGGING CAN ASSIST WITH CABLE SIZING.

THE MORE WIRES AND STRANDS IN A CABLE, THE MORE FLEXIBLE AND LESS RESISTANT IT IS TO ABRASION. TYPICALLY, 1X19 CONSTRUCTION IS COMMON FOR STRAIGHT OR SLIGHTLY BENDING RUNS; 7X7 MAY BE USED FOR STRAIGHT RUNS OR FOR CONDITIONS REQUIRING FLEXIBILITY AND BENDING. 1X19 AND 7X7 IN 1/8, 3/16, AND 1/4 INCH DIAMETERS ARE USUALLY THE MOST COMMON FOR RAILING IN-FILL.

1X19 CONSTRUCTION HAS A TWISTED WIRE APPEARANCE WHERE AS 7X7 HAS A WOVEN, BRAIDED WIRE APPEARANCE.

TYPE 316 IS EXCELLENT FOR BOTH INTERIOR AND EXTERIOR CONDITIONS.

THE FOLLOWING CABLES ARE THE MOST COMMON IN USE. OTHER OPTIONS INCLUDING PVC AND NYLON COATED CABLES ARE AVAILABLE - CONTACT FEENEY WIRE ROPE AND RIGGING FOR INFORMATION.

1. Cable: [1/8 inch (3.2 mm) diameter, 1x19 construction, Type 316 stainless steel.]
[1/8 inch (3.2 mm) diameter, 7x7 construction, Type 316 stainless steel.]
[3/16 inch (4.8 mm) diameter, 1x19 construction, Type 316 stainless steel.]
[3/16 inch (4.8 mm) diameter, 7x7 construction, Type 316 stainless steel.]
[1/4 inch (6.4 mm) diameter, 1x19 construction, Type 316, stainless steel.]
[1/4 inch (6.4 mm) diameter, 7x7 construction, Type 316, stainless steel.]
 - a. Coating: [None] [Clear PVC] [Black PVC] [White PVC] [Custom color PVC as selected by Architect].

VERIFY THAT DRAWINGS IDENTIFY ALL HARDWARE ITEMS BY FEENEY MODEL NUMBER IF "as identified by manufacturer's model number on Drawings" IS SELECTED IN THE FOLLOWING PARAGRAPH.

2. Fittings: Type 316 stainless steel swage style terminals, turnbuckles and fixed ends and other hardware [as identified by manufacturer's model number on Drawings] [as recommended by manufacturer for installation conditions].

PART 3 - EXECUTION

3.01 EXAMINATION

- A. Examine work to which cables will be anchored or will penetrate. Coordinate with responsible entity to perform corrective work as necessary.
 1. Verify post size and cable spacing are in accordance with manufacturer's recommendations.
- B. Take field measurements and compare installation conditions to shop drawings. Notify manufacturer if field measurements vary from shop drawings.

3.02 INSTALLATION

MANUFACTURER'S INSTALLATION INSTRUCTIONS COVER PROCEDURES FOR TYPICAL INSTALLATION CONDITIONS. INSERT ADDITIONAL REQUIREMENTS AS NECESSARY TO COVER SPECIAL OR UNUSUAL CONDITIONS.

- A. Follow manufacturer's installation instructions.
- B. Isolate dissimilar metals with grommets or bushings.

3.03 CLEANING

- A. Reference Section 01 74 00--Cleaning and Waste Management.

INCLUDE FOLLOWING PARAGRAPH FOR EXTERIOR CABLES IN COASTAL AREAS.

- B. Clean cables thoroughly using synthetic scotch type pads and hot soapy water (or denatured alcohol or acetone) to remove residual lubricants; rinse thoroughly with clear water and wipe dry.

END OF SECTION



GARAGE AND PLANTING AREA DRAINS

COPY

EXTRA LARGE BUCKET GARAGE DRAIN

FUNCTION: Heavy duty floor drain with an integral trap incorporates a large sediment bucket to intercept chips and debris. Floor level cleanout provides access to sewer line and backwater valve. Used in garages and industrial areas where compact trap drain provides roughing advantages. Removable deep sediment bucket.

REGULARLY FURNISHED:

Galvanized Fabricated Steel Body with Heavy Duty Ductile Iron Grate, Suspended Bucket and Bronze Cleanout Plug.

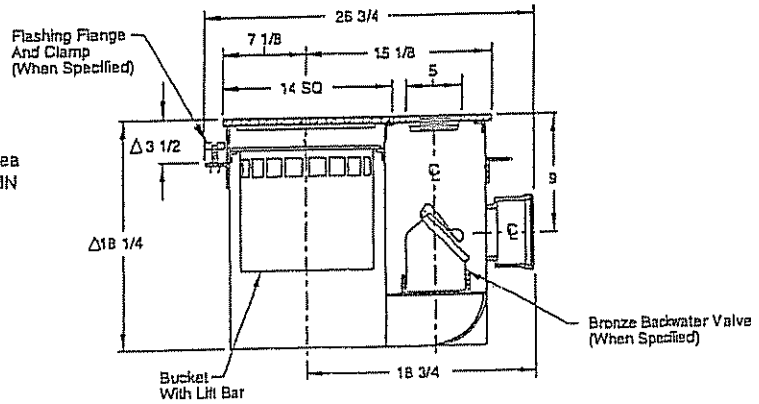
VARIATIONS:

Backwater Valve -V
Flashing Flange -F
Flashing Flange with Flashing Clamp -F-C
Vandal Proof Top -U

OPTIONAL MATERIALS:

Nickel Bronze Top -NB
Polished Bronze Top -PB

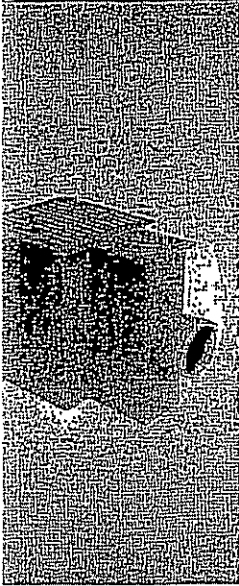
Free Area
53 SQ IN



A (Pipe Size) = 03 or 04

Fig. 2650C HUB OUTLET

Δ add 3/16" when bronze top is specified



2650

DRAINS FOR SMALL PLANTING AREAS

FUNCTION: Provides for the drainage of any excess moisture which builds up in planting or flower boxes. Heavy stainless steel mesh screen over the dome prevents soil or stones from entering the drain line.

REGULARLY FURNISHED:

Ducto Cast Iron Body, Bronze Flashing Clamp, Secured Bronze Dome with Stainless Steel Mesh Screen.

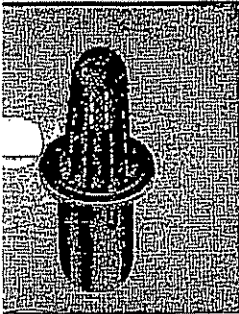
VARIATIONS:

NO-HUB Adaptor (Specify Fig. 2646Y)
Vandal Proof Dome -U

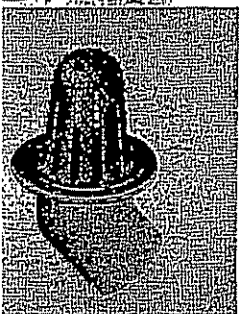
OPTIONAL MATERIALS:

Bronze Body -BB
Galvanized Cast Iron -G
Nickel Bronze Dome -NBD

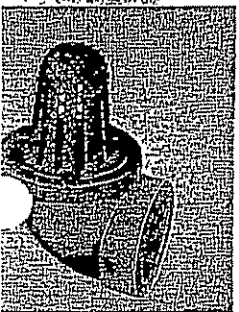
Free Area
25 SQ IN



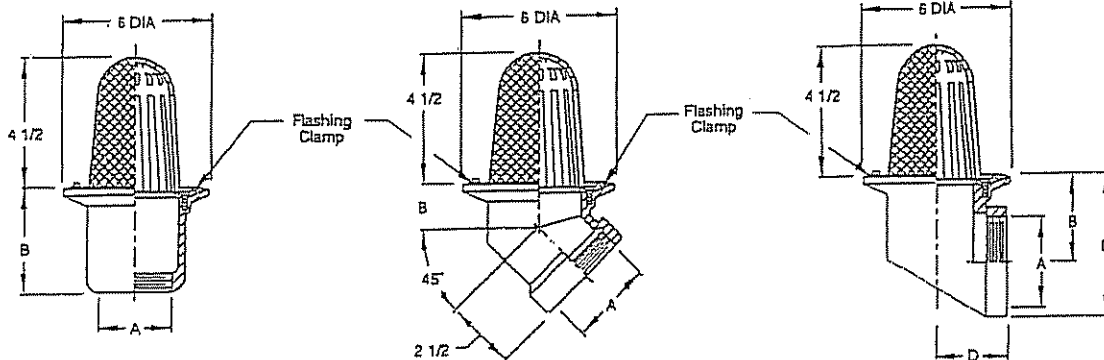
670 2671



2673



2674



THREADED OUTLET
(Caulk When Specified)

Fig. 2673T
THREADED OUTLET

Fig. 2674T
THREADED OUTLET

Fig. No.	A SIZE	B
2670T	02, 03 Thread	2
2670C	02 Caulk	
2673T	02, 03 Thread	
2673C	02 Caulk	

A SIZE	02	03
B	1 1/2	1 3/4

A SIZE	02	03
B	2 1/2	3
C	4	5 1/4
D	2 1/2	3

PLANTING AREA AND CAN WASHED DRAINS

SMITH®



PLANTING AREA DRAINS FOR LARGE AREAS

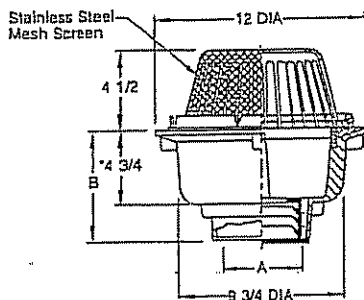
FUNCTION: Used to drain excess moisture which builds up in large planting or flower boxes. Extra large mesh covered dome insures greater drainage area and prevents soil or stones from entering the drain line.

REGULARLY FURNISHED:
 Duco Cast Iron Body and Flashing Clamp with Polyethylene Dome and Stainless Steel Mesh Screen.

VARIATIONS:
 L Speedi-Set Service Weight (02, 03 & 04" sizes only)
 LXH Speedi-Set Extra Heavy (02, 03 & 04" sizes only)
 T Threaded Outlet

OPTIONAL MATERIALS:
 Bronze Body -BB
 Rough Bronze Dome -RBD
 Cast Iron Dome -CID
 Galvanized Cast Iron -G

Free Area
 53 SQ IN



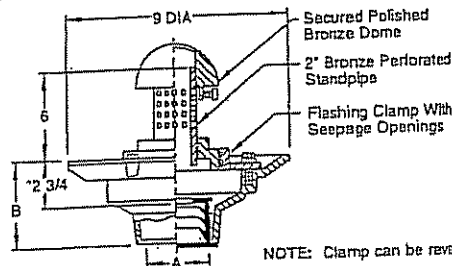
FUNCTION: The perforated standpipe, when surrounded by gravel fill, provides drainage of excess water from the planting or flower box. Top of standpipe is set at ground level and protected by dome cap. Excess surface water overflows into top of standpipe.

REGULARLY FURNISHED:
 Duco Cast Iron Body and Flashing Clamp with Bronze Standpipe and Polished Bronze Dome.

OPTIONAL MATERIALS:
 Chrome Plated Dome -CPD
 Galvanized Body -G
 Nickel Bronze Dome and Stainless Steel Standpipe -NBDSSP
 Rough Bronze Dome -RBD

VARIATIONS:

L Speedi-Set Service Weight
 LXH Speedi-Set Extra Heavy
 Longer Standpipe (When Specified)
 Solid Standpipe -SP
 Standpipe Covered with Stainless Steel Mesh -SSM
 T Threaded Outlet



*This Dimension to Internal Stop of Speedi-Set Gasket.

NOTE: Clamp can be reversed.

Fig 2675C...CAULK OUTLET
 2675Y...NO-HUB OUTLET

A SIZE	02, 03, 04, 05 or 06
B	6 for Caulk, NO-HUB, & Speedi-Set, 4 3/4 for Threaded

Fig 2680C...CAULK OUTLET
 Fig 2680Y...NO-HUB OUTLET

A SIZE	02, 03 or 04
B	4 for Caulk, NO-HUB, & Speedi-Set, 3 for Threaded

PLANTING AREA DRAINS FOR LARGE AREAS

FUNCTION: The perforated standpipe, when surrounded by gravel fill, provides drainage of excess water from the planting or flower box. Top of standpipe is set at ground level and protected by dome cap. Excess surface water overflows into top of standpipe.

REGULARLY FURNISHED:
 Duco Cast Iron Body and Flashing Collar with Bronze 8" Standpipe and Polished Bronze Dome.

OPTIONAL MATERIALS:
 Chrome Plated Dome and Standpipe -CPD
 Galvanized Cast Iron -G
 Nickel Bronze Dome and Stainless Steel Standpipe -NBDSSP
 Rough Bronze Dome -RBD

VARIATIONS:
 L Speedi-Set Service Weight
 LXH Speedi-Set Extra Heavy
 Longer Standpipe (Specify)
 Solid Standpipe -SP
 Standpipe Covered with Stainless Steel Mesh -SSM
 T Threaded Outlet

A SIZE	02, 03 or 04
B	5 for Caulk, NO-HUB, & Speedi-Set, 3 3/4 for Threaded

*This Dimension to Internal Stop of Speedi-Set Gasket.

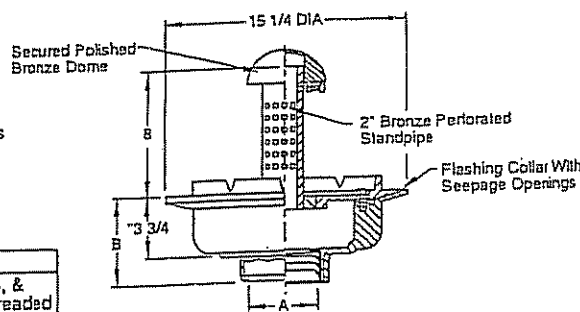


Fig 2685C...CAULK OUTLET
 Fig 2685Y...NO-HUB OUTLET

COMBINATION GARBAGE CAN WASHER AND DRAIN

FUNCTION: Used in areas where it is desired to wash the interior of garbage and other cans, and prevent the solids from entering the waste line. The exclusive Smith design combines an engineered floor drain with a "single orifice" can washing nozzle. The spray from the nozzle is adjustable from a solid stream to a driving fine mist, providing a means for thoroughly scouring the interior of the can. The slotted sediment bucket catches all debris, and provides ample drainage. "Safe-Set" design insures bucket replacement after cleaning since top grate cannot be inserted unless bucket is in place.

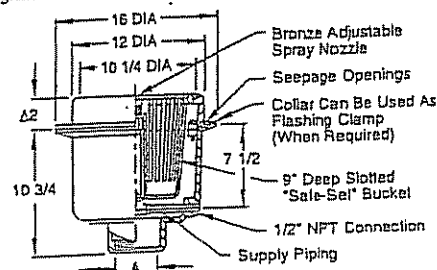
REGULARLY FURNISHED:
 All Galvanized Cast Iron Body with Flashing Collar, Loose Set Grate, Sediment Bucket, Pipe Assembly with Bronze Adjustable Spray Nozzle.

OPTIONAL MATERIALS:
 Duco Cast Iron -CI
 *Nickel Bronze Top -NB
 *Polished Bronze Top -PB

Free Area
 28.5 SQ IN

add 3/8" when bronze top is specified
 *Not Safe-Set when specified

VARIATIONS:
 NO-HUB Adaptor (Specify Fig 2645Y)
 Stainless Steel Mesh Lined Bucket -BS
 Square Top -S

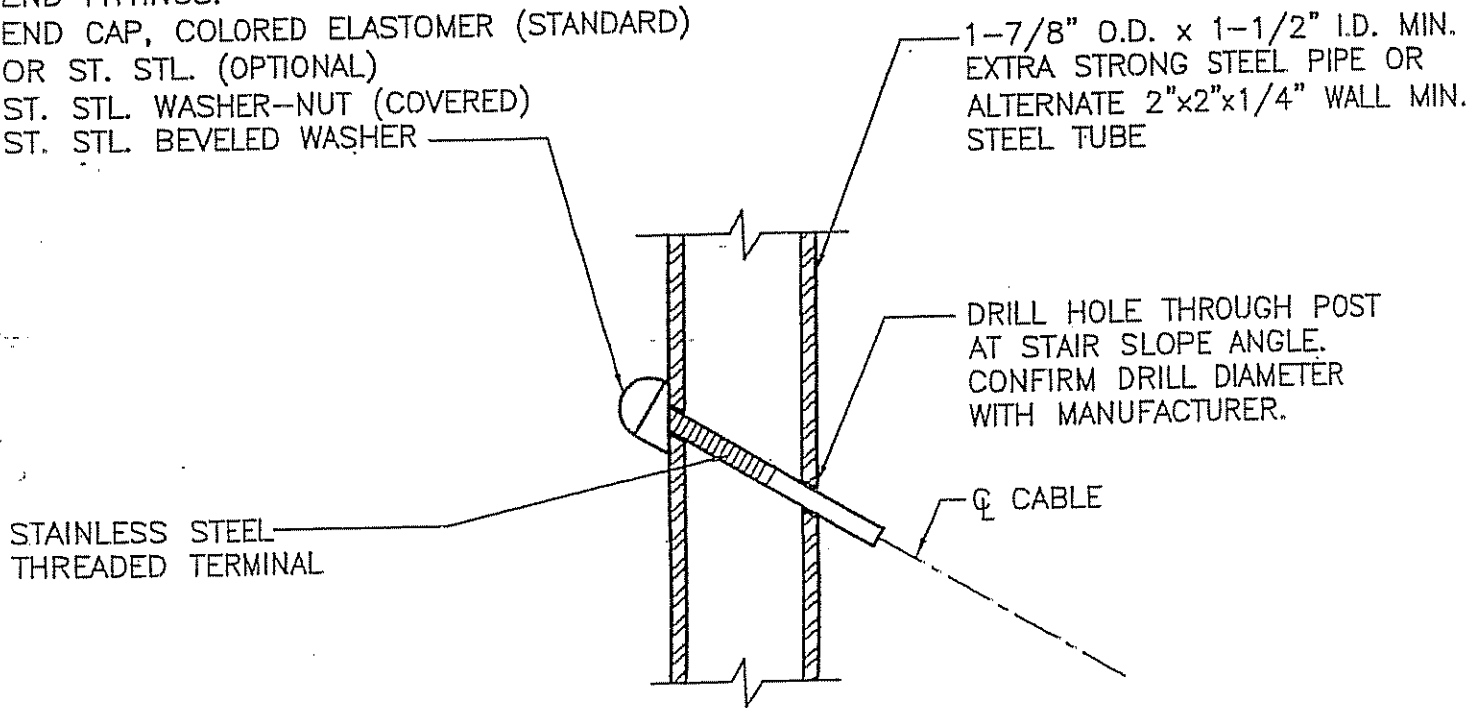


THREADED TERMINAL: STEEL PIPE POST WITH ANGLED TERMINATION - STAIRS

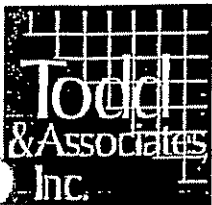
NOTE: DETAIL IS TYPICAL FOR 1/8", 3/16" AND 1/4" DIAMETER STANDARD CABLERAIL™ ASSEMBLIES.

END FITTINGS:

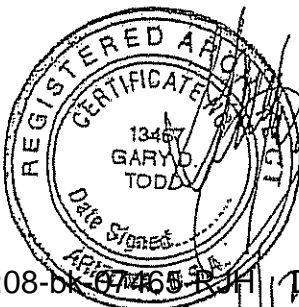
- END CAP, COLORED ELASTOMER (STANDARD) OR ST. STL. (OPTIONAL)
- ST. STL. WASHER-NUT (COVERED)
- ST. STL. BEVELED WASHER



NOTE:
OCCURS AT UNITS "A" & "B".



4019 North 44th Street
Phoenix, Arizona 85018
PHONE (602) 952-8280
FAX (602) 952-8888



THREADED CABLE CONNECTION @ INTERIOR STAIRS

Scale: Scale NO SCALE

Project: Project Name: X (TEN) LOFTS
 Proj. No.: PRJ # 04-2085-01 Drawn By: RA
 Issued For: ADDENDUM #001 Ref. Dwg.: 14/A83.1

Rev. Date: Description:

SD-1



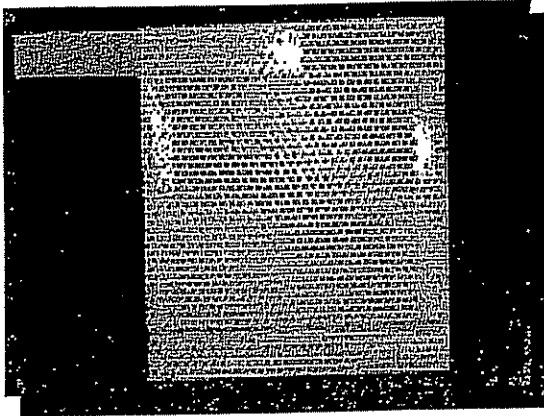
Acoustical Surfaces, Inc.

Soundproofing, Acoustics, Noise & Vibration Control Specialists

123 Columbia Court North • Suite 201 • Chaska, MN 55318
 (952) 448-5300 • Fax (952) 448-2613 • (800) 448-0121

Email: sales@acousticalsurfaces.com
 Visit our Website: www.acousticalsurfaces.com

We Identify and S.T.O.P. Your Noise Problems



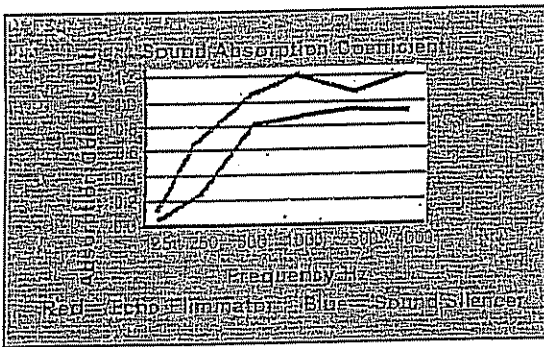
Noise S.T.O.P.™ ACOUSTIMETAL™

Affordable Options to Metal
Ceilings and Walls

- ✓ Durable
- ✓ Impact Resistant
- ✓ Walls & Ceilings
- ✓ Class A-1 ASTM E-84 Nonflammable

Sound Absorption Coefficients
Within Speech Frequency Range

	250Hz	500Hz	1KHz	NRC
Acoustimetal™	0.69	1.13	1.00	0.95



Introducing Acoustimetal™, the latest advancement in noise control and acoustic treatment. Acoustimetal™ combines the durability of a perforated metal shell and the superior noise control, properties of our exclusive fire retardant acoustical material. Acoustimetal™ is ideal for demanding environments where noise control applications are exposed to physical impact. Indoor or outdoor use.

The Acoustimetal™ shell is available in electrostatically finished, galvanized anodized aluminum. The Acoustimetal™ shell is designed to withstand the harshest industrial installations or visually appealing interior design. The unique 50% perforation pattern gives maximum sound control with the use of our Class 1, Fiberglass free Echo Eliminator or Sound Silencer material inside. Can be stacked for extra wall height with U-channel system. Custom panel sizes available.

Acoustimetal™— Sound Absorption / Noise Reduction

Panel	Size	Fill	Features	Flammability	Shell
Panel 1	2'x10'x1" 2'x10'x2"	Sound Silencer or Echo Eliminator w/Aluminum Shell	Perforated metal shell scatters, absorbs and deflects sound waves	ASTM E-84 Class 1-A nonflammable	22 Gauge Aluminum Perf.

• Soundproofing Products • Sonex™ Ceiling & Wall Panels • Sound Control Curtains • Equipment Enclosures • Acoustical Baffles & Banners • Solid Wood & Veneer
 Acoustical Ceiling & Wall Systems • Professional Audio Acoustics • Vibration & Damping Control • Fire Retardant Acoustics • Hearing Protection • Moisture & Impact
 Resistant Products • Floor Impact Noise Reduction • Sound Absorbers • Noise Barriers • Fabric Wrapped Wall Panels • Acoustical Foam (Egg Crate) • Acoustical Sealants &
 Adhesives • Outdoor Noise Control • Assistive Listening Devices • OSHA, FDA, ADA Compliance • On-Site Acoustical Analysis • Acoustical Design & Consulting • Large
 Inventory • Fast Shipment • No Project too Large or Small • Major Credit Cards Accepted

 COPY

Don Mellow

From: RAlexander@toddassoc.com
Sent: Thursday, January 19, 2006 8:42 AM
To: Don Mellow
Subject: X Lofts - Addendum Item #92

Hi Don, as we discussed yesterday (1/18/06), Item #92 on Addendum #001 is to be deleted. We will use Detail 3/AB.1.1 as it is drawn on the plans. This item can be reviewed by Summit Builders and Terry Ryser during construction for possible changes. Please contact me if you have any questions.
Thanks,
Ron

END OF EMAIL

Todd & Associates, Inc. • Architecture/Planning/Landscape Architecture
4019 N. 44th Street • Phoenix, Arizona 85018
(602)952-8280 • FAX (602)952-8995
www.toddassoc.com

TA Project Number: 04-2085-01

Summit Builders Plan Review Log

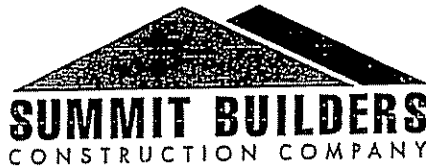
Item	Drawing	Detail	Keynote/Section	Spec Section	Description	Response by Archt/Engineer/Owner	Response Date	RFI	Contract Clarification	Sub Division	VE Item
2	2 of 5		14		Trench drain not referenced on North side of parking garage. Provide additional concrete elevations on Northwest ramp between bldg. And trash enclosure.			X			
2	2 of 5				Private water & sewer plan. Landscape meter and domestic is shown on the south side of the sidewalk easement. Should it be moved further on the private property? Typical at all landscape and domestic meter locations.			X			
4	4 of 5				Private sewer note #2, on 4 of 6, calls for wye septic installed. Please clarify who make the tap to the city line. Include that responsibility on the plans.			X			
4	4 of 5		2		Sheet 4 of 6, Domestic & landscape water lines on south side of project do not show asphalt sawt and placement. Is this work by the city of Scottsdale of GC7			X			
4	4 of 5				Sheet 4 of 6 shows sanitary Inv. A1 36.25. The invert on sheet P.3.1.0 shows 36.5. The connection in the street to the 12 city sewer shows an invert elevation of 36.42. This only allows .08 of fall in approx. 80'. What elevation is correct?			X			
4	4 of 5, P.3.1.0				Provide specific details and verify specified litter/hand/sweep works with all flooring upgrades.			X			
A0.5			GN 22		No buzzer shown on electric drawings.			X			
A0.5			GN37		General site notes calls for a flagpole. Where is it? Provide details and who provides.			X			
A0.5			GN19		Who pulls pool, spas, and fence permit?			X			
A0.5			GS15		Who pulls signage permit?			X			
A0.5			GS14		Provide construction details for pool fence.			X			
A0.5			GS11		Provide garage parking signage plan for "reserved", or numbered parking.			X			
A0.5			GS0		Drywall to run behind tubs, change to 7			X			
A0.5			21		Provide details, both construction and arch. For monument sign.			X			
A1.1					Verify elevator room has independent HVAC & Lighting, and Fire Sprinklers.			X			
A1.2			7		Keynotes call out for detail A2.3, no page			X			
A1.2		10,14,11,3			Provide color for joist and walls same as 16A1.3-BM10777			X			
A1.3		15			Verify if two-tone is required for domes and ramp. Use conc. Or brick?			X			
A1.3		9,9			Specify epoxy for concrete fire stop.			X			
A1.3		7			Reference to 6/A1.4 is not correct.			X			
A1.3		3			No structural detail provided. No provisions for automatic off switches and liner on the electrical drawings.			X			
A1.4		11		2	Provide locations of bike racks on the site plan and storage plan.			X			
A1.4		12			How are the raised planters going to drain through dirt to floor drain.			X			
A1.4		8			Provide detail.			X			
A1.4		10		3	Provide pool fence gate detail.			X			
A1.4		9			Provide structural detail for spa.			X			
A1.4		9			Verify with Maricopa County health, if 6" width is acceptable.			X			
A1.4		9			Explain sand method for spa. Could we use spray foam?			X			
A1.4		5			Is owner supplying planting pots? If not, need spec.			X			
A1.4		1			Replace pre-cast with CIP seat wall cap.			X			
A1.4		1			Is owner supplying the light fixture. Shown "by others"?			X			
A1.4		4,1,3			Provide structural detail			X			
A2.1		C			Clarify how tub & shower are separated if 4/A2.3.1 is referenced in the detail.			X			
A2.1					Reflect light fixture locations with dimensions on bath elevations and floor plans.			X			
A2.1					Unit "A" second floor plan calls for 1/A2.1.1 at balcony. No detail exist			X			
A2.1			30/23		Keynote 23, 30 reference to A2.1.1 at balcony. No detail exist			X			
A2.1			29		Wash/dryer shown as owner provided. Is this correct?			X			
A2.1			27		Specify heights on note 27, like done on note 26.			X			
A2.1			37		Keynote 37, provide detailed, dimensioned, and location.			X			
A2.1					Are there any medicine cabinets in the units?			X			
A2.1					Elevation "C"-Master bath. How does detail 4/A2.3.1 separate tub/shower?			X			
A2.1			47		Show dimensions on floor plan and detail 4/A2.2.			X			
A2.1								X			

COPY

Item	Draw	Detail	Keynote/G on Note	Spec Section	Description	Response by Archt/Engineer/ Owner	Response Date	RFI	Cl Call out	Sub Division	VE Item
43	AZ.1				Keynotes 11, 16, 19, 24, 25, 26, 32, 33, 34, 36, 37, 38, 40, 42, 43, 44, 45, 47, 49, 50, 51, 52 are not used. Either show or delete.			X			
44	AZ.1		GN6.D		Reference to 16/A7.2 is not correct.			X			
45	AZ.1		GN6B		Should include details 20, 25, 26, 28, 29, 30, 32/A7.2.			X			
46	AZ.2				All notes on Unit "B" floor plan-2nd floor are wrong.			X			
47	AZ.2		40		Note 48 is not correct with 6/A8.1...1 referenced out. 1/A8.1.1 referenced, but does not exist.			X			
48	AZ.2		38		What is the height, material finish?			X			
49	AZ.2				Elev. "C"-Kitchen. Garbage disposal on wrong side. Typical on many elevations of units.			X			
50	AZ.2		21		Elev. "D"-Mstr. Bath. Note 21 not correct note.			X			
51	AZ.3				Unit "C" floor plan. Can powder room shower be squered up?			X			
52	AZ.3				Unit "C3" partial plan. Ref. To detail 4/A6.1.1 is not correct.			X			
53	AZ.3				Powder room elevations are not correct.			X			
54	AZ.3				Unit C, C2, C3 at 2 hour wall. Provide door types and dims, and notes.			X			
55	AZ.4				Unit D floor plan. Delete angle wall at back of entry door and close at hinge wall.			X			
56	AZ.4				Bedroom by entry does not show at door. Does it get one? This is typical in many units. Should we put doors on all bedrooms?			X			
57	AZ.4				Can we square up shower?			X			
58	AZ.5				Base spillover mine bar is noted in kitchen. Where does it occur? make sure W/D doors are specified with 180 degree hinges, or provide hinge stop.			X			
59	AZ.5				Is this going to work, glass block exposed to Dining/Living? What about sound?			X			
60	AZ.6		50		Optional door shown to mstr. Bedroom can't be optional. It is the only entry to the bedroom.			X			
61	AZ.6				Why is this wall 6'-3" standard and full height optional?			X			
62	AZ.6		40		Reference to 5/A8.1.1 at storage room is incorrect.			X			
63					Keynotes 2, 3, 4, 7, 8 are not referenced. Notes 2 & 8, are missing detail #. Allie access panels are not shown. Water heater exhaust not shown. Roof symbol for sipe shows 1/4", but roof plan is 3/8". Roof drain leader has bad details-not 11, 12, 15/A8.2.5. Fire riser enclosure not shown-no detail referenced.			X			
64	A3.1.5		18		Provide flow arrows to drains.			X			
65	A3.1.0				Wrong detail referenced.			X			
66	A3.1.0		10		Keynotes 2, 3, 4, 7, 15, 21, 22 are not noted. Delete?			X			
67	A3.1.1				Clearly notate pool fence localions. Provide details and reference.			X			
68	A3.1.3/A3.1.4				Provide flow arrows at entry's that do not show them.			X			
69	A3.1.5				Is an awning needed to protect equipment (Boiler, pumps, etc)			X			
70	A3.1.9				Where is this. General note 27. General note 6-bad detail reference. Need more dimensions for brick type terminations.			X			
71	A3.1.9		GN2/GN0		Provide gutter detail.			X			
72	A4.1				Notes 7 thru 10 are not referenced on sections. Typical on other sheets. Delete?			X			
73	A4.2				Section 2-reference to 1/B.1.2, should be 4/A8.1.2.			X			
74	A4.3				Section 6-Reference to 1/A4.2 is not correct.			X			
75	A4.3				Section 4-reference to 9/A0.2.3 is not correct, should be 4/A8.2.3.			X			
76	A4.3				Section 6-reference to 8/A8.2.1, is not correct at butterfly roof.			X			
77	A4.3/A4.2				Section 7 does not provide correct section call.			X			
78	A5.1				Podium/ Second floor plan- Is there precast on this stair? It appears to be showing something.			X			
79	A5.1		2		Is a security fence required around air riser. Chainlink?, etc			X			
80	A5.1/General				At columns where masonry meets, will there be caulking of dissimilar materials required?			X			
81	A5.1/General				Note 17/A5.1 calls for abrasive nosing. Is this typical at oil treads?			X			
82	A5.2		3		Sheet A3.1.0 shows FD, but detail 3 does not show. See plumbing? Reference to 10/A7.1 is incorrect.			X			
83	A5.3		2		Details referenced from 6/A9.3. Details are not clearly showing if it is a wall handrail detail or center railing detail.			X			
84	A5.4		3-7		Same as item #120 above.			X			
85	A5.4		2-7		14/A5.4 is incorrect detail reference.			X			
86	A5.4		10					X			

COPY

Item	Draw	Detail	Keynote/G	Spec Section	Description	Response by Arch/ Engineer/ Owner	Response Date	RFI	Call	Sub Division	VE Item
08	AB.5	2			What is the circle shown by trash chute? balcony handrail called out to be 1/4" welded steel mesh. Is this stainless per elevation notes?			X			
09	AB.1.1	5			Dimensions from top rail to middle is 8". Can it be this tall? Run silicone continuous behind CMU. This will work better with construction sequences also.			X			
01	AB.1.1	5			Detail call for vapor barrier? No other references on plans. Provide location of other references where required.			X			
02	AB.1.1	15	3		Provide call detail for precast slab. CMU below? Precast cap shows detail 1/AB.1.1, no detail. Dimension all wall type changes, i.e., brick, stucco, ans well as height of roofing.			X			
03	AB.1.3							X			
04	AB.1.3							X			
05	AB.1.4							X			
06	AB.2.2	1,10			Provide detail for steel rod connection to parapet, and to roof decking. Awaiting 2. How does it attach to the building?			X			
07	AB.2.3	3			No head flashing shown. Is it required?			X			
08	AB.2.5	6			Reference to 24/AV.2 should reference 35/AV.3? See Unit "V" floor plan.			X			
09	AB.3.1	11			7' height on rail exceeds 4' ball theory? Can you have horizontal cables?			X			
100	AB.3.1	11			Provide connection detail for cables.			X			
101	AB.3.1	12			Show finishes around mullions.			X			
102	AB.3.1				There are no power requirements for landscape controller shown on L2.1.			X			
103	AB.3.1				Provide spec. for perforated metal ceilings at Exercise and Clubhouse.			X			
104	AB.3.1				Provide note for all lugs to be set in concrete or equal.			X			
105	AB.3.1				Verify all balcony cuts are correct for all units and floors.			X			
106	AB.3.1				Does electrical show power for wine coolers in kitchen and islands. How do cabinet bases work with wine cooler. Bases too deep.			X			
107	AB.3.1				Details reflect square head. Is round head wanted in some locations.			X			
108	AB.3.1				Why so many optional doors to bedrooms?			X			
109	AB.3.1				Verify all doors have correct door type and sill windows have correct type noted on plans.			X			
110	AB.3.1				Provide sufficient dimensions for kitchen, baths, and angled wall areas.			X			
111	AB.3.1				Verify maghold opens are shown on elect. Drawings at elevator doors.			X			
112	AB.3.1				Can we get colored building elevations with notes?			X			
113	AB.3.1				Not all doors at stairwells are marked. Note 24 on A5.3 calls for mesh screen panel, but there is no door mark with that type.			X			
114	AB.3.1				Note 4 & 7/A5.1, calls for aluminum lugs. Can this be a cheaper material? Note 11 & 12 calls for handrail, but does not specify material.			X			
115	AB.3.1				Verify maghold opens are shown on elect. Drawings at elevator doors.			X			
116	AB.3.1				Can we get colored building elevations with notes?			X			
117	AB.3.1				Not all doors at stairwells are marked. Note 24 on A5.3 calls for mesh screen panel, but there is no door mark with that type.			X			
118	AB.3.1				Note 4 & 7/A5.1, calls for aluminum lugs. Can this be a cheaper material? Note 11 & 12 calls for handrail, but does not specify material.			X			
119	AB.3.1				Verify spec. for Air handler access vents is not a cheap. Filmy one. Sheet L2.1 shows 1 1/2" hard copper/line for landscape mainline connection. Sheet P.3.1.0, does not show line or its origin.			X			
120	AB.3.1	1			Clarify the material noted as "hardboard" at pot at podium deck.			X			
121	AB.3.1				Provide spec. for owner approved pots.			X			
122	AB.3.1				Sheet L3.1, no details as referenced for 0, 7, 12/A1.5. Sheet A1.5 does not exist.			X			
123	AB.3.1				Fire Riser not shown in fire riser room on North side. Why?			X			
124	AB.3.1	0,7,12			Many notes not used in page. Remove or show note.			X			
125	AB.3.1				Where is fluorescent fireproofing used?			X			
126	AB.3.1							X			
127	AB.3.1			07/B16				X			



PROJECT: X (TEN) Lofts
Date Created: 1/3/2006
Updated: 4/21/06 11:52 AM

Exhibit "D"

Clarifications/Exclusions to the GMP for X Lofts

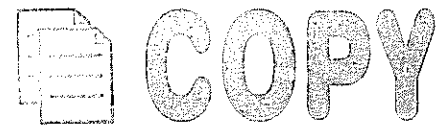
DIVISION 0 –	GENERAL INFORMATION
CS	COVER SHEET
00005	PROJECT DIRECTORY
00010	TABLE OF CONTENTS
00200	INSTRUCTIONS TO BIDDERS
00300	SUBSTITUTION REQUEST (DURING THE BIDDING PROCESS)
00320	SOILS REPORT
	1. Agreement includes Soils Report date 4/20/05 only.
00410	BID FORM
00700	NIC
00800-97	NIC

DIVISION 1 –	GENERAL REQUIREMENTS
1100	SUMMARY OF WORK

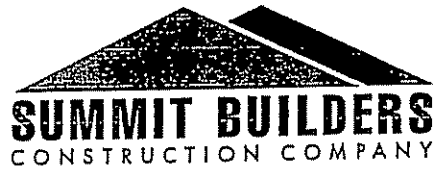
1. Final baseline schedule to be completed and approved within first 45 days from date of commencement
2. The GMP is based on the documents listed in the drawing and specification index included as part of the Contract. Reference Exhibit "G".
3. Scope specifically not included in GMP to be Owner costs.
 - a. Building permit costs, plan review and /or development fees.
 - b. APS costs – conduit only for APS primary to APS transformers is included in GMP per the Bid Documents. Conductors and equipment are provided by APS.
 - c. Cox costs – conduit only for Cox cabling to IMPOP room is included in GMP per the Bid Documents. However, if Cox charges to pull cable into IMPOP room, it will be an Owner cost.
 - d. Qwest – Excavation, conduit, and backfill ONLY for Qwest per the Bid Documents are included in this GMP. Any charges for cable installation will be an owner cost.
 - e. Impact and/or connection fees – any water or sewer impact fees are not included.
 - f. Quality Built fees.
 - g. Water envelope testing fees.
 - h. All on-site testing is excluded. All third party inspections, special inspections, envelope testing, materials testing and geotechnical observation / testing are furnished by the owner. Billings will be sent to Owner directly.
 - i. Builders risk insurance costs.
 - j. Southwest Gas piping or installation costs. Contract includes trench excavation and backfill from building to property line. Sand shading by SWG.
4. There is existing tree salvage on site. Cost are excluded for the transportation off and back on the site and any planting of salvage trees are excluded.
5. Allowance for overtime, material acceleration, phased acceleration is not included in this GMP.
6. Proposal excludes all City permits and fees, utility company permit and fees, water meters and offsite permits. Architect or owner will apply for all required permits
7. Proposal includes Maricopa County dust permit.
8. Owner will provide (2) on-site benchmarks and will establish property corners.
9. Owner will provide an acceptable Alta survey of the property that is no older than approximately 1 year. The cost of the Alta survey if provided by the Contractor will be in addition to the GMP amount.
10. Proposal is based on industry standard work hours, unless otherwise agreed to.
11. Proposal excludes any engineering fees, architect fees or plan check fees.
12. Proposal excludes utility company charges for services to the building.
13. Proposal includes the cost of all temporary power and water consumption until the permanent services are connected and supplied to the building even if such services are supplied in a temporary position.
14. Proposal excludes separate office space or office services for owner, architect or consultants.


1290

MEASUREMENT AND PAYMENT



- 1312 PROJECT MEETINGS
 - 1. Summit Builders take meeting minutes and distribute to project team within 48 hours of meeting.
- 1315 CONTRACTOR'S REQUEST FOR INFORMATION/INTERPRETATION
- 1316 REQUEST FOR INFORMATION/INTERPRETATION
- 1330 SUBMITTALS
 - 1. Summit Builders will submit a Submittal Schedule for approval by the owner and architect within 30 days from execution of Contract
- 1352 ENVIRONMENTAL PROCEDURES (TYPICAL PROJECTS)
- 1430 QUALITY CONTROL
- 1500 CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS
- NONE TEMPORARY FACILITIES AND CONTROLS
 - 1. SWPP plan/design is to be provided by the civil engineer. Execution and maintenance of this plan is included in the GMP.
 - 2. Green screen is excluded from this GMP.
 - 3. Owner will continue to pay for temporary fence costs until December 31,2006. Transfer of fence will occur in Summit Builders name on January 1,2007. All previous damage prior to commencement of work will be the responsibility of the owner.
- NONE CONSTRUCTION WASTE MANAGEMENT
 - 1. No special provisions have been included for recycling and/or a waste reduction plan. Summit Builders will evaluate options with owner for any special provisions at a later date, if necessary.
- 1600 MATERIAL AND EQUIPMENT
 - 1. Summit Builders reserves the right to use the owner's lot at XI Lofts if it becomes available, at no additional cost to Summit Builders or its Subcontractors. Temporary parking at adjacent church to be contracted and directly paid for by Owner. No cost for offsite parking are included in the agreement.
- 1650 SUBSTITUTION REQUEST (AFTER THE BIDDING PHASE)
 - 1. Exceptions and/or alternates to the specifications are listed within each specification section listed below.
- 1675 VALUE ENGINEERING PROCEDURES
 - 1. See Exhibit "A" in Contract for inclusions.
- 1732 CUTTING AND PATCHING
- 1420 REFERENCES AND DEFINITIONS
- 1700 CONTRACT CLOSEOUT
 - 1. Per Specifications, unless otherwise agreed upon.
- DIVISION 2 –
NONE SITE CONSTRUCTION
- NONE SITE DEMOLITION
 - 1. There are no demolition drawings or requirements. Any future site issues that are not known at this time would be additional scope to be added to the GMP.
- NONE SITE EXCAVATIONS
 - 1. Proposal is based on the original Soils report dated 4/20/2004.
 - 2. Proposal excludes water, sanitary, gas, electrical, communications, security and other low voltage connections that are not specifically shown on the drawings.
 - 3. OCIP/CCIP will be in place at the time of mobilization/construction commencement.
 - 4. Utility capping, disconnects, or relocating, removal of abandoned utilities outside of excavation. This work is excluded in the GMP.
- NONE SITE UTILITIES
 - 1. Hard dig conditions are excluded from this GMP. Digging conditions based on Soils Report.
 - 2. Fire hydrant pavement markers are excluded from this GMP.
 - 3. Hydro-Vac Service Cleaning on sewer lines are excluded from this GMP.
 - 4. Removal, Relocation, or bracing of conflicting utilities of existing obstructions is excluded from this GMP.
 - 5. Clarifications to utilities are as follows:
 - a. Per Plans and Specifications.
 - b. Site improvements beyond that shown on the plans are excluded. Phasing, if economically feasible, to be determined by Summit Builders.
 - c. Electrical primary and secondary conduit system only, including excavation, conduit, and backfill only.
- 2360 SOIL TREATMENT
 - 1. GMP based on the use of Prevail 0 25% on approximately 45,940 SF per label directions.
 - 2. GMP excludes vegetation control.
- 2765 PAVEMENT MARKINGS
 - 1. Per Plans and Specifications.



 **COPY**

2. There are no designated fire lane red curbs on the plans. The City of Scottsdale Fire Department to provide direction. Any adds for red curb, or additional signage will be an extra to the GMP.
3. Traffic controls are excluding but not limited to traffic signals, decel lanes, pavement markings and signage, etc. in this GMP.

2773 CONCRETE CURBS, GUTTERS, SIDEWALKS, AND DRIVEWAYS

1. Per Plans and Specifications.

2783 CONCRETE PAVERS

1. NIC

2810 LANDSCAPE IRRIGATION SYSTEM

1. Water meter cost are by the owner. General Contractor to pull permit in the owner's name.
2. Salvage trees have died, but are included in the GMP. Only one Mexican Fan Palm is included.

2822 ORNAMENTAL FENCES, DECORATIVE SCREENS AND GATES

1. This GMP does not include any stainless steel. Only steel material was included, and to be painted using standard painting practices. Electrostatic painting is excluded from this GMP.
2. Per Plans and Specifications.
3. Pool fence
 - a. Pool fence is included as shown on A1.5, and approved shop drawings.
 - b. There are no provisions for security access control to pool fence gates in the GMP. Pool fences to have self-closing hardware and latch as allowed by health department.

2874 BICYCLE RACKS

1. The GMP includes Model U238-IG-P "U-Rack", inverted U's, 2-bike capacity, in-ground mount, powder-coated finish standard catalog colors, 2 3/8" OD loppers, 22" long x 34" High.

2900 LANDSCAPING

NONE SODDING

1. The GMP does not include any sod material, or preparation.

2970 LANDSCAPE MAINTENANCE AND WARRANTY

1. No water harvesting is included in the GMP.
2. Non-Grouted Rip Rap is included in GMP, in lieu of grouted river rock.

DIVISION 3 -- CONCRETE

NONE

CAST-IN-PLACE CONCRETE

1. Per plans and specifications, with exception to details 3,5,6/A1.4, which are precast material per Owner direction.
2. No curb and gutter and/or sidewalk outside of phase limits is included in this GMP. Offsite concrete (such as deceleration lanes and related work) is excluded.
3. Insulation between Podium Deck and garage lid is excluded.
4. Waterproofing of garage lid within building areas is excluded in this GMP.
5. Cracks in slabs are to be considered acceptable providing that the crack is not open or subject to differential settlement.
6. Installation of penetrating sealer is excluded. Only marks left from construction will be removed.
7. GMP excludes visqueen, vapor barriers, floor sealers or hardeners.

3532 CEMENTITIOUS CONCRETE FLOOR UNDERLAYMENT

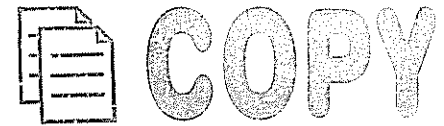
1. Cracks in slabs are to be considered acceptable providing that the cracks are per AIC (American Concrete Institute), or governing specification.
2. This GMP includes acoustical mat only in areas where there are hard surface flooring, as bid by Subcontractor. Unit finish schedule had flooring options, and Subcontractor assumed hard surfaces at the entry, bathrooms, laundry, and kitchens. All other areas exclude acoustical mat under cementitious underlayment.
3. Lightweight slabs in units
 - a. Tooled joints (not saw cut joints) are included in building unit lightweight slabs.
 - b. Concrete cure/seal will NOT be applied immediately after lightweight slabs are placed and finished.
 - c. No cleaning or low sheen penetrating sealer will be applied to lightweight slabs prior to final clean up.
4. Balcony deck installation per specifications and plans. Deviations will be submitted for approval prior to installation.

DIVISION 4 -- MASONRY

4220

CONCRETE MASONRY UNITS

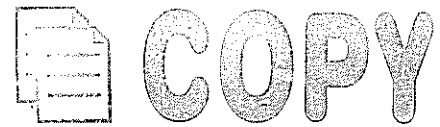
1. Tooled joints at masonry to be concave strike joints (not raked).
2. GMP does not include additional banding that may be added by the owner.
3. Lead times for block is 12 to 16 weeks from initial order.



- 4930 MASONRY CLEANING
 - 1. Staining, waterproofing, sealing of CMU is excluded in this GMP.
 - 2. Removal of efflorescence is excluded in this GMP.
- DIVISION 5 – METALS
- NONE STRUCTURAL STEEL
 - 1. Engineered shop drawings or calculations are excluded in the GMP.
- NONE STEEL DECK
 - 1. There is no specification for the exterior sheet metal awnings. Material to be approved during Submittal process.
- NONE COLD-FORMED METAL FRAMING
 - 1. Per Plans and Specifications.
- 5500 METAL FABRICATIONS
 - 1. The following items shown in the summary of work for this division are excluded from the GMP:
 - a. Stair nosings
 - 2. There are stainless steel references to various elements of project. There is no specification for stainless steel and is specifically excluded.
- 5510 STEEL STAIRS
 - 1. Per Plans and Specifications.
- 5520 HANDRAILS AND RAILINGS
 - 1. No specification exist for cable railing. Material to be approved during the shop drawings process.
 - 2. All handrail is to be steel, primed ready for paint, or aluminum, as shown on the Bid Documents.
- DIVISION 6 – WOOD AND PLASTICS
- 6100 ROUGH CARPENTRY
 - 1. Per Plans and Specifications.
- NONE WOOD DECKING
 - 1. Per Plans and Specifications.
- NONE SHEATHING
 - 1. Per Plans and Specifications.
- NONE STRUCTURAL GLUE-LAMINATED TIMBERS
 - 1. Per Plans and Specifications.
- NONE FINISH CARPENTRY
 - 1. Paint grade 2 1/2" high MDF base throughout units is included in GMP.
 - 2. Door casings are included in GMP, but are squared edged material.
 - 3. Paint grade particle wood shelving in closets, pantries, etc. is included in GMP, as shown on drawings, and clarified in Addendum #1. Any other shelving is excluded from the GMP.
- DIVISION 7 – THERMAL AND MOISTURE PROTECTION
- NONE BITUMINOUS DAMPPROOFING
 - 1. NIC
- NONE HOT FLUID-APPLIED WATERPROOFING
 - 1. NIC
- 7145 LIQUID-APPLIED URETHANE WATERPROOFING
 - 1. Per Plans and Specifications.
- NONE WATER REPELLENTS
 - 1. NIC
- 7210 BUILDING INSULATION
 - 1. Includes Roof area: R30, Exterior walls: R19, Between floors: R11, Partywalls- 2 layers: R11
- 7410 METAL ROOF AND WALL PANELS
 - 1. Included in this GMP is 24 ga. Steel, 1.0 mil Kynar 500 paint finish, standard (non-metallic, non-exotic finish) color, standing seam roof panel. Complete with membrane underlayment, all related prefinished trim, closures and sealants as required for a weathertight system...
- 7570 COATED FOAMED ROOFING
 - 1. GMP includes Duragard Cementitious Coated Foam Roof System. System is UL 790 Class "A" Rated Foam thickness to be one inch applied over sloped and crickets plywood deck. Diathon Acrylic Elastomer Coating applied at the rate of 3 gallons per 100 SF in multiple coats to achieve 28 mil film thickness. Aggregate and Duragard cementitious coating applied to achieve UL Class "A" rating. Includes 10 year warranty against leaks and defects in workmanship or materials.
- 7600 FLASHINGS AND SHEET METAL
 - 1. No stainless steel flashings are included in project.
- 7816 ALBI INTUMESCENT FIREPROOFING
 - 1. Only as shown on plans and specifications.



- 7840 FIRESTOPPING
1. Per Plans and Specifications.
- NONE ROOF DRAINAGE SPECIALTIES
1. Per Plans and Specifications.
- NONE ROOF ACCESSORIES
1. The mansard vents are not specified in the Contract Documents. Summit Builders includes a 24" x 30" low cost, vented, hinged model in this GMP at 10 locations.
- NONE SPRAYED FIREPROOFING
1. NIC
- 7900 JOINT SEALANTS
1. Per Plans and Specifications.
- DIVISION 8 -- DOORS AND WINDOWS
- 8100 STEEL DOORS AND FRAMES
- 8215 WOOD DOORS
1. All interior unit doors are 1 3/4" paint grade wood doors and frames.
2. All exterior unit doors are 1 3/4" 3080 hollow metal doors and frames, with 24 " sidelights.
- 8310 ACCESS DOORS AND FRAMES
1. Locations are not identified on plans. Summit Builders discretion as to the locations on an as needed basis for Electrical, Mechanical, or Plumbing needs.
- NONE VERTICAL LIFT DOORS
1. Colling security doors are included at locations shown in the Garage level on the Bid Documents. Product to be approved during Submittal process.
- 8410 ALUMINUM ENTRANCES AND STOREFRONTS
1. Per Plans and Specifications.
- 8521 ALUMINUM WINDOWS (PROJECTED, CASEMENT, AND HORIZONTAL SLIDING)
1. GMP includes International windows and doors, series 6200 windows, and 6900 SGD's, bronze paint per VE acceptance, Low E glass.
2. GMP includes International windows and doors, series 6200, IWC alum frames to match windows, 1/8" temp and 3/16 temp glass, bronze painted frames per VE acceptance.
- NONE SLIDING AUTOMATIC DOORS
1. NIC
- 8800 GLAZING
1. Toilet Accessory shower glass doors are included per VE selection.
2. Glass tinting is excluded from this GMP.
- NONE FINISH HARDWARE
1. Public area hardware is Schlage AL Series, Finish: Satin Chrome or Brushed Chrome. No specifications or standard provided in the Bid Documents.
2. Hardware to be Schlage "F" series locks at all unit doors and Hager locks, closures, hinges, and stops at public area doors. Also includes Pemko seals thresholds and sweeps. Hardware finish is brass for interior and exterior doors of units.
- NONE MIRRORED GLASS
1. Mirror specification, size, and location per VE option selected.
- DIVISION 9 -- FINISHES
- 9220 PORTLAND CEMENT PLASTER (FIBER REINFORCED)
1. Per Plans and Specifications.
2. GMP does not include stucco in garage or site walls except trash enclosures, smooth finish.
3. Stucco will be used at raised planters, in lieu of founders block per VE selection.
- 9250 GYPSUM BOARD
1. GMP is based on medium knockdown texture.
2. Drop ceiling structure for wood soffits is not an engineered system. Hat channel attached to bottom of structure may be utilized.
3. Drywall ceilings will be a USG suspension system (or equal).
4. Densglass or soffit board is included in this GMP at exterior soffits.
5. Soffit board is included in this GMP at exterior gypsum board.
- 9251 GYPSUM SHAFT WALL
1. Per Plans and Specifications.
- NONE GLASS BLOCK
1. Glass block is included in this GMP. Material to be approved during Submittal process.
- 9310 CERAMIC TILE
1. Mudset at all shower walls and floors, per manufacturers approved installation instructions.



2. This GMP includes shower block at thresholds and surrounding walls in lieu of wood framing.
3. GMP includes ceramic 12 x 12 Daltile, solid color at floor areas, and 4 x 4 Daltile at showers and tub surrounds, per Creative Design Proposal.

9680 CARPET

1. GMP includes Shaw Industries, standard base grade "New Champ", with 3/8" 5lb. pad, per Creative Design Proposal.

NONE ACOUSTICAL CEILINGS AND SUSPENSION SYSTEMS

1. Per Plans and Specifications. Material to be approved during the Submittal process.

NONE RESILIENT WALL BASE AND ACCESSORIES

1. NIC

9752 STONE COUNTERTOPS

1. Granite Slab with 4" backsplash, Group 3, in kitchens and baths.
2. GMP includes 3/4" thick material with 1 1/2" laminated polished edges for kitchens and vanities. Subtops per manufacturer's recommendations.
3. GMP includes colors as selected from group 3 of suppliers available product.

9901 PAINTING

1. Per Plans and Specifications.
2. No powder coat finishes, or electrostatic painting are included in this GMP.
3. Wood base will be sprayed at the same time the walls are sprayed.
4. Epoxy coating is not included on stair treads due to environmental restrictions by Maricopa County.
5. Painting of base, doors, and frames is with semi-gloss paint.

DIVISION 10 – SPECIALTIES

10200 LOUVERS AND VENTS

NONE FIREPLACES

1. Individual unit fireplaces are Excluded in this GMP.
2. (1) Fire pit, (1) Fire place, and (4) BBQ grill fireplaces are included in this GMP.

NONE IDENTIFYING DEVICES

1. Unit identification by Owner. Summit to provide code-compliant signage only.
2. Monument sign is included as detailed on plans.
3. Only (1) monument sign is included in this GMP. Site maps, illuminated or not, specific directional signage, or any other owner provided or city required signage is excluded in this GMP.
4. Garage entry headache bars are excluded from this GMP.

NONE PARKING SIGNS

1. Parking garage signage are excluded in this GMP, unless shown on the plans.
2. Site traffic signage is excluded in this GMP.
3. Garage slab parking stall numbering is excluded.

NONE FIRE EXTINGUISHERS AND CABINETS

1. NIC

10550 POSTAL SPECIALTIES

1. (2) two sets of mailboxes as shown on the plans is included in this GMP. Owner to verify with post office that all requirements have been met. Summit Builders will coordinate installation with local postal official.
2. GMP includes 1400 series horizontal front loading mailboxes by Auth-Florence. Doors to be 5"H x 12 3/4"W x 15 1/2"D, including 10 1/4"H x 12 3/4" W x 15 1/2"D parcel Lockers. 1 door in each unit is used for the postal master lock. GMP includes clear anodized alum finish, 5/8" H engraved door numbers or clear plastic windows, five pin cylinder cam locks with 2 keys, optional matching snap-on trim.
3. No specific identification is shown in the Contract Documents. Only factory standard identification selections are included in this GMP.

10810 TOILET AND BATH ACCESSORIES

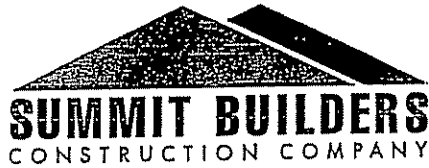
1. Toilet Accessories as selected in the VE is included.
2. Triangle Luxury Medicin Cabinets with beveled mirror door is offered as an alternate price to this GMP.
3. Grab bars are excluded in this GMP.

DIVISION 11 – EQUIPMENT

11450 RESIDENTIAL APPLIANCES

1. Refrigerators are to be furnished by the condo buyers.
2. Washer / dryers are to be furnished by the condo buyers.
3. Appliances included in this GMP, are manufactured by Whirlpool Appliances, and per owner's specifications.

Included in this GMP:



COPY

- Gas Cook Top-GLT3057RB
- Dish Washer-Whirlpool GU2400XTPB
- Disposal- Whirlpool 1/2 horsepower
- Micro hood 30"-Whirlpool GH5184XPB
- Single Oven-Whirlpool GBS307PRB
- Wine Storage-Whirlpool 75WCB-00
- Ins & Wire appliances
- Clubhouse Package
- Microwave Oven- GH5184XPB
- Dishwasher-GU2400XTPB
- Refrigerator-14 cu.ft by Whirlpool
- 11451 CEILING FANS
 - 1. Per Plans and Specifications. Pre-wire only.
- DIVISION 12 -- FURNISHINGS
 - 12357 RESIDENTIAL CASEWORK
 - 1. There was no specific specification of standard finish/type in the bidding documents. GMP includes product chosen by Owner through Canac Cabinets.
 - 2. All plastic laminate is to be Wilsonart brand color quest solid colors, patterns group, or woodgrains group, unless otherwise specified. Othe manufacturers and selections are available at an additional cost.
 - NONE INTERIOR ROLLER SHADES/BLINDS
 - 1. NIC
 - NONE WALK OFF MATS
 - 1. NIC
- DIVISION 13 -- SPECIAL CONSTRUCTION
 - NONE SOUND CONTROL- NIC
 - 1. NIC, unless shown on Bid Documents.
 - NONE POOLS AND SPAS
 - 1. Water features are excluded from this GMP.
 - 2. Pools are based on Supreme Pools proposal dated February 7, 2006.
 - 3. Pool Chairs are not included in the GMP.
 - 4. Lounge Furniture is not included in the GMP.
- DIVISION 14 -- CONVEYING SYSTEMS
 - 14240 HYDRAULIC ELEVATORS (PASSENGER)
 - 1. Access control to 4th floor has been provided
 - 2. GMP includes (4) 2500 lb., twin-post holeless (in lieu of conventional jack per specs) elevators as approved by the City of Scottsdale.
 - 3. No cab allowance is included in GMP for cab finish upgrades. Car sills are aluminum, flooring by others, not to exceed 3/8" high. Interior finishes per Thyssenkrupp quote dated January 18, 2006.
 - 4. No provisions are provided above what is shown on the drawings to accommodate for Elevator core acoustics (No lining of walls, or other sound attenuation.)
 - NONE MECHANICAL LIFTS
 - 1. NIC
 - 14560 TRASH CHUTES
 - 1. Per Plans and Specifications.
- DIVISION 15 -- MECHANICAL
 - NONE Mechanical general provisions
 - 1. Per Plans and Specifications and approved VE selections.
- DIVISION 16 -- ELECTRICAL
 - 16000 1. Per Plans and Specifications.
 - Transformers
 - 1. Proposal excludes APS primary and secondary cable and devices. Proposal includes trenching and conduit only.
 - Lighting
 - 1. Interior unit fixtures, material handling, distribution, storage of owner-supplied fixtures is not part of this agreement. Owner option and credit available to delete all light fixtures for house lighting.
 - Special Systems
 - 1. Per owner's selected contractor. Specifications by Owner contractor. An allowance of \$275,000 is included in this agreement. Competitive pricing is assumed.
 - Communications/Telecommunication, Security, Intercom Data Systems- Excluded from this GMP.

JV JTB
 [1. CONTRACT INCLUDES \$175,000.00 ALLOWANCE FOR INTERIOR LIGHT FIXTURES AS SHOWN ON PLANS WITH THE EXCEPTION OF UNDERCOUNTER LIGHTING]

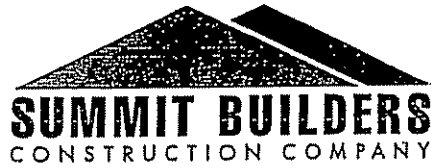


COPY

~~1. Per owner's selected contractor. Specifications by Owner contractor. An allowance of \$275,000 is included in this agreement. Competitive pricing is assumed.~~ DW JV

Fire Alarm and Detection Systems

1. Owner vendor to supply design and installation of system.
2. Fire Alarm system is included per R-2 Occupancy, and as reviewed with City of Scottsdale on 1-26-06, and IT Systems.
3. Per owner's selected contractor. Specifications by Owner contractor. An allowance of \$100,000 is included in this agreement. Competitive pricing is assumed.



 COPY

PROJECT: X (TEN) Lofts
Date
Created: 1/3/2006
Updated: 4/20/06 10:30 AM

Exhibit "E"

Schedule of Completion Dates included in the GMP for X Lofts

Commencement Based on a May 15,2006 start. Reference attached bar chart for specific milestones.

Completion of Building, including Garage and 3 floors of Resident Units, the Roof, Clubhouse and Exercise, Landscaping and Sitework.

579 calendar days from the start date of the project, or from when permits are received

ID	Description	Start	Finish	Duration	ES	EF	LS	LF	Free Float	Total Float	Predecessors
* 1000	Project Management	11/07/05	08/15/06	282 *	83 *						
* ST1999	START OF CONSTRUCTION	08/18/06	12/21/07	424 *	28 *						
+ G2000	SiteWork & Utilities Schedule	05/15/06	08/23/06	28 *	28 *						
+ F3000	Foundations Schedule	05/18/06	05/26/06	9 *	9 *						
+ AF3002	Area A Foundation	05/29/06	08/11/06	54 *	54 *						
+ BF3001	Area B Foundation	08/09/06	08/03/06	62 *	62 *						
+ G4000	Garage Parking Schedule	06/19/06	11/17/06	110 *	110 *						
+ A15000	1st Floor Schedule	11/09/06	04/03/07	105 *	105 *						
+ EXR11000	Exercise Schedule	11/09/06	03/14/07	91 *	91 *						
+ CLB10000	Clubhouse Schedule	11/20/06	03/23/07	90 *	90 *						
+ A26000	2nd Floor Schedule	12/04/06	05/23/07	121 *	121 *						
+ A37000	3rd Floor Schedule	01/18/07	08/01/07	139 *	139 *						
+ R8000	Roof Schedule	04/04/07	07/19/07	77 *	77 *						
+ E9000	Exterior Schedule	12/19/06	08/09/07	124 *	124 *						
+ PD1000	Podium Hardscaping Schedule	05/23/07	08/22/07	66 *	66 *						
+ H3000	Hardscaping Schedule	05/22/07	08/22/07	67 *	67 *						
+ LS2000	Landscaping Schedule	07/02/07	11/01/07	89 *	89 *						
10000	Final Inspections/Approvals	10/19/07	12/13/07	40	40	LS2430					
10100	Punchlist	11/16/07	12/27/07	30	30	10000					
11000	Substantial Completion	11/23/07	11/23/07	1	1	10000					
12000	Closeout Schedule	10/05/07	12/20/07	55	55	10100					

Start date	03/01/06
Finish date	12/27/07
Run date	04/21/06
Page number	1A

© Primavera Systems, Inc.

Summit Builders Construction Company
X (Ten) Lofts

- ▲ Early start point
- Early bar
- Progress bar
- Critical bar
- Summary bar
- ▲ Progress point
- ▲ Critical point
- ▲ Summary point
- ▲ Start milestone point



COPY

PROJECT: X (TEN) Lofts
 Date Created: 1/3/2006
 Updated: 4/21/06 11:15 AM

Exhibit "F"

Specification Index included in the GMP for X Lofts

SECTION NUMBER AND
TITLE

ISSUE DATE

INTRODUCTORY
INFORMATION

1	PROJECT TITLE PAGE	10/31/2005
10	TABLE OF CONTENTS	12/5/2005

BIDDING REQUIREMENTS,
CONTRACT FORMS,
CONDITIONS OF THE
CONTRACT

00200	INSTRUCTIONS TO BIDDERS	SEPT. 2005
00300	SUBSTITUTION REQUEST (DURING THE BIDDING PHASE)	SEPT. 2005
00320	SOILS REPORT	April 20, 2004
00410	BID FORM	SEPT. 2005
00700	GENERAL CONDITIONS (AIA A201-1997 EDITION)	SEPT. 2005
00800-97	SUPPLEMENTARY CONDITIONS (AIA A201-1997 EDITION)	SEPT. 2005

DIVISION 1 - GENERAL
REQUIREMENTS

01110	SUMMARY OF WORK	SEPT. 2005
01290	MEASUREMENT AND PAYMENT	SEPT. 2005
01312	PROJECT MEETINGS	SEPT. 2005
01315	CONTRACTORS REQUESTS FOR INFORMATION/INTERPRETATION	SEPT. 2005
01316	SUBMITTALS	SEPT. 2005
01352	ENVIRONMENTAL PROCEDURES (TYPICAL PROJECTS)	SEPT. 2005
01430	QUALITY CONTROL	SEPT. 2005
01500	CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS	SEPT. 2005
01600	MATERIALS AND EQUIPMENT	SEPT. 2005
01650	SUBSTITUTION REQUEST (AFTER THE BIDDING PHASE)	SEPT. 2005
01675	VALUE ENGINEERING PROCEDURES	SEPT. 2005
01732	CUTTING AND PATCHING	SEPT. 2005
01770	CONTRACT CLOSEOUT	SEPT. 2005

DIVISION 2 - SITE
CONSTRUCTION

02360	SOIL TREATMENT	SEPT. 2005
02765	CONCRETE CURBS, GUTTERS, SIDEWALKS AND DRIVEWAYS	SEPT. 2005
02773	PAVEMENT MARKINGS	SEPT. 2005
02783	UNIT PAVERS	SEPT. 2005
02810	LANDSCAPE IRRIGATION SYSTEM	SEPT. 2005
02822	ORNAMENTAL FENCES, DECORATIVE SCREENS AND GATES	SEPT. 2005



COPY

02841	PARKING BUMPERS	SEPT. 2005
02874	BICYCLE RACKS	SEPT. 2005
02900	LANDSCAPE	SEPT. 2005

DIVISION 3 - CONCRETE		SEPT. 2005
03532	CEMENTITIOUS FLOOR UNDERLAYMENT	

DIVISION 4 - MASONRY		SEPT. 2005
04220	CONCRETE MASONRY UNITS	SEPT. 2005
04930	MASONRY CLEANING	

DIVISION 5 - METALS		SEPT. 2005
05500	METAL FABRICATIONS	SEPT. 2005
05510	STEEL STAIRS	SEPT. 2005
05520	HANDRAILS AND RAILINGS	


DIVISION 6 - WOOD AND PLASTICS		SEPT. 2005
06100	ROUGH CARPENTRY	

DIVISION 7 - THERMAL AND MOISTURE PROTECTION		SEPT. 2005
07145	LIQUID-APPLIED URETHANE WATERPROOFING	SEPT. 2005
07210	BUILDING INSULATION	SEPT. 2005
07410	METAL ROOF AND WALL PANELS	SEPT. 2005
07570	COATED FOAM ROOFING	SEPT. 2005
07600	FLASHING AND SHEET METAL	SEPT. 2005
07610	SHEET METAL ROOFING	SEPT. 2005
07810	ALUMINUM INTUMESCENT FIREPROOFING	SEPT. 2005
07840	FIRESTOPPING	SEPT. 2005
07900	JOINT SEALERS	

DIVISION 8 - DOORS AND WINDOWS		SEPT. 2005
08100	STEEL DOORS AND FRAMES	SEPT. 2005
08215	WOOD DOORS	SEPT. 2005
08310	ACCESS DOORS AND FRAMES	SEPT. 2005
08410	ALUMINUM ENTRANCES AND STOREFRONTS	SEPT. 2005
08521	ALUMINUM WINDOWS (PROJECTED, CASEMENT, AND HORIZONTAL)	SEPT. 2005
08800	GLAZING	

DIVISION 9 - FINISHES		SEPT. 2005
09220	PORTLAND CEMENT PLASTER (FIBER REINFORCED)	SEPT. 2005
09250	GYPSON BOARD ASSEMBLIES	SEPT. 2005
09251	SHAFT WALL	SEPT. 2005
09310	CERAMIC TILE	SEPT. 2005
09680	CARPET	SEPT. 2005
09752	STONE COUNTERTOPS	SEPT. 2005
09901	PAINTING	



 **COPY**

DIVISION 10 - SPECIALTIES

10200	LOUVERS	SEPT. 2005
10550	POSTAL SPECIALTIES	SEPT. 2005
10810	TOILET ACCESSORIES	SEPT. 2005

DIVISION 11 - EQUIPMENT

11450	RESIDENTIAL APPLIANCES	SEPT. 2005
11451	CEILING FANS	SEPT. 2005

DIVISION 12 FURNISHINGS

12357	RESIDENTIAL CASEWORK	SEPT. 2005
-------	----------------------	------------

DIVISION 13 - SPECIAL
CONSTRUCTION (NOT
USED)

DIVISION 14 - CONVEYING
SYSTEMS

14240	HYDRAULIC ELEVATORS (PASSENGER)	SEPT. 2005
14560	LINEN AND TRASH CHUTES	SEPT. 2005

DIVISION 15 -
MECHANICAL

15100	BASIC MECHANICAL REQUIREMENTS	1/24/2006
15400	PLUMBING	1/24/2006

DIVISION 16 - ELECTRICAL

16000	Revised Multi-Family Electrical Specification in lieu of Specifications on the plans	1/24/2006
-------	--	-----------

DIVISION 17 - SPECIAL
SYSTEMS

17000	No Specifications, per plans only	
-------	-----------------------------------	--

END OF TABLE OF
CONTENTS



COPY

PROJECT: X (TEN) Lofts
 Date
 Created: 1/3/2006
 Updated: 4/21/06 11:23 AM

Exhibit "G"

Drawing index included in the GMP for X Lofts

Sheet Symbol	Sheet Name	Drawing date	Stamp Date	Delta #	Delta Date	Received
CIVIL DRAWINGS						
1 of 5	IMPROVEMENT PLANS	12/02/05	12/02/05	N/A	N/A	12/13/2005
2 of 5	GRADING AND DRAINAGE PLAN	12/02/05	12/02/05	N/A	N/A	12/13/2005
3 of 5	GRADING AND DRAINAGE PLAN	12/02/05	12/02/05	N/A	N/A	12/13/2005
4 of 5	PRIVATE WATER AND SEWER PLAN	12/02/05	12/02/05	N/A	N/A	12/13/2005
5 of 5	DETAILS	12/02/05	12/02/05	N/A	N/A	12/13/2005

LANDSCAPE						
LO-1	LANDSCAPE & IRRIGATION LEGENDS AND NOTES	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L1-1	LANDSCAPE PLANTING PLAN	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L1-2	LANDSCAPE PLANTING PLAN	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L1-3	LANDSCAPE PLANTING DETAILS	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L2-1	IRRIGATION PLAN	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L2-2	IRRIGATION PLAN	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L2-3	IRRIGATION DETAILS	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L3-1	HARDSCAPE CONSTRUCTION LAYOUT	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L3-2	HARDSCAPE CONSTRUCTION LAYOUT	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L3-3	HARDSCAPE PAVEMENT LAYOUT	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L3-4	HARDSCAPE DETAILS (NOT INCLUDED FOR CITY REVIEW)	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005
L3-5	HARDSCAPE DETAILS (NOT INCLUDED FOR CITY REVIEW)	09/08/05	12/09/05	1	10/3 1/2005	12/13/2005

ARCHITECTURAL						
A0.1	TITLE SHEET	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.2	GENERAL NOTES, SYMBOLS, ABBREV.	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A0.3	CODE ANALYSIS AND EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.4	ENLARGED COURTYARD PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.5	GENERAL NOTES & ACCESSIBLE PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.6	1ST FLR/SITE ACCESS ROUTE/EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.7	2ND FLR/SITE ACCESS ROUTE/EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.8	3RD FLR/SITE ACCESS ROUTE/EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A0.9	4TH FLR/SITE ACCESS ROUTE/EXITING PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A.10	OPEN SPACE PLAN	09/08/05	12/08/05	1	10/3 1/2005	12/13/2005
A1.1	SITE PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A1.2	LARGE SCALE PARTIAL PLANS AT 1ST FLOOR	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A1.3	SITE DETAILS	09/08/05	12/08/05	1	10/3 1/2005	12/13/2005
A1.4	SITE DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A1.5	SITE DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.1	UNIT "A" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.2	UNIT "B" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A2.3	UNIT "C" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.4	UNIT "D" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.5	UNIT "H" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.6	UNIT "J" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.7	UNIT "I2" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.8	UNIT "K" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.9	UNIT "K2" ENLARGED PLAN	09/08/05	12/08/05	1	10/3 1/2005	12/13/2005
A2.10	UNIT "K3" ENLARGED PLAN	09/08/05	12/08/05	1	10/3 1/2005	12/13/2005
A2.11	UNIT "L" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	1	10/3 1/2005	12/13/2005
A2.12	UNIT "L2" & "L3" ENLARGED PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A2.13	UNIT "M" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A2.14	UNIT "N" ENLARGED PLAN & INT ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.0	FIRST FLOOR PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.1	SECOND FLOOR PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A3.1.2	SECOND FLOOR DIMENSION PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A3.1.3	THIRD FLOOR PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A3.1.4	FOURTH FLOOR PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
A3.1.5	ROOF PLAN	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.6	EXTERIOR ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.7	COURTYARD ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.1.8	EXHIBIT FOR ROOF ELEMENTS OVER 50'-0"	09/08/05	12/08/05	1	10/3 1/2005	12/13/2005
A3.2.1	CLUBHOUSE & EXERCISE HOUSE FLOOR PLANS & INTERIOR ELEVATIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.2.2	CLUBHOUSE & EXERCISE HOUSE ROOF PLANS & REFLECTED CEILING PLANS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A3.2.3	CLUBHOUSE EXTERIOR ELEVATIONS	09/08/05	12/08/05	1	10/3 1/2005	12/13/2005



SUMMIT BUILDERS
CONSTRUCTION COMPANY

COPY

A3.2.4	EXERCISE HOUSE EXTERIOR	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A3.2.5	ELEVATIONS CLUBHOUSE & EXERCISE HOUSE SECTION & DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A4.1	BUILDING SECTIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A4.2	PARTIAL BUILDING SECTIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A4.3	PARTIAL BUILDING SECTIONS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A5.1	ENLARGED STAIR PLANS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A5.2	ENLARGED STAIR PLANS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A5.3	STAIR SECTIONS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A5.4	STAIR DETAILS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A5.5	ELEVATOR PLANS, DETAILS, AND HOISTWAY SECTION	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A6.1	DOOR SCHEDULE					
A6.2	WINDOW SCHEDULE	09/08/05	12/08/05	0	Delta 1 noted, but not in Rev Block	12/13/2005
A6.3	DOOR DETAILS	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A6.4	DRAWING NOT USED					12/13/2005
A6.5	WINDOW DETAILS	09/08/05	12/08/05	0	Delta 1 noted, but not in Rev Block	12/13/2005
A6.6	WINDOW DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A7.1	WALL TYPES & FIRE RATED ASSEMBLIES	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A7.2	WALL TYPES & FIRE RATED ASSEMBLIES	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A7.3	THRU PENETRATION FIRE STOPS/PARTITION TYPES	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A7.4	THRU PENETRATION FIRE STOPS/PARTITION TYPES	09/08/05	12/08/05	1	10/31/2005	12/13/2005
A8.1.1	EXTERIOR BUILDING DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.1.2	EXTERIOR BUILDING DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.1.3	EXTERIOR BUILDING DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.1.4	EXTERIOR BUILDING DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.1	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.2	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.3	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.4	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.2.5	ROOF DETAILS	09/08/05	12/08/05	2	9/28/2005	12/13/2005
A8.3.1	INTERIOR DETAILS	09/08/05	12/08/05	0	Delta 1 noted, but not in Rev Block	12/13/2005

STRUCTURAL DRAWINGS

S1.1	GENERAL STRUCTURAL NOTES	09/08/05	12/09/05	1	12/9/2005	12/13/2005
S1.2	TYPICAL DETAILS	09/08/05	12/09/05	0		12/13/2005
S1.3	TYPICAL DETAILS	09/08/05	12/09/05	0		12/13/2005
S1.4	TYPICAL DETAILS	09/08/05	12/09/05	1	12/9/2005	12/13/2005
S1.5	SCHEDULE SHEET	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S2.1	FOUNDATION PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.1.1	GARAGE DECK SLAB FRAMING PLAN-1ST FLOOR	09/08/05	12/12/05	1	12/8/2005	12/13/2005
S3.1.2	PARTIAL GARAGE DECK FLOOR FRAMING PLAN-1ST FLOOR	09/08/05	12/12/05	1	12/8/2005	12/13/2005
S3.1.3	PARTIAL 3RD FLOOR SHEAR WALL PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.2.1	3RD FLOOR FRAMING PLAN	09/08/05	12/09/05	0		12/13/2005
S3.2.2	PARTIAL 3RD FLOOR FRAMING PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.2.3	PARTIAL 3RD FLOOR SHEAR WALL PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.3.1	4TH FLOOR FRAMING PLAN	09/08/05	12/09/05	0		12/13/2005
S3.3.2	PARTIAL 4TH FLOOR FRAMING PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.3.3	PARTIAL 4TH FLOOR SHEAR WALL PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.4.1	ROOF FRAMING PLAN	09/08/05	12/09/05	0		12/13/2005
S3.4.2	PARTIAL ROOF FRAMING PLAN	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S3.5.1	EXERCISE BLDG & CLUBHOUSE BLDG PLANS & ROOF FRAMING PLANS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S4.1	FOUNDATION DETAILS	09/08/05	12/09/05	0		12/13/2005
S4.2	FOUNDATION DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S5.1	CONCRETE SLAB DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S5.2	CONCRETE SLAB DETAILS	09/08/05	12/09/05	0		12/13/2005
S6.1	FLOOR FRAMING DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S6.2	FLOOR FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
S6.3	FLOOR FRAMING DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S6.4	FLOOR FRAMING DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005
S7.1	ROOF FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
S7.2	ROOF FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
S7.3	ROOF FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
S7.4	ROOF FRAMING DETAILS	09/08/05	12/09/05	1	12/8/2005	12/13/2005

S8.1	STAIR FRAMING DETAILS	09/08/05	12/09/05	0		12/13/2005
------	-----------------------	----------	----------	---	--	------------

MECHANICAL DRAWINGS

M1.1	GARAGE MECHANICAL FLOOR PLAN -1ST FLOOR	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M1.2	ROOF MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M2.1	UNIT "A"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M2.2	UNIT "B"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M2.3	UNIT "C" & "D"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M2.4	UNIT "G" & "H"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M2.5	UNIT "J" & "K"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M2.6	UNIT "L"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M2.7	UNIT "M" & "N"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M2.8	UNIT "O" & "P"-ENLARGED MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M3.1	EXERCISE CLUB BUILDING MECHANICAL FLOOR PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M3.1.1	1ST FLOOR BUILDING MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M3.1.2	2ND FLOOR BUILDING MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M3.1.3	3RD FLOOR BUILDING MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M3.1.4	ROOF MECHANICAL PLAN	09/08/05	01/24/06	4	1/9/2006	1/26/2006
M4.1	MECHANICAL NOTES AND DETAILS	09/08/05	01/24/06	4	1/9/2006	1/26/2006

PLUMBING DRAWINGS

P2.1	UNIT "A"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P2.2	UNIT "B"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P2.3	UNIT "C" & "D"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P2.4	UNIT "E" & "F"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P2.5	UNIT "G"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P2.6	UNIT "H" & "I"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P2.7	UNIT "J"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P2.8	UNIT "K"-ENLARGED PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P3.1.0	1ST FLOOR PLUMBING FLOOR PLAN-WASTE AND VENT	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P3.1.0.1	1ST FLOOR PODIUM LEVEL PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P.3.1.1	2ND FLOOR PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P3.1.1.1	2ND FLOOR PLUMBING FLOOR PLAN-RAINWATER	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P3.1.2	3RD FLOOR PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P3.1.3	4TH FLOOR PLUMBING FLOOR PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P3.1.4	ROOF PLUMBING PLAN	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P3.2.1	EXERCISE & CLUB BUILDING PLUMBING FLOOR PLAN	09/08/05	12/12/05	0		12/13/2005
P4.1.0	WASTE & VENT RISER DIAGRAMS	09/08/05	12/12/05	1	12/9/2005	12/13/2005
P4.1.1	HOT & COLD WATER DIAGRAMS	09/08/05	12/12/05	0		12/13/2005
P4.1.2	HOT & COLD WATER DIAGRAMS	09/08/05	12/12/05	0		12/13/2005
P5.1.0	SCHEDULE, NOTES AND WATER CALCULATIONS	09/08/05	12/12/05	1	12/9/2005	12/13/2005

ELECTRICAL DRAWINGS

E1.1.0	ELECTRICAL SITE LIGHTING	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E1.1.1	ELECTRICAL PHOTOMETRY PLAN	09/08/05	12/03/05	2	9/28/2005	12/13/2005
E1.1.2	LIGHTING FIXTURE CUT SHEETS	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E1.1.3	LIGHTING FIXTURE CUT SHEETS	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E1.1.4	LIGHTING FIXTURE CUT SHEETS	09/08/05	12/12/05	2	9/28/2005	12/13/2005
E1.2.0	ELECTRICAL SITE POWER DISTRIBUTION	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E2.1	ELECTRICAL FLOOR PLANS UNIT "A"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E2.2	ELECTRICAL FLOOR PLANS UNIT "B"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E2.3	ELECTRICAL FLOOR PLANS UNIT "C" & "D"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E2.4	ELECTRICAL FLOOR PLANS UNIT "E"	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E2.5	ELECTRICAL FLOOR PLANS UNIT "F" & "G"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E2.6	ELECTRICAL FLOOR PLANS UNIT "H"-ENLARGED PLAN	09/08/05	12/12/05	2	9/28/2005	12/13/2005
E2.7	ELECTRICAL FLOOR PLANS UNIT "I"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E2.8	ELECTRICAL FLOOR PLANS UNIT "J" & "K"-ENLARGED PLAN	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.0.1	ELECTRICAL LIGHTING PLAN GARAGE PLAN-1ST FLOOR	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.0.2	PHOTOMETRY PLAN GARAGE PLAN-1ST FLOOR	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.0.3	ELECTRICAL POWER PLAN	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.1.0	ELECTRICAL LIGHTING PLAN 2ND FLOOR	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.1.1	ELECTRICAL POWER PLAN-2ND FLOOR	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.2.0	ELECTRICAL LIGHTING PLAN-3RD FLOOR	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.2.1	ELECTRICAL POWER PLAN-3RD FLOOR	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.3.0	ELECTRICAL LIGHTING PLAN-4TH FLOOR	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.3.1	ELECTRICAL POWER PLAN-4TH FLOOR	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.4.0	ELECTRICAL BUILDING PLAN ROOF PLAN	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E3.5.0	ELECTRICAL BUILDING PLAN EXERCISE CLUB BUILDING	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E4.01	LIGHTING FIXTURE CUT SHEETS	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E5.01	ELECTRICAL DIAGRAMS	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E5.02	ELECTRICAL DIAGRAMS	09/08/05	12/09/05	2	9/28/2005	12/13/2005
E6.01	ELECTRICAL SPECIFICATIONS AND SYMBOL LIST	09/08/05	12/09/05	2	9/28/2005	12/13/2005



COPY

PROJECT: X (TEN) Lofts

Date Created: 1/3/2006

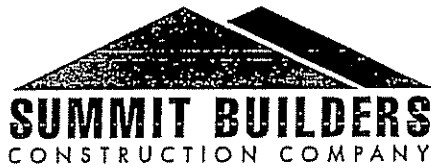
Updated: 4/20/06 10:53 AM

Exhibit "H"

Final GMP Budget Summary Sheet for X Lofts

PROJ: X LOFT
 Scottsdale, Arizona
 DATE: March 1, 2006
 FILE: X LOFT

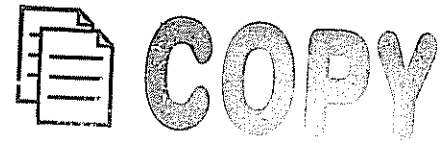
SPEC NO.	DESCRIPTION	GMP ESTIMATE	NOTES
	EARTHWORK	\$ 252,000	
	PAVING	\$ 15,000	
	UTILITIES	\$ 84,885	
2360	SOIL TREATMENT	\$ 4,290	
2765	PAVEMENT MARKINGS	\$ 5,900	
2841	PARKING BUMPERS	\$ 1,210	
2783	CONCRETE PAVERS	\$ 231,210	
2810	LANDSCAPE & IRRIGATION	\$ 157,830	Includes VE #20
	POTS	\$ 1,210	
2822	ORNAMENTAL FENCE & SCREENS	\$ 1,850	
2874	BICYCLE PARKING RACKS	\$ 221,405	
3582	CEMENT CONC. FLR. UNDERLAYMENT	\$ 3,698,900	
	CONCRETE	\$ 1,175,000	
	CONCRETE REINFORCING	\$ 2,523,900	
2733	SITE CONCRETE	\$ 2,348,464	Includes VE #23, 24, 26
4220	CONCRETE MASONRY UNITS	\$ 1,800	
4930	MASONRY CLEANING	\$ 116,800	
	MASONRY REBAR	\$ 592,172	
5500	METAL FABRICATIONS	\$ 1,000	
5510	STEEL STAIRS	\$ 2,572,000	
5520	HANDRAILS & RAILINGS - ARCH	\$ 75,000	
	MAPLE HANDRAIL @ BALCONY	\$ 4,000	
6100	ROUGH CARPENTRY	\$ 2,572,000	
	MILLWORK IN COMMON SPACE	\$ 75,000	
7145	LIQUID APPLIED WATERPROOFING	\$ 244,315	
7210	BUILDING INSULATION	\$ 126,500	Includes VE #5
7410	METAL ROOF & WALL PANELS	\$ 1,885,000	
7570	COATED FOAM ROOFING	\$ 15,000	
7600	FLASHING & SHEET METAL	\$ 221,425	
7610	SHEET METAL ROOFING	\$ 200,362	
7816	INTUMESCENT FIREPROOFING	\$ 392,252	
7840	FIRESTOPPING	\$ 20,000	
7900	JOINT SEALERS	\$ 20,000	
8100	STEEL DOORS & FRAMES	\$ 20,000	
8215	WOOD DOORS	\$ 20,000	
	HARDWARE	\$ 20,000	
	DOOR LABOR - LOCK & HANG	\$ 20,000	
8310	ACCESS DOORS	\$ 55,544	
8410	ALUMINUM ENTRANCE & STOREFRONT	\$ 428,159	Includes VE # 27
8521	ALUMINUM WINDOWS	\$ 428,159	
	INSTALL ALUMINUM WINDOWS	\$ 428,159	
8800	GLAZING	\$ 932,743	
9220	CEMENT PLASTER	\$ 931,785	
9250	GYP SUM BOARD	\$ 518,300	
9310	TILE	\$ 10,000	
9680	CARPET	\$ 230,047	Based on Summit Sub
	WOOD FLOORS	\$ 380,000	
9452	STONE COUNTERTOPS	\$ 10,000	
9901	PAINTING	\$ 4,160	
10200	LOUVERS	\$ 134,595	Includes VE 21a
10550	POSTAL SPECIALTIES	\$ 1,000	
10810	TOILET ACCESSORIES	\$ 1,000	
11450	RESIDENTIAL APPLIANCES	\$ 1,000	
	- REFRIGERATOR	\$ 1,000	



COPY

	- WHIRLPOOL SINGLE OVEN	\$ 82,820	
	- WHIRLPOOL GAS COOKTOP	\$ 36,490	Includes VE #33
	- WHIRLPOOL MICROHOOD	\$ 31,130	
	- WHIRLPOOL DISHWASHER	\$ 35,342	
	- INSTALL APPLIANCES	\$ 25,912	
	- WINE COOLER	\$ 74,620	
	- GARBAGE DISPOSAL	\$ 4,944	Includes VE #29
11450	CEILING FANS	\$	
12357	RESIDENTIAL CASEWORK	\$ 384,627	
	SWIMMING POOL & SPA	\$ 86,000	Includes VE #15
14240	HYDRAULIC ELEVATORS	\$ 245,260	
14560	LINEN & TRASH CHUTES	\$ 15,000	
		\$	
	PLUMBING	\$ 1,047,588	Includes VE #3, 6,28,30,31,34
	FIRE PROTECTION	\$ 378,867	
	HVAC	\$ 930,214	Includes VE # 10, 11, 33
	ELECTRICAL	\$ 1,365,000	Includes VE # 6
	SPECIAL SYSTEMS	\$ 275,000	
	FIRE ALARM SYSTEM - ALLOWANCE	\$ 100,000	
		\$	
	GENERAL CONDITIONS	\$ 1,232,923	
	STAKING	\$ 23,000	
	LOCATION SERVICE	\$ 600	
	PERMITS & FEES	NIC	
	UTILITY FEES	NIC	
	TESTING/INSPECTIONS	NIC	
	TOTAL DIRECT COSTS	\$ 21,698,931	
	LIABILITY INSURANCE	\$ 86,795	
	DATA PROCESSING	\$	
	SUBGUARD INSURANCE	\$ 150,075	
	CONTRACTOR CONTINGENCY	\$ 7,505	
	OVERHEAD & PROFIT	\$ 877,432	
	SALES TAX	\$ 1,179,262	
	TOTAL	\$ 24,000,000	
	BOND PREMIUM	\$ 145,400	Add To Base Bid

First \$500,000 @ 1.15%	\$ 5,750
Next \$2.0 mil @ 8%	\$ 16,000
Next \$2.5 mil @ .65%	\$ 16,250
Next \$2.5 mil @ .60%	\$ 15,000
Over \$7.5 mil @ .55%	\$ 92,400
	\$ 145,400



PROJECT: X (TEN) Lofts
 Date
 Created: 1/3/2006
 Updated: 4/20/06 10:57 AM

Exhibit "I"

Final GMP General Conditions Summary Sheet for X Lofts

PRELIMINARY ESTIMATE BREAKDOWN						
PROJ :	X LOFT					
DATE:	March 2, 2006					
LOC:	Scottsdale, AZ					
BLDG:	135,000	SF				
				DURATION:	87	WEEKS
					3,464	HOURS
	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	COMMENTS
GENERAL CONDITIONS:	OPERATION MANAGER	87	HR	\$92.78	\$ 8,035	ONE HOUR PER WEEK
	GENERAL SUPERINTENDENT	173	HR	\$90.14	\$ 15,612	TWO HOUR PER WEEK
	SENIOR PROJECT MANAGER	-	HR	\$0.00	\$ -	
	PROJECT MANAGER	3,464	HR	\$64.56	\$ 223,636	FULL TIME
	ASSISTANT PROJECT MANAGER	-	HR	\$0.00	\$ -	
	SENIOR CONSTRUCTION MANAGER	-	HR	\$0.00	\$ -	
	CONSTRUCTION MANAGER	3,464	HR	\$62.35	\$ 215,980	FULL TIME
	ASSISTANT SUPERINTENDENT	1,732	HR	\$42.25	\$ 73,177	1/2 TIME
	ASSISTANT SUPERINTENDENT	1,490	HR	\$42.25	\$ 62,953	43%
	PUNCH SUPERINTENDENT	693	HR	\$42.25	\$ 29,271	LAST FOUR MONTHS
	PROJECT ENGINEER	3,464	HR	\$41.28	\$ 142,994	FULL TIME
	PROJECT ACCOUNTANT	577	HR	\$39.04	\$ 22,539	1/6 TIME
	PROJECT COORDINATOR	577	HR	\$36.84	\$ 21,269	1/6 TIME
	GENERAL CLEAN-UP	87	WK	\$250.00	\$ 21,650	
	FINAL CLEAN-UP	135,000	SF	\$0.25	\$ 33,750	
	FINAL CLEAN GARAGE	87,000	SF	\$0.08	\$ 6,960	
	DUMP FEES	1	LS	\$5,500.00	\$ 5,500	
	DUMPSTER	20	MTH	\$1,050.00	\$ 21,000	3 PULLS PER MONTH
	JOB TRAILER	21	MTH	\$910.00	\$ 19,110	PLUS ONE IN AND OUT
	TEMPORARY TOILETS	20	MTH	\$540.00	\$ 10,800	SIX TOTAL
	TEMPORARY WATER	20	MTH	\$750.00	\$ 15,000	
	TEMPORARY POWER	20	MTH	\$2,500.00	\$ 50,000	
	DRINKING WATER	20	MTH	\$200.00	\$ 4,000	
	PHONE HOOK-UP	5	EA	\$250.00	\$ 1,250	
	TEMP TRASH CHUTE	1	LS	\$7,500.00	\$ 7,500	
	TEMP STAIRS	1	LS	\$10,000.00	\$ 10,000	
	PHONE	20	MTH	\$625.00	\$ 12,500	
	SMALL TOOLS	20	MTH	\$175.00	\$ 3,500	
	GAS	87	WK	\$141.25	\$ 12,232	7 1/2% labor X 20%
	JOB SIGN	1	EA	\$1,531.00	\$ 1,531	
	SAFETY SUPPLIES	20	MTH	\$400.00	\$ 8,000	
	FIRE EXTINGUISHERS	12	EA	\$30.00	\$ 360	
	SECURITY FENCE	800	LF	\$2.00	\$ 1,600	
	VEHICLES	87	WK	\$554.89	\$ 48,928	7 1/2% labor x 80%
	GENERAL LABOR	20	MTH	\$4,097.91	\$ 81,958	
	PETTY CASH	20	MTH	\$200.00	\$ 4,000	
	OFFICE SUPPLIES	20	MTH	\$404.16	\$ 8,083	
	OFFICE EQUIPMENT	20	MTH	\$1,119.00	\$ 22,380	
	CLOSEOUT/WARRANTY	1	LS	\$12,900.00	\$ 12,900	
	TOTAL GENERAL CONDITIONS				\$ 1,232,923	