

UNOFFICIAL COPY



00455141

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

00455141

3703/0030 87 006 Page 1 of 13
2000-06-20 14:54:34
Cook County Recorder 24.50

SUBCONTRACTOR'S NOTICE AND CLAIM FOR LIEN

IN THE OFFICE OF THE
RECORDER OF DEEDS
COOK COUNTY, ILLINOIS

The undersigned lien Claimant, EWING-DOHERTY MECHANICAL, INC., of 304 N. York Road, Bensenville, Illinois 60106 (hereinafter referred to as "Claimant") hereby files a notice and claim for lien against LEOPARDO COMPANIES, INC., (hereinafter referred to as "Contractor") and THOMAS STACK, SUCCESSOR TRUSTEE OF TRIDENT INVESTMENT MANAGEMENT, INC. - MEYER INVESTMENT PROPERTIES, INC., PUBLIC PENSION FUND I - 1983, GROUP TRUST AGREEMENT DATED AS OF FEBRUARY 29, 1984; CENTURY, L. L. C., AN ILLINOIS LIMITED LIABILITY COMPANY; JOHN E. SHAFFER; DENNIS J. HIFFMAN; LANDMARK THEATER CORP.; E. THOMAS COLLINS, JR. (hereinafter referred to as "Owners"), and all other persons having or claiming an interest in the real estate described below and states as follows:

**COOK COUNTY
RECORDER
EUGENE "GENE" MOORE
SKOKIE OFFICE**

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1. On or about October 7, 1999, the Owners owned the following described land in the County of Cook, State of Illinois, to-wit:

See Attached Legal Description

Commonly known as 2828 North Clark Street, Chicago, Illinois 60657, and together with all improvements thereon referred to as to the "Premises".

2. Prior to October 29, 1999, Owners entered into a Contract with Contractor whereby the Contractor was to provide labor and materials for the construction of a commercial structure on the Premises.

3. On October 29, 1999, Contractor made a written subcontract with the Claimant to furnish and supply plumbing to the Premises in accordance with the attached Agreement in the amount of \$175,250.00.

4. Claimant has furnished extra labor and material to the Premises in the agreed amount of \$19,940.00.

5. On March 24th, 2000; Claimant substantially completed all required by said contract and extras to be performed on their part.

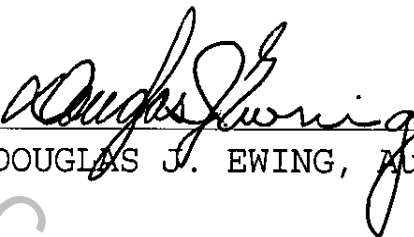
6. The labor, materials, supplies, equipment, and services for the work and in the improvement of the aforementioned Premises and supplied by Claimant was done with the knowledge and consent of the Owners.

7. Claimant is entitled to credits on account thereof as follows:

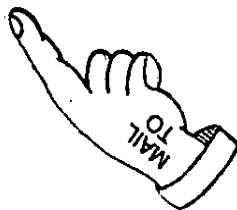
UNOFFICIAL COPY

Payments totaling \$155,567.00, leaving due, unpaid and owing to the Claimant, after allowing all just credits, the sum of Thirty-Nine Thousand Six Hundred Twenty-Three (\$39,623.00) Dollars, for which, with interest pursuant to 770 ILCS 60/1 of the Mechanics' Lien Act, Claimant claims a lien on the Premises and improvements and on all monies or other considerations due or to become due from the Owner to Contractor under the contract between Contractor and Owner.

EWING-DOHERTY MECHANICAL, INC.

By: 
DOUGLAS J. EWING, Authorized Officer

Document Prepared By and Return To:
Gene A. Eich, Ltd.
Attorney for EWING-DOHERTY MECHANICAL, INC.
6032 N. Lincoln Avenue
Morton Grove, Illinois 60053-2955
847-965-4440



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

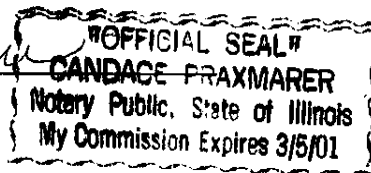
The Affiant, DOUGLAS J. EWING, being first duly sworn, on oath deposes and states that he is an authorized officer of EWING-DOHERTY MECHANICAL, INC., the Claimant; that he has read the foregoing Subcontractor's Notice and Claim for Lien and knows the contents thereof, and that all statements contained therein are true and correct.

EWING-DOHERTY MECHANICAL, INC.

By: *Douglas J. Ewing*
DOUGLAS J. EWING, Authorized Officer

Subscribed and Sworn to before me
this 7th day of June, 2000

Candace Praxmarer
Notary Public



UNOFFICIAL COPY

Legal Description

PARCEL 1:

LOTS 1 AND 2 (EXCEPT THAT PART OF THE SOUTH 0.71 FEET, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE, LYING EAST OF THE WEST 163.0 FEET, AS MEASURED ALONG THE SOUTH LINE OF SAID LOT 2) IN BROMLEY'S SUBDIVISION OF THE EAST PART OF THE SOUTH 1/2 OF LOT 10 IN BICKERDIKE'S AND STEELE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

PARCEL 2:

LOTS 1, 2, 3, 4, 5, 6 AND 7 IN THE SUBDIVISION OF THE NORTH 1/2 OF LOT 10 IN BICKERDIKE'S AND STEELE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

PARCEL 3:

THE EAST 207 FEET OF THE SOUTH 1/2 OF LOT 11 IN BICKERDIKE'S AND STEELE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

PARCEL 4:

LOTS 18 AND 19 IN RAWORTH AND OTHERS SUBDIVISION OF PART OF LOTS 11, 12, 15 AND 16 IN BICKERDIKE'S AND STEELE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

14-28-119-003 (LOT 18 PARCEL 4), 14-28-119-004 (LOT 19 PARCEL 4),
14-28-119-005 (PART OF PARCEL 3), 14-28-119-006 (PART OF PARCEL 4),
14-28-119-007 (PART OF PARCEL 2), 14-28-119-008 (LOT 5 PARCEL 2) 14-28-119-011
(PARCEL 1), 14-28-119-024 (PART OF PARCEL 2). VOLUME 486
COMMON ADDRESS: 2828 NORTH CLARK STREET, CHICAGO, ILLINOIS

-DOCUMENT #: CHC001A (50756-00021-0) 275294.1:DATE:04/12/97/TIME:15:51-

DATE: October 7, 1999

Page 1
LCI #7699
Century 7 Theatres
2828 N. Clark
Chicago, IL 60657

CONTRACT TO: Ewing-Doherty Mechanical, Inc.
304 North York Road
Bensenville, IL 60106
Attn: Randy Duncan
PH: 630.766.5920
FAX: 630.766.0734

PROJECT:

SUBJECT TO CONDITIONS OF THE SUBCONTRACT AGREEMENT ATTACHED HERE TO, you are authorized to proceed with the work described below in connection with the above project, the cost of which is to be \$ 175,250.00

DESCRIPTION

Furnish all labor and material plus related and incidental items necessary to fully complete. All work to include, but not necessarily limited to the

PLUMBING - 15400

Provide all necessary labor, material and equipment in order to complete in every respect, all Plumbing work as shown in the attached RFI's. In addition, the entire project specifications dated 12/21/98 including the following specification divisions and sections are incorporated in this contract.

A. Scope of Work:

1. Maintain, alter, and repair existing plumbing installations as follows:
 - ~~Refrigerant recharging, servicing, and/or repair equipment, as needed in order to accommodate new construction.~~
 - Add or repair insulation if required
 - ~~Remove and replace existing fixtures as needed (replace or repair damaged during your installation)~~
 - Include premium time, as may be required, for work in occupied areas to complete the plumbing rough-in for the bathrooms and concession areas.
 - Maintain utilities to occupied areas at all times
2. Furnish and install a complete operable plumbing system to include:
 - Domestic water systems
 - Waste/vent systems
 - All new plumbing fixtures as specified
 - ~~Water meter and meter fitting (for building use)~~
 - Hot water heaters with open site wastes
 - Floor drains
 - Cleanouts
 - Mop receptors
3. Conceal all pipes within existing or new walls.
4. Provide for floor, wall, and ceiling penetrations necessary to complete your work including all:
 - Flashing, pitch pans, and sleeves
 - Caulking/weatherproofing/fireproofing to maintain fire ratings at walls, floors and ceilings
 - Necessary cutting and coring
 - Coordination of size and location of all openings with other trades
 - Approved grout or other approved fire rating material at all fire rated structures
 - ~~Fire opening sleeves~~
 - Templates

Subcontractor acknowledges that he is familiar with this Subcontract Agreement, and he agrees to be bound to Leopardo Construction, by the terms thereof and to assume toward Leopardo Construction all the obligations and responsibilities that it assumes toward the Owner.

ACCEPTED: Ewing-Doherty Mechanical (Subcontractor)

LEOPARDO CONSTRUCTION (Contractor)

Douglas A. Ewing
Douglas A. Ewing, Executive Vice President
DATE: 10/26/99

[Signature]
DATE: 10/26/99

SUBCONTRACTOR COPY

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CONTRACT
NO.

DATE: October 7, 1999

CONTRACT TO: Ewing-Doherty Mechanical, Inc.
304 North York Road
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PROJECT:

Page 2
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- Enlarge or fill in existing openings to be reused

5. Provide all necessary mountings and supports for your work including:

- Anchor bolts and plates
- Hangers and supports
- Threaded rod/Unistrut
- Sketches and details
- Templates

6. Provide the following miscellaneous items related to your work:

- ~~Permit application fees~~
- On-site laborer for clean-up of your materials and debris
- ~~Sealing wall penetrations~~
- Protection/restoration of completed/existing areas
- Caulk around all fixtures/finished installations
- Vacuum breakers (where required by codes)
- Shut-off valves
- Backflow devices/R.P.Z. valves wherever required by code
- Layout of all the above
- As built
- Circulating pumps
- Identification signs, labels, directories for your installation/equipment as required

7. Gas piping by HVAC contractor.

8. Connection of Owner furnished and installed equipment as follows:

- Concession equipment
- Job makers

Provide all necessary service revisions, connectors, piping or other plumbing items necessary to make the above systems operable.

- Exposed piping shall be painted by others. Leave piping and insulation free of oil and grease.
- When exposed piping parallel and perpendicular to structural members.

Subcontractor acknowledges that he is familiar with this Subcontract Agreement, and he agrees to be bound to Leopardo Construction, by the terms thereof and to assume toward Leopardo Construction all the obligations and responsibilities that it assumes toward the Owner.

ACCEPTED: Ewing-Doherty Mechanical (Subcontractor)

LEOPARDO CONSTRUCTION (Contractor)

Douglas J. Ewing
Douglas J. Ewing, Executive Vice President
DATE: 10/28/99

[Signature]
DATE: 10/28/99

DATE: October 7, 1999

CONTRACT TO: Ewing-Doherty Mechanical, Inc.
304 North York Road
Bensenville, IL 60106
Attn: Randy Duncan
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FAX: 630.766.0734

PROJECT: Page 3
LCI #7699
Century 7 Theatres
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PLUMBING - 15400

10. Provide all start up and testing of new and existing systems as required in the contract documents including:

- Flushing and cleaning of piping including sanitization
- Equipment start-up
- Pressure test lines as required
- Recharge and bleed air from all lines

B. The project bid package dated January 19, 1999 is included in this contract. This package outlines the following construction issues:

- Scaffolding information
- Tower Crane information
- Preliminary construction schedule for bidding
- Supplemental General Conditions
- Shopping Center rules and procedures
- Safety specifications
- Leopardo safety rules

Year 2000 Compliance

The Subcontractor represents and warrants to LCI that all computer hardware or software provided to LCI under the terms of this Agreement, or incorporated in any equipment or systems provided to LCI under this Agreement, or used by Subcontractor in connection with the performance of the Contract Duties hereunder, before, during or after the calendar year 2000, shall, at no additional cost to LCI, be "Year 2000 Compliant". For purposes of this Agreement, "Year 2000 Compliant" shall mean that such software shall not provide or cause invalid and/or incorrect results in the operation of any building equipment, systems or components located within or servicing the Property, and that such hardware and software shall, at a minimum, provide for (i) date century recognition, (ii) calculations that accommodate same century and multicentury formulas and date values, (iii) date data interface values that reflect the century and (iv) accurate calendar year 2000 leap year calculations.

SCHEDULE

Schedule dates to be as per attached master schedule dated 9/29/99. The attached schedule will be reviewed and will be subject to changes as reviewed in the weekly subcontractor meeting on-site. Each subcontractor is required to attend with either the Project Manager or Project Superintendent.

This subcontractor shall provide sufficient competent manpower required to meet project schedule.

Subcontractor acknowledges that he is familiar with this Subcontract Agreement, and he agrees to be bound to Leopardo Construction, by the terms thereof and to assume toward Leopardo Construction all the obligations and responsibilities that it assumes toward the Owner.

ACCEPTED: Ewing-Doherty Mechanical, Inc. (Subcontractor)

LEOPARDO CONSTRUCTION (Contractor)

Douglas J. Ewing, Executive Vice President

DATE: 10/26/99

DATE:

Corporate Headquarters:
115 North Brandon Drive, Glendale Heights, Illinois 60139
Tel: 630.294.7280 or Fax: 630.294.6678 or www.leopardo.com

CONTRACT
NO.

DATE: October 7, 1999

CONTRACT TO: Ewing-Doherty Mechanical, Inc.
304 North York Road
Bensenville, IL 60106
Attn: Randy Duncan
PH: 630.766.5920
FAX: 630.766.0734

PROJECT: Page 4
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Additional manpower and/or overtime to be provided at no additional cost by this subcontractor as required to meet project schedule.

Information given on graphic schedule issued by Leopardo Companies, Inc. shall not relieve the subcontractor from completing their work on time as provided herein. Such work shall be completed in a manner so as not to impede other trades' ability to complete the work.

MULTIPLE MOBILIZATIONS

Subcontractor shall provide multiple mobilizations, delivery, and staging as required to complete project in accordance with LCI construction schedule.

UNION MANPOWER

All work will be performed in a workmanlike manner by Union tradesmen. Subcontractor is responsible at no additional cost to Leopardo Companies, Inc., Owner or Architect to indemnify, defend and hold harmless each of them for any labor disputes which arise, including those between labor unions which make jurisdictional claims for the same work being performed by the Subcontractor.

Subcontractor acknowledges that Leopardo is signatory to the following standard union agreements, which may make jurisdictional claims: Chicago and Northeast Illinois District Council of Carpenters and Construction and General Laborers, District Council of Chicago and Vicinity.

INSURANCE

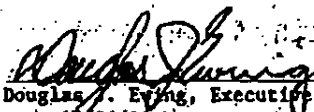
The subcontractor shall maintain insurance in accordance with the limits and coverages as stated in the Supplemental General Conditions attached hereto and to the maximum limits required by the Owner, if shown below. Submit a Certificate of Insurance naming the following as primary additional insureds. Any insurance carried by the additional insured will be excess insurance. It will conform to the requirements in the specifications within five (5) days of execution of this contract. The following firms shall be added as primary additional insureds on the subcontractor's policies.

- Century L.I.C. c/o H.S.A., Attn: Steve Uhlarik, 180 N. Wacker Dr., Suite 500, Chicago, IL 60606 (OWNER)
- Hiffman Shaffer Associates, Inc., Attn: Steve Uhlarik, 180 N. Wacker Dr., Suite 500, Chicago, IL 60606 (OWNER)
- Leopardo Companies, Inc., Attn: Jeanne Jackson, 115 N. Brandon Dr., Glendale Heights, IL 60139 (GENERAL CONTRACTOR)
- JK Architects, Inc., 106 West 11th, Suite 1900, Kansas City, MO 64105 (ARCHITECT)

Subcontractor acknowledges that he is familiar with this Subcontract Agreement, and he agrees to be bound to Leopardo Construction, by the terms thereof and to assume toward Leopardo Construction all the obligations and responsibilities that it assumes toward the Owner.

ACCEPTED: Ewing-Doherty Mechanical (Subcontractor)

LEOPARDO CONSTRUCTION (Contractor)


Douglas Ewing, Executive Vice-President
DATE: 10/26/99


DATE: 10/26/99

CONTRACT
NO.

DATE: October 7, 1999

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Page 5
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- Landmark Theatre Corporation, 474 Belt Line Rd., Suite 205, Lockbox 18, Dallas, TX 75244
(THEATRE TENANT)

The subcontractor shall be responsible to insure all tools, equipment, and materials on site from vandalism and theft and shall provide adequate protection for all stored materials from adverse weather etc.

INSPECTIONS

This subcontractor is required to coordinate and schedule all inspections as required to complete your work.

WASTE REMOVAL

Provide all labor required to remove any waste generated by your work on a daily basis. After reasonable written notice, failure to do so will be considered as authorization for Leopardo Companies, Inc. to remove such waste with their own forces and charge all costs associated with this clean up to this subcontractor.

HAZARD FREE WORK AREA

Subcontractor shall keep work area completely free of all hazards to any workers or other persons, and shall notify Leopardo Job Site Superintendent or office immediately, in writing, of any apparent hazards in the workplace.

RESTORATION OF ORIGINAL/EXISTING CONDITION

The subcontractor shall sufficiently protect and/or restore to original condition any completed or existing installation which has been damaged as a result of their work.

MATERIAL SAFETY DATA SHEETS

The subcontractor shall provide Material Safety Data Sheets (M.S.D.S.) to Leopardo Companies, Inc. for all substances/materials used during installation. Applicable copies to be forwarded to Leopardo Job Site Superintendent in accordance with O.S.H.A. regulations.

CHANGE ORDER REQUESTS

All change order requests/cost proposals shall be submitted to Leopardo Companies, Inc. within five (5) days from the date of issuance of said change order request. If subcontractor does not submit pricing within the five (5) day limit, Leopardo Companies, Inc. reserves the right to price the change and direct the subcontractor to complete the work for the price determined by Leopardo Companies, Inc.

PAYOUTS

No payout will be processed without a properly completed G702 and G703 form.

Subcontractor acknowledges that he is familiar with this Subcontract Agreement, and he agrees to be bound to Leopardo Construction, by the terms thereof and to assume toward Leopardo Construction all the obligations and responsibilities that it accrues toward the Owner.

ACCEPTED: Ewing-Doherty Mechanical (Subcontractor)

LEOPARDO CONSTRUCTION (Contractor)

Douglas J. Ewing, Executive Vice President

DATE: 10/26/99

SUBCONTRACTOR COPY

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PROJECT CLOSEOUT

The Subcontractor shall complete all associated punchlist items, warranties, as-built drawings, operation and maintenance manuals, and provide final waivers of lien, (hereinafter referred to as Project Closeout), as required by the contract documents. In the event that the subcontractor fails to complete the Project Closeout within the time period established by written notice from Contractor (which shall not be less than 10 calendar days), the subcontractor shall pay to Contractor the sum of \$700.00 for each calendar day the Project Closeout is not completed, after the period established by written notice of Contractor.

In addition to the Contractor's rights as stated above, and if Subcontractor has failed to complete the punchlist within the period established by written notice of Contractor, the Contractor may, without violating this agreement, perform or have performed all work required to complete Subcontractor's punchlist, and any cost incurred by reason thereof, shall be a charge against the Subcontractor and may be offset from any amounts owed to Subcontractor. If the payments due the Subcontractor are not sufficient to cover such cost, Subcontractor shall pay difference to Contractor. The Contractor's performance of any work to complete Subcontractor punchlist shall not relieve Subcontractor from any obligation or warranties which the Subcontractor would otherwise have per the terms of this agreement.

The subcontractor expressly agrees that in the event of the Contractor's termination of the agreement between Contractor and Owner, the Owner shall become the third party beneficiary of the Subcontract Agreement, and the Subcontractor shall be obligated to the Owner to complete the remaining work under the terms of this Subcontract Agreement.

Subcontractor acknowledges that he is familiar with this Subcontract Agreement, and he agrees to be bound to Leopardo Construction, by the terms thereof and to assume toward Leopardo Construction all the obligations and responsibilities that it assumes toward the Owner.

ACCEPTED: Ewing-Doherty Mechanical (Subcontractor)

LEOPARDO CONSTRUCTION (Contractor)

Douglas J. Ewing, Executive Vice President

DATE: 10/27/99

DATE: 10/27/99

CONDITIONS TO THE SUBCONTRACT AGREEMENT

The parties agree as follows:

1. The Subcontract Documents, consisting of (a) The Subcontract Agreement (Subcontract); (b) The Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents attached hereto; (c) any other documents listed in the Subcontract; and (d) any modifications to this Subcontract made after its execution. The Subcontract Documents form the Subcontract and are a part of the Subcontract.

2. The Subcontract Documents are complementary. Performance of the Work must be consistent with the Subcontract Documents and that which is reasonably inferable from them as being necessary to produce the intended result. The Subcontract represents the entire agreement between the parties and supersedes all prior negotiations, representations or agreements. A listing of the other documents included within the Subcontract Documents appears in Schedule A attached hereto. If any of the Subcontract Documents require Subcontractor specifically to consent to any provision thereof, Subcontractor hereby consents to such provision.

3. The Subcontractor shall perform the construction and services described on the front page of this Subcontract (the Work), including all labor, materials, equipment, services and other items required to complete such Work. No changes in the Work may be made except upon written order from Contractor. The Subcontractor has accepted that it is to the conditions of the Project site and existing work of being placed there, and that it will be liable for any damage to the Work or other property.

3.1 The first payment will not be made until the Subcontract is executed and submitted to Contractor and all its requirements are satisfied. Prior to the first application for payment, Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work, aggregating the Subcontract Price, made out in such detail and supported by such evidence as the Contractor, Owner or Lender may require, and including a listing of all sub-contractors, suppliers, and labor and material to be used. In applying for payment, the Subcontractor must submit such statements based upon this schedule.

3.2 Partial payments to Subcontractor will be made on the 15th day of each month agreed upon by the parties, provided bills, contracts or receipts, standard amount statements and orders of pay have been received, approved and issued by the Owner at least five days prior thereto. Payments will be in the amount of 80% of the value of the Work and materials incorporated in the Project during the previous month. The Subcontractor shall be responsible for the cost of any interest on Subcontractor's account for any delay in payment in accordance with Article 13 and surety bonds in accordance with Article 14, and shall not be liable for Contractor's right to revoke and Subcontractor's right to sue for the balance of the contract amount or a separate note, all sums which the Subcontractor has advanced for actual costs or which on the date of the payment application are not yet paid for.

3.3 The Subcontractor's own statements must reflect other work included in the contract amount or a separate note, all sums which the Subcontractor has advanced for actual costs or which on the date of the payment application are not yet paid for.

3.4 All payments to Subcontractor will be made only if and after the Contractor has received payment from the Owner for the Work.

3.5 Applications will include requests for payment on account of approved work on orders only.

3.6 Applications for payment may not include requests for payment of amounts which the Subcontractor does not intend to pay to a sub-contractor or supplier within 30 days after the date of the application because of a dispute or for any reason.

3.7 If the Subcontractor is furnishing labor and material on a time and material basis, it will promptly file with Contractor and Owner a true and correct copy of the following: (a) a true and correct copy of the Subcontractor's schedule of values, showing the labor and materials furnished to the Project. Subcontractor shall submit labor rates with complete breakdown of all large benefits prior to commencement of any time and material work. A copy of the signed vouchers will be submitted with invoices, together with duplicate bills for materials furnished. The Contractor may examine the records of Subcontractor relating to these charges.

3.8 Payments will cease if (a) Subcontractor ceases any provision of the Subcontract and does not comply therewith; (b) there is reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract Price; or (c) there is reasonable evidence that the Work will not be completed within the Subcontract time and that the unpaid balance of the Subcontract Price would not be adequate to cover the Contractor's damages as a result. Payments will be made and will continue until the final closing statement has been received by the Subcontractor.

3.9 If there is a claim, lien or security interest concerning Project payments of the Subcontractor because of any action of Subcontractor, or there is reasonable evidence indicating the probable filing of such claim, lien or security interest, that the Work is not due or to become due an amount sufficient to indemnify and protect the Contractor and Owner against such claim, lien or security interest and the cost of defending thereagainst, the Contractor has the right, whenever it deems appropriate, to pay directly to any person any sum due or to become due from Subcontractor for performance of any work or materials, supplies, tools or equipment to the Project. All such payments will be on account of Subcontractor.

3.10 The Contractor has the right, whenever it deems appropriate, to pay directly to any person any sum due or to become due from Subcontractor for performance of any work or materials, supplies, tools or equipment to the Project. All such payments will be on account of Subcontractor.

3.11 All payments to Subcontractor which are in full shall leave the Subcontractor to sub-contractors for effect on any such sub-contractors. The Subcontractor shall be liable to sub-contractors for such other persons and cannot be used for any other purposes until such obligations are satisfied.

3.12 The final payment, including the 10% retainage reserved, will be made within 30 days after Contractor has received its final payment from Owner provided that (a) Subcontractor has completed its Work and all punch list obligations to the complete satisfaction of the Architect, Owner, Contractor and governing authorities; (b) the Owner has accepted the Project; (c) Subcontractor has provided satisfactory evidence of performance, including, but not limited to, bills, contracts, owner manuals, and notices of completion of Subcontractor by the Client; (d) Subcontractor, Owner and Contractor; and (e) if required, the Subcontractor has evidenced that all payrolls, bills for materials and equipment, and obligations connected with the Work have been satisfied and that the Contractor and Owner are protected against mechanics' liens. Contractor shall not be liable to Subcontractor for final payment unless and until Owner has paid Contractor in full for Contractor's Work on the Project and all claims of Subcontractor.

3.13 Subcontractor's acceptance of final payment shall constitute a waiver of all claims against Contractor and Owner and shall constitute a release of all claims by Subcontractor as mentioned at the time of the final application for payment.

4.0.1. **Execution, Progress, and Administration of the Work.**
4.1 **Ownership, Progress, and Responsibility.** (a) Subcontractor represents that it is qualified and able to do the Work according to the Subcontract Documents and in the time specified.
(b) Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, for performing and completing all parts of the Work.
(c) Subcontractor shall not be relieved of obligations to perform the Work in accordance with the Subcontract Documents by activities or duties of the Contractor's assistants.

4.2 **Coordination.** The Subcontractor shall cooperate with the Contractor in scheduling and performing the Work to avoid conflict, delay or interference with the work of the Contractor, other subcontractors or the Owner's own forces. Subcontractor shall regularly monitor the project schedule and meet promptly with the Contractor to discuss the schedule.

4.3 **Supervision.** Subcontractor shall give his personal attention and supervision to the Work. Subcontractor must have a competent foreman or superintendent on-site at the Project during performance of the Work. If the Contractor determines that the Subcontractor's foreman or superintendent is unsatisfactory, then the Subcontractor shall, upon written notice from Contractor, immediately remove him from such position and replace him with another qualified person. The Subcontractor will not be relieved of its obligations under this Subcontract as a result of the Contractor's removal of the Subcontractor's foreman or superintendent.

4.4 **Review of Subcontract Documents and Instructions.** Subcontractor shall carefully study and compare with each other all portions of the Subcontract Documents which relate to the Work and shall at once report to the Contractor any errors, omissions, discrepancies or ambiguities discovered. If the Subcontractor performs any portion of the Work which he later, or should have known, involves an error, omission or discrepancy in the Subcontract Documents and/or notices has been given to Contractor, then Subcontractor shall assume full responsibility for correcting the error or discrepancy in the Subcontract Documents. If any change or correction or ambiguity in the Subcontract Documents or in the Subcontract Documents arises relating to performance of the Work, the provisions of performance of Subcontractor, requiring most stringent performance will govern. Such discrepancy, omission or ambiguity does not relate to design or interpretation of performance, then the provisions of this Subcontract will govern to the extent applicable. In any event, upon first becoming aware of any such discrepancy, omission or ambiguity, Subcontractor shall immediately admit in writing the facts and circumstances relating thereto to Contractor and shall

the Contractor's directions as to how to proceed. Any part of the Work undertaken by the Subcontractor without having first made such admission will be at the subcontractor's own risk and expense and, if necessary, Subcontractor shall demobilize, shut down and/or reconfigure and repair of such work at its own cost and expense. If Subcontractor should fail to do so promptly, then the Contractor may do so and charge the costs to Subcontractor.

4.5 **Sub-subcontractors.** (a) The Subcontract may require or necessitate the Subcontractor to enter into agreements with sub-subcontractors in order for them to perform portions of the Work. In this case, the Subcontractor and sub-subcontractors will assume toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other, and each shall have the benefit of all rights and remedies which may be available to either which the Contractor and Subcontractor have against each other under this Subcontract.

(b) Subcontractor is responsible to Contractor for the acts and omissions of its sub-subcontractors. If Owner or Contractor request that any sub-subcontractor be terminated due to inept, incompetent or the performance of defective work, then Subcontractor shall terminate the sub-subcontractor and take such other actions as may be necessary to protect the interests of the Contractor and Owner.

4.6 **Investigation of Other Work.** If the proper performance of the Work depends upon the status of other work, the Subcontractor shall investigate the status of such other work and determine whether it is in, out of, or in jeopardy of being out of, the proper performance of the Work. The Subcontractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Subcontractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once. Before proceeding with the Work, Subcontractor shall report promptly and in writing any improper conditions and defects in such other work to Contractor.

4.7 **Progress Schedules and Reports.** (a) All work shall be performed in accordance with the progress schedules prepared by Contractor. The Subcontractor must provide a explanation and schedule breakdown that will lead to its incorporation with any schedule prepared for the Project.
(b) The Subcontractor shall furnish to the Contractor periodic progress reports on the Work, including information on the status of materials and equipment which may be in the course of preparation or manufacture.

4.8 **Shop Drawings.** (a) The Subcontractor shall prepare and submit to Contractor such shop drawings as may be necessary to describe the details and construction of the Work. The Subcontractor shall carefully compare such other work and determine whether it is in, out of, or in jeopardy of being out of, the proper performance of the Work. The Subcontractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Subcontractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once. Before proceeding with the Work, Subcontractor shall report promptly and in writing any improper conditions and defects in such other work to Contractor.

(b) The Subcontractor shall promptly submit shop drawings, product data, samples and other materials required by the Subcontract Documents, and do so in such quantities as to not delay the Work or the activities of Contractor or other Subcontractors. Approval of all submittals must be obtained from the Owner or Architect before Subcontractor can proceed with the work. Contractor will not be responsible to Subcontractor for any error or omission in any shop drawing or submittal of the Subcontractor. The approval of any shop drawing or submittal does not relieve the Subcontractor from conforming to the requirements of the Contract Documents.

4.9 **Material Quantities.** Quantities of materials mentioned in this Subcontract or in the Contract Documents are approximate only. Deliveries will be based upon actual needs and the wastage of the Work.

4.10 **Manufactured Items.** All manufactured articles, materials and equipment shall be "installed," erected, connected, used, cleaned and conditioned in accordance with the manufacturer's printed installation directions. Copies of such directions shall be submitted to the Contractor for approval if requested, and if approved shall be used by the Subcontractor. The Subcontractor shall conform to the requirements of the Contract Documents.

4.11 **Contractor's Payments to Others.** The Subcontractor shall pay for materials, equipment or labor used in connection with performance of this Subcontract through the period covered by any money received from the Contractor. Subcontractor shall furnish evidence to verify compliance with these requirements.

4.12 **Retention of Work.** The Owner, Architect, or Contractor will have the authority to reject any portion of the Work which does not conform to the Contract Documents. The Owner, Contractor or Architect's decisions on matters relating to their duties shall be final if consistent with applicable provisions in the Prime Contract.

4.13 **Overtime/Acceleration.** (a) The Contractor may direct the Subcontractor to work overtime if Contractor deems it necessary in order to timely complete the Project. If so directed, the Subcontractor shall work the required overtime and, provided the Subcontractor has the cause for any portion of the delay, the Owner approval will be paid by Contractor. Overtime requests shall be in writing and approved by Contractor, plus written approval by the Subcontractor's foreman or superintendent. Overtime shall be paid by the Subcontractor.

4.14 **Effect of Delay.** If the Contractor is delayed by any fault, neglect, act or omission by the Subcontractor or any of its sub-contractors or suppliers, then the Contractor may direct the Subcontractor, in addition to satisfying the obligations imposed by this Subcontract upon the Subcontractor to such extent as may be necessary and expense, to perform the Work in accordance with the Contract Documents. If the Contractor is delayed by any fault, neglect, act or omission by the Subcontractor or any of its sub-contractors or suppliers, then the Contractor may direct the Subcontractor, in addition to satisfying the obligations imposed by this Subcontract upon the Subcontractor to such extent as may be necessary and expense, to perform the Work in accordance with the Contract Documents.

4.15 **Effect of Inspection or Payment.** No payment for inspection or approval of the Work made under this Subcontract will be (a) conclusive evidence of the satisfactory performance of the Work; (b) construed to be an acceptance of defective, faulty or improper work or materials; or (c) released the Subcontractor from its obligations under this Subcontract. The Contractor's acceptance of the Work will not constitute acceptance of the Work or any part thereof.

4.16 **Review of Records.** The Subcontractor will permit the Contractor to review all books, records, documents and transactions of Subcontractor related to this Subcontract.

4.17 **Cleanliness.** Subcontractor shall on a daily basis keep the premises and equipment free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for rubbish or debris caused by others not working for him. If in the Contractor's opinion, Subcontractor does not perform adequate daily cleanup related to operations performed under this Subcontract, the Contractor may perform such cleanup and deduct cost for same from Subcontractor's bills.

4.18 **Maintenance and Duty to Repair.** (a) Subcontractor warrants to the Owner, Architect and Contractor that all materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents. The Work of the Subcontractor will be free from defects not inherent in the quality of materials or equipment. (b) The Work will conform with the requirements of the Subcontract Documents and Specifications. Work not conforming to these requirements, including but not limited to, work not properly approved or inspected, may be considered defective. This includes, but is not limited to, defects caused by abuse, misapplication, or misuse of the Subcontractor's equipment or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

(c) In addition to the foregoing warranty, Subcontractor will repair, replace or make good any defects, omissions or faults resulting from defective work that may appear within the warranty period. Subcontractor's obligation to repair, replace or make good any defects, omissions or faults resulting from defective work that may appear within the warranty period shall be subject to the Contractor's approval of the specifications relating to the Work. The warranty is in addition to and not in limitation of any other warranty or remedy provided by law or by the Subcontract Documents.

4.19 **Contractor's Right to Carry Out Work.** (a) The Subcontractor (i) provides fully written and signed instructions to the Contractor; (ii) supplies an adequate number of properly skilled workers; (iii) maintains the part of the Work with diligence and in accordance with the project schedule; (iv) does not carry out the Work in accordance with this Subcontract, and Subcontractor shall, within three working days after receipt of written notice from the Contractor, shut down and correct all such situations with diligence; then the Contractor may direct the Subcontractor to carry out the Work. In such case, the Contractor will have a change order including both materials and labor. Subcontractor shall be responsible for the cost of correcting such situation, including all costs for which the Contractor may in turn be responsible to pay to the Owner under the Prime Contract.

4.20 **Contractor's Right to Reject Work.** Contractor has the right to reject materials or

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Work which it considers defective... 10.1 The Contractor shall be responsible for the correction of work... 10.2 The Contractor shall be responsible for the correction of work... 10.3 The Contractor shall be responsible for the correction of work...

11.2 The insurance required by this Paragraph 11 shall be written for not less than... 11.3 The Contractor shall be responsible for the correction of work... 11.4 The Contractor shall be responsible for the correction of work...

Subcontractor: [Signature]
Date: 11/9/97
SCHEDULE A
INSURANCE COVERAGE
The Subcontractor shall provide and maintain during the term of this Contract...

Office