

Doc#: 0404118147 Eugene "Gene" Moore Fee: \$49.50 Cook County Recorder of Deeds Date: 02/10/2004 02:53 PM Pg: 1 of 35

STATE OF ILLINOIS)
COUNTY OF COOK) ss)

SUBCONTPACTOR'S NOTICE AND CLAIM FOR MECHANICS' LIEN

The Claimant, Pickus Construction & Equipment Co., Inc. d/b/a The Pickus Companies, of Waukegan, County of Lake, State of Illinois, hereby files notice and claim for lien against Howard Immel Inc., of the City of Green Pay, State of Wisconsin (hereinafter referred to as "Contractor") and Elk Grove SK, L.P., of the City of Northbrook, County of Cook, State of Illinois (hereinafter referred to as "Owner") and states:

That on July 29, 2003 the Owner owned the following described land in the County of Cook, State of Illinois, to wit:

See legal description attached as Exhibit "A", incorporated herein and made a part hereof.

P.I.N.(s): 07-25-300-055-0000 07-25-300-056-0000

Common Address: 600 Meacham Road, Elk Grove, Illinois (the "Premises").

That Howard Immel Inc. was the Owner's Contractor for the improvement of the Premises.

That on July 29, 2003, Claimant entered into a written contract with Howard Immel Inc., the Owner's Contractor, who was authorized or knowingly permitted by said Owner to contract with the Claimant, to supply construction material, labor and services relating to site utilities and

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storm drainage work, for and in said improvement of the Premises. (A copy of said contract is attached hereto and incorporated herein by reference as Exhibit "B").

That Claimant did so provide material, labor and services in said improvement of the Premises, and that the Claimant completed delivery of all labor, material and services required to be done by said Contract on November 18, 2003.

That at the special instance and request of said Contractor, Howard Immel Inc., the Claimant furrished extra and additional materials at and extra and additional labor on said Premises of the value of \$66,218.89 and completed same on November 18, 2003.

That said Contractor, Floward Immel Inc., is entitled to credits on account and after allowance of all credits there is due, unpaid and owing to the Claimant the sum of Eighty-Five Thousand Four Hundred Eighteen Dollars and 89/100 Cents (\$85,418.89), for which, with interest, the Claimant claims a lien on said land and improvements and on the monies or other considerations due or to become due from the Owner under said contract against said Contractor and Owner.

PICKUS CONSTRUCTION & EQUIPMENT CO., INC., d/b/a THE PICKUS COMPANIES

By: James Pickus, President

STATE OF ILLINOIS)
COUNTY OF LAKE) SS)

VERIFICATION

The affiant, James Pickus, being first duly sworn on oath deposes and says that he is the President of Pickus Construction & Equipment Co., Inc. d/b/a The Pickus Companies, the Claimant; that he has read the foregoing Subcontractor's Notice and Claim for Mechanics' Lien and knows the contents thereof; and that all the statements therein contained are true.

Subscribed and sworn to before me this day of January, 2004.

This document was prepared by and after recordation mail to:

James J. Babowice

Sounity Clark's Office TROBE, BABOWICE & ASSOCIATES, LLC

32 N. West Street, Suite 102

Waukegan, Illinois 60085

Legal Description:

PARCEL 1:

LOT 1A OF SUPER KMART CENTER RESUBDIVISION NO. 1, BEING A RESUBDIVISION OF PROPOSED LOT 1 IN SUPER KMART CENTER IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SUPER KMART CENTER RESUBDIVISION NO. 1, AFORESAID RECORDED JANUARY 21, 2000, AS DOCUMENT NUMBER 00053995, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

PROPOSED LOT 2 IN SUPER KMART CENTER IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 41 NOR TH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 15, 1993, AS DOCUMENT NUMBER 93278482, IN COOK COUNTY, ILLINOIS.



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ASSOCIATED GENERAL CONTRACTORS OF AMERICA



AGC DOCUMENT NO. 650

STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

(Where the Contractor Assumes the Risk of Owner Payment)

This document is endorsed by The Associated Specialty Contractors, Inc.



The Associated Specialty Contractors, Inc. (ASC) is an umbrella organization composed of the following eight specialty contractor groups: Mason Contractors Association of America, Mechanical Contractors Association of America, National Electrical Contractors Association, National Insulation Association, National Roofing Contractors Association, Painting and Decorating Contractors of Association, Plumbing-Heating-Cooling Contractors-National Association, and Sheet Metal and Air Conditioning Contractors' National Association. ASC has approved and endorsed this document, AGC

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- 6. SUBCONTRACT AMOUNT
- 7. CHANGES IN THE SUBCONTRACT WORK
- 8. PAYMENT
- 9. INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION
- 10. CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND



TERMINATION OF AGREEMENT

- 11. DISPUTE RESOLUTION
- 12. MISCELLANEOUS PROVISIONS
- 13. EXISTING SUBCONTRACT DOCUMENTS

This Agreement has important legal and insurance consequences. Consultation with an attorney and an insurance consultant is encouraged with respect to its completion or modification.

ARTICLE 1

AGREEMENT

This Agraem ent is made this TWENTY-NINTH day of JULY in the year TWO THOUSAND THREE, by

CONTRACTOR

(Name and Address)

HOWARD IMMEL INC

1820 RADISSON STREET (<u>34302)</u>
P. O. BOX 8208	
GREEN BAY, WI 54308	
and the	4
SUBCONTRACTOR	C
(Name and Address)	
PICKUS COMPANY	40x.
1220 GRAND AVENUE	9
WAUKEGAN, IL 60079	
TELEPHONE: 847/33	6-5490
FAX:	
PROJECT NUMBER: 200304	603
TASK CODE: 20 1000	

for services in connection with the

SUBCONTRACT WORK

PROVIDE LABOR, MATERIALS, TOOLS AND EQUIPMENT NECESSARY TO COMPLETE ALL SITE UTILITIES ADN STORM DRAINAGE AS REQUIRED UNDER SECTIONS 2550 AND 2721 PER PLANS AND SPECIFICATIONS, INCLUDING ADDENDA NOS. 1 AND 2.

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for the following

PROJECT

THE HOME DEPOT - ELK GROVE

REMODEL

600 MEACHUM

ELK GROVE, ILLINOIS

whose

OWNER

(Name and Acdress)

THE HOME DEFOT

1400 WEST DUNDE: ROAD

ARLINGTON HEIGHTS, II 60004

The ARCHITECT/ENGINEER for the Project is

(Name and Address)

<u>_N</u>/A

Notice to the parties shall be given at the above addresses.

ARTICLE 2

SCOPE OF WORK

- 2.1 SUBCONTRACT WORK The Contractor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the work described in Article 1 for the Project in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Progres, Schedule, as may change from time to time. The Subcontractor shall perform the Subcontract Work and earlies the general direction of the Contractor and in accordance with the Subcontract Documents.
- 2.2 CONTRACTOR'S WORK The Contractor's work is the construction and services required of the Contractor to fulfill its obligations pursuant to its agreement with the Owner (the Work). The Subcontract Work is a portion of the Work.
- 2.3 SUBCONTRACT DOCUMENTS The Subcontract Documents include this Agreement, the Owner-Contractor agreement, special conditions, general conditions, specifications, drawings, addenda, Subcontract Change Orders, amendments and any pending and exercised alternates. The Contractor shall make available to the Subcontractor, prior to the execution of the Subcontract Agreement, copies of the Subcontract Documents to which the Subcontractor will be bound. The Subcontractor similarly shall make copies of applicable portions of the Subcontract Documents available to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after the Subcontract Agreement is executed. The Subcontract Documents existing at the time of the execution of this
- 2.3.A. Pickus Construction & Equipment Co., Inc.'s proposal dated July 2, 2003, attached hereto and made a part of this agreement as Exhibit 1.

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- 2.4 CONFLICTS In the event of a conflict between this Agreement and the other Subcontract
- 2.5 EXTENT OF AGREEMENT Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor. This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

- .1 Wherever the term Progress Schedule is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.
- .2 Whenever the term Change Order is used in this Agreement, it shall be read as Change Document when that term is used in the Subcontract Documents.
- .3 Un's s otherwise indicated, the term Day shall mean calendar day.

- SUBCONTRACTOR'S RESPONSIBILITIES 3.1 OBLIGATIONS The Contractor and Subcontractor are hereby mutually bound by the terms of this Subcontract. To the extent the terms of the prime contract between the Owner and Contractor apply to the work of the Subcontractor, then the Contractor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the prime contract assumes toward the Contractor. In an identical way, the Subcontractor hereby assumes toward the Contractor all the same obligations, rights, duties, and redress that the Contractor assumes toward the Owner and Architect/Engineer under the prime contract. In the event of an inconsistency among the documents,
- 3.2 RESPONSIBILITIES The Subcontractor agrees to famish its best skill and judgment in the performance of the Subcontract Work and to cooperate with the Contractor so that the Contractor may fulfill its obligations to the Owner. The Subcontractor shall turnish all of the labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work. The Subcontractor shall provide the Contractor a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials and all other actions as required to meet the
- 3.3 INCONSISTENCIES AND OMISSIONS The Subcontractor shall make a carerul a lalysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be sole from the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within three (3) days. Upon receipt of notice, the Contractor shall instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Nothing in this Paragraph 3.3 shall relieve the Subcontractor of responsibility for its own errors, inconsistencies

- 3.4 SITE VISITATION Prior to performing any portion of the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Project site to become generally familiar with local conditions and to correlate site observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its site observations and the Subcontract Documents, such discrepancies shall
- 3.5 INCREASED COSTS AND/OR TIME The Subcontractor may assert a Claim as provided in Article 7 if Contractor's clarifications or instructions in responses to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in Paragraph 3.3 and 3.4, above, to the extent the Contractor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations.
- 3.6 COMMUNICATIONS Unless otherwise provided in the Subcontract Documents and except for emergencies, Subcontractor shall direct all communications related to the Project to the Contractor. 3.7 SUBMITTALS

3.7.1 The Subcontractor promptly shall submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents within two (2) weeks of award of contract. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to out regize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and Owner authorizing such deviation, substitution or change. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request or submit in a timely fashion to the Contractor for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, Owner or Architect/Engineer.

Costs associated with a Subcontractor's failure to submit a required submittals or order products in a timely manner will be backcharged accordingly.

3.7.2 The Contractor, Owner, and Architect/Engineer are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements. 3.8 DESIGN DELEGATION

- 3.8.1 If the Subcontract Documents (1) specifically require the Subcontractor to provide design services and (2) specify all design and performance criteria, the Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed design professionals retained by the Subcontractor as permitted by the law of the place where the Project is located (the Designer). The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer.
- 3.8.2 If the Designer is an independent professional, the design services shall be procured

pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability, except to the extent that consequential damages are waived pursuant to Paragraph 5.4, or exclusion from participation in the multiparty proceedings requirement of Paragraph 11.4. The Designer(s) is (are) N/A. The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria

- 3.8.3 The Subcontractor shall not be required to provide design services in violation of any
- 3.9 TEMPORARY SERVICES Subcontractor's responsibilities for temporary services are set forth in
- 3.10 COOPDINATION The Subcontractor shall:
 - .1 cooperate with the Contractor and all others whose work may interface with the Subcontract Work;
 - .2 specifically note and immediately advise the Contractor of any such interface with the Subcontract Work; and
 - .3 participate in the preparation of coordination drawings and work schedules in areas of
- 3.11 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall designate a person, subject to Contractor's approval, who shall be ne Subcontractor's authorized representative. This representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency. The Subcontractor's representative is <u>JAMES PICKUS</u>, who is
- 3.12 TESTS AND INSPECTIONS The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work. The Subcontractor shall give proper written notice to all required parces of such tests, approvals and inspections. The Subcontractor shall bear all expenses associated with fests, inspections and approvals required of the Subcontractor by the Subcontract Documents with ch, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity a proved by the Contractor and Owner. Required certificates of testing, approval or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Contractor. 3.13 CLEANUP
 - 3.13.1 The Subcontractor shall conduct daily cleanup of its work. The Subcontractor shall at all times during its performance of the Subcontract Work keep the Work site clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.
 - 3.13.2 If the Subcontractor fails to commence compliance with cleanup duties within forty-eight (48) hours after written notification from the Contractor of non-compliance, the Contractor may implement appropriate cleanup measures without further notice and the cost thereof shall be deducted from any amounts due or to become due the Subcontractor.

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3.14 SAFETY

- 3.14.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:
 - .1 employees and other persons at the site;
 - .2 materials and equipment stored at the site or at offsite locations for use in performance of the Work; and
 - .3 all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.
- 3 4 2 The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.
- 3.14.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

Proper dress will be required by all trades.

- 3.14.4 The Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work which involves explosive or purer dangerous methods of construction or hazardous procedures, materials or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the
- 3.14.5 Damage or loss not insured under property insurance which may arise from the performance of the Subcontract Work, to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss attributable to the acts or omissions of the Contractor and not to the Subcontractor shall be properly remedied by the Contractor.
- 3.14.6 The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project
- 3.14.7 The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request, in writing, from the Contractor loading
- 3.14.8 The Subcontractor shall within twenty-four (24) hours give prompt written notice to the Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.
- 3.14.9 Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by

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governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. Each party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply

Subcontractor agrees to strictly abide by all Contractor's project, safety and government rules and requiations and to comply with all requirements of OSHA and all other entities having

- 3.15 PROTECTION OF THE WORK The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Superintractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, utiles such costs are recovered under applicable property insurance.
- 3.16 PERMITS, FEES, LICENSES AND TAXES The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. To the extent reimbursement is obtained by the Contractor from the Owner under the Owner-Contractor agreement, the Subcontractor shall be compensated for additional costs resulting from taxes exacted after the date of this Agreement.
- 3.17 ASSIGNMENT OF SUBCONTRACT WORK The Subcontractor shall not assign the whole nor any part of the Subcontract Work without prior written approval of the Contractor.
- 3.18 HAZARDOUS MATERIALS To the extent that the Contractor pussights or obligations under the Owner-Contractor agreement or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor she ii have the same rights or
- 3.19 MATERIAL SAFETY DATA (MSD) SHEETS The Subcontractor shall submit to the Contractor all Material Safety Data Sheets required by law for materials or substances necessary to the performance of the Subcontract Work. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.
- 3.20 LAYOUT RESPONSIBILITY AND LEVELS The Contractor shall establish principal axis lines of the building and site, and benchmarks. The Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in
- 3.21 WARRANTIES The Subcontractor warrants that all materials and equipment furnished under this Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or a designated portion.
- 3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

3.22.1.1 If required in writing by the Contractor, the Subcontractor must uncover any portion of the Subcontract Work which has been covered by the Subcontractor in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Contractor. Upon receipt of a written directive from the Contractor, the Subcontractor shall uncover such work for the Contractor's or Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense.

3.22.1.2 The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided in Clause 3.22.1.1, this Agreement shall be adjusted by change order for the cost and time of uncovering and restoring any work which is uncovered for inspection and p oves to be installed in accordance with the Subcontract Documents, provided the Cor ractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subscrittractor uncovers work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontracto shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Contractor shall be required to adjust this Agreement by

3.22.2 CORRECTION OF WORK

3.22.2.1 If the Architect/Engineer or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. The Subcontractor small be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Architect/Engineer and Contractor made necessary by the defective

3.22.2.2 In addition to the Subcontractor's obligations under Paragraph 3.21, the Subcontractor agrees to promptly correct, after receipt of a written notice from the Contractor, all Subcontract Work performed under this Agreement valich proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of tires as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the Civiller can occupy or utilize the Project, or a designated portion, for the use for which it is intended. If, during the one-year period, the Contractor fails to provide the Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, the Contractor shall neither have the right to require the Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Subcontract Work

3.22.3 The Subcontractor's correction of Subcontract Work pursuant to this Paragraph 3.22 shall not extend the one-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of

Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within one year as described in this Paragraph 3.22 does not limit the enforcement of Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

- 3.22.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged
- 3.22.5 If portions of Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site if so
- 3.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing any items it may discover that do not conform to require nents of the Subcontract Documents. The Subcontractor shall not proceed to install non-conforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcornactor shall be deducted from any amounts due or to become due the
- 3.24 SUBSTITUTIONS No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upor the Subcontractor first receiving all approvals required under the Subcontract Documents for substrutions.
- 3.25 USE OF CONTRACTOR'S EQUIPMENT The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Contractor's equipment only with the express written permission of the Contractor's designated representative and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, the Subcontractor shall defend, indemnify and be liable to the Contractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Contractor's amployees operating the
- 3.26 WORK FOR OTHERS Until final completion of the Subcontract Work, the Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly vith the Owner's representatives in connection with the Subcontract Work, unless otherwise approved in writing by the

3.27 SUBCONTRACT BONDS

- 3.27.1 The Subcontractor $\underline{}$ shall not furnish to the Contractor, as the named Obligee, appropriate surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work.
- 3.27.2 If a performance or payment bond, or both, are required of the Subcontractor under this Agreement, the bonds shall be in a form and by a surety mutually agreeable to the Contractor and Subcontractor, and in the full amount of the Subcontract Amount, unless otherwise specified.
- 3.27.3 The Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. The reimbursement amount for the subcontractor bonds shall not exceed percent (N/A %) of the Subcontract Amount, which sum is included in the Subcontract Amount.

- 3.27.4 In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Contractor costs and expenses incurred by the Contractor as a result of said termination shall be paid by the Subcontractor.
- 3.28 SYSTEMS AND EQUIPMENT STARTUP With the assistance of the Owner's maintenance personnel and the Contractor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.
- 3.29 COMPLIANCE WITH LAWS The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the Laws) applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other Laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures, except as provided in Subparagraph 3.14.9.
- 3.30 CONFIDENTIALITY To the extent the Owner-Contractor agreement provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the penormance of this Agreement, the Subcontractor is equally bound by the Owner's
- 3.31 ROYALTIES, PATENTS AND COPYRIGHTS The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify and hold the Contractor and Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, 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 Subcontract Documents. However, if the Subcontractor has reason to believe that a particular design, process or product requirer by the Subcontract Documents is an infringement of a patent, the Subcontractor shall promptly furnish such information to the Contractor or be responsible to the Contractor and Owner for any loss sustained as a result.
- 3.32 LABOR RELATIONS (Insert here any conditions, obligations or requirements relative to labor relations and their effect on the project. Legal counsel is recommended.)

ARTICLE 4

CONTRACTOR'S RESPONSIBILITIES

- 4.1 CONTRACTOR'S REPRESENTATIVE The Contractor shall designate a person who shall be the Contractor's authorized representative. The Contractor's representative shall be the only person the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency. The
- 4.2 PAYMENT BOND REVIEW The Contractor __ has X has not provided the Owner a payment bond. The Contractor's payment bond for the Project, if any, shall be made available by the Contractor 4.3 OWNER'S ABILITY TO PAY
- - 4.3.1 The Subcontractor shall have the right upon request to receive from the Contractor such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work, including any subsequent material variation in such information. The Contractor, however,

does not warrant the accuracy or completeness of the information provided by the Owner.

- 4.3.2 If the Subcontractor does not receive the information referenced in Subparagraph 4.3.1 with regard to the Owner's ability to pay for the Work as required by the Contract Documents, the Subcontractor may request the information from the Owner and/or the Owner's lender.
- 4.4 CONTRACTOR APPLICATION FOR PAYMENT Upon request, the Contractor shall give the Subcontractor a copy of the most current Contractor application for payment reflecting the amounts approved and/or paid by the Owner for the Subcontract Work performed to date.
- 4.5 INFORMATION OR SERVICES The Subcontractor is entitled to request through the Contractor any information or services relevant to the performance of the Subcontract Work which is under the Owner's control. To the extent the Contractor receives such information and services, the Contractor shall provide them to the Subcontractor. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.
- 4.6 STORA 3F AREAS The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work. Unless otherwise agreed upon, the Cartractor shall-reimburse the Subcontractor for the additional costs of having to relocate such storage arr as at the direction of the Contractor.
- 4.7 TIMELY COMMUNICATIONS The Contractor shall transmit to the Subcontractor, with reasonable promptness, all sur nittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communications by and with the Subcontractor's subcontractors, malerialmen and suppliers shall be through the Subcontractor.
- 4.8 USE OF SUBCONTRACTOR'S EQUIPMENT The Contractor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Contractor or any of its agents, employees or suppliers utilize any of the Subcontractor's equipment, including machinery, took, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Subcontractor, the Contractor shall defend, indemnify and be liable to the Subcontractor as provided in Article 9 for any loss or dr.mage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment.

ARTICLE 5

PROGRESS SCHEDULE

5.1 TIME IS OF THE ESSENCE Time is of the essence for both parties. They nouturally agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents, Specifications and particularly the Progress Schedule as set forth in Exhibit _____ Drawings. COMPLETION DATE: NOVEMBER 1, 2003

Contractor reserves the right to update the Project Schedule for logistical reasons or for the betterment of the project as a whole, in which cases this Subcontractor will be notified and adjustments shall be implemented by this Subcontractor at no additional cost to Contractor.

5.2 SCHEDULE OBLIGATIONS The Subcontractor shall provide the Contractor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Work (the Progress Schedule) and shall revise and update such schedule, as necessary, as the Work progresses. Both the Contractor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right

to determine and, if necessary, change the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work.

5.3 DELAYS AND EXTENSIONS OF TIME

- 5.3.1 OWNER CAUSED DELAY Subject to Subparagraph 5.3.2, if the commencement and/or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Subcontract Change Order to the extent obtained by the Contractor under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.
- 5.3.2 CLAIMS RELATING TO OWNER The Subcontractor agrees to initiate all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by the Contractor upon the Owner and in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense to the extent agreed upon in writing, the Contractor, agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Contractor upon the Owner.
- 5.3.3 CONTRACTOR CAUSED DELAY Nothing in this Article shall preclude the Subcontractor's recovery codelay damages caused by the Contractor.
- 5.3.4 CLAIMS RELATING TO CONTRACTOR The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 5.3.2 within seven (7) days of the Subcontractor's knowledge of the 'ac's giving rise to the event for which claim is made; otherwise, such claims shall be deem u waived. All unresolved claims, disputes and other matters in question between the Contract or and the Subcontractor not relating to claims included in Subparagraph 5.3.2 shall be resolved in the manner provided in Article 11.
- 5.3.5 DAMAGES If the Subcontract Documen's provide for liquidated or other damages for delay beyond the completion date set forth in the Subcantract Documents, and such damages are assessed, the Contractor may assess a share of the camages against the Subcontractor in proportion to the Subcontractor's share of the responsibility or 'he delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This Paragraph 5.3 shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual delay

5.4 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

- 5.4.1 To the extent the Owner-Contractor agreement provides for a mutual vaix ex of consequential damages by the Owner and the Contractor, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, including to the extent provided in the Owner Contractor agreement, damages for principal office expenses and the compensation of personnel stationed there; loss of financing, business and reputation; and for loss of profit. Similarly, the Subcontractor shall obtain from its sub-subcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Owner-Contractor agreement. To the extent the Owner-Contractor agreement does not preclude the award of liquidated damages, nothing contained in this Paragraph 5.4 shall preclude the imposition of such damages, if applicable in accordance with the requirements of the Subcontract Documents.
- 5.4.2 To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Contractor is liable to the Owner including those related to Subparagraph 9.1.1 are not consequential

damages for the purpose of this waiver. Similarly, to the extent the Subcontractor-sub-subcontractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Contractor are not consequential damages for the purpose of this waiver.

ARTICLE 6

SUBCONTRACT AMOUNT

As full compensation for performance of this Agreement, Contractor agrees to pay Subcontractor in current funds for the satisfactory performance of the Subcontract Work subject to all applicable

- (a) the fixed-price of Dollars (\$-ONE HUNDRED NINETY-TWO THOUSAND AND NO/100 Dollars (\$192,000.00) subject to additions and deductions as provided for in the Subcontract
- (b) unit prices in eccordance with the attached schedule of Unit Prices and estimated quantities, which is incorporated by reference and identified as Exhibit_; and/or
- (c) time and material rates and prices in accordance with the attached Schedule of Labor and Material Costs which is incorporated by reference and identified as Exhibit_.

The fixed-price, unit prices and/or time and material rates and prices are referred to as the

ARTICLE 7

CHANGES IN THE SUBCONTRACT WORK

- 7.1 SUBCONTRACT CHANGE ORDERS When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work which are within the general scope of this Agreement. Any adjustment in the Succentract Amount or Subcontract Time shall be authorized by a Subcontract Change Order. No adjustment; shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Subcontract Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work.
- 7.2 CONSTRUCTION CHANGE DIRECTIVES To the extent that the Subcontract Dr.ci.ments provide for Construction Change Directives in the absence of agreement on the terms of a Subcontract Change Order, the Subcontractor shall promptly comply with the Construction Change Directive and be entitled to apply for interim payment if the Subcontract Documents so provide.
- 7.3 UNKNOWN CONDITIONS If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subcontract Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of work provided for in this Agreement, the Subcontract Amount and/or the Progress Schedule shall be equitably adjusted by a Subcontract Change Order within a reasonable time after the conditions are first observed. The adjustment which the Subcontractor may receive shall be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor, or as otherwise provided under Subparagraph 5.3.2.
- 7.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT If a Subcontract Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following

methods:

- .1 mutual acceptance of an itemized lump sum;
- .2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the parties: or
- .3 costs determined in a manner acceptable to the parties and a mutually acceptable fixed or percentage fee; or
- .4 another method provided in the Subcontract Documents.
- 7.5 SUBSTANTIATION OF ADJUSTMENT If the Subcontractor does not respond-promptly in writing within three (3) working days or disputes the method of adjustment, the method and the adjustment shall be de ermined by the Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Ar rount, an allowance for overhead and profit of the percentage provided in Paragraph 7.6. The Subcantractor may contest the reasonableness of any adjustment determined by the Contractor. The Succentractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiaced accounting of the following items attributable to the Subcontract Change
 - .1 labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;
 - .2 costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or
 - .3 costs of renting machinery and equipment other than hand tools;
 - .4 costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
 - .5 costs of additional supervision and field office personnel services necessitated by the change.
- 7.6 Adjustments shall be based on net change in Subcontia stor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cos., an agreed upon sum for overhead and profit not to exceed ten percent (-10 %), unless contract documents indicate a lower percentage.

Changes in the work must be authorized in writing by the Contractor's Project Manager prior to commencement of work. The Contractor's Field Superintendent is not aut orized to approve changes in the work. Changes in the work signed off by Contractor's Field Superintendent will be subject to approval from the Contractor's Project Manager, subject to the contractual agreement, and may not be allowed as a valid request for change. The Contractor's Field Superintendent shall any review and sign documentation for labor hours, materials and equipment incorporated into any charge in work, even though the Contractor's Project Manager may later deem the work to be part of the contract

Receipt of requests for change, labor rates, material costs, equipment charges, unit costs or any other correspondence from the Subcontractor shall in no way constitute agreement or acceptance or indicate acquiescence on behalf of Contractor. Only requests for change which have prior written authorization from Contractor's Project Manager will be valid requests for changes to the work. No

- 7.7 NO OBLIGATION TO PERFORM The Subcontractor shall not perform changes in the Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with Paragraphs 7.2 and 7.9.
- 7.8 EMERGENCIES In an emergency affecting the safety of persons and/or property, the

Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Amount and/or the Progress Schedule on account of emergency work shall be determined as provided in this Article.

7.9 INCIDENTAL CHANGES The Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and are binding on

ARTICLE 8

PAYMENT

8.1 SCHEDULFI OF VALUES As a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor not more than fifteen (15) days from the date of execution of

8.2 PROGRESS PAYMENTS

- 8.2.1 APPLICATIONS The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to Paragraph 3.8, Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's application shall be notarized if required and if allowed under the Subcontract Documents may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress r ayrı ent application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values if required and Subparagraphs 8.2.2, 8.2.3, and 8.2.4. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on t shalf of the Subcontractor.
- 8.2.2 RETAINAGE The rate of retainage shall be ten percent (10.%), which is equal to the percentage retained from the Contractor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the Subcontract Documents provide for reduction of retainage at a specified percentage of completion, the Subcontractor's retainage shall also be reduced when the Subcontract Work has attained the same percentage of comp'etion and the Contractor's retainage for the Subcontract Work has been so reduced by the Owner.

Subcontractor must submit lien waivers from material suppliers and subcontractors with cach

- 8.2.3 TIME OF APPLICATION The period covered by each application for payment shall be one calendar month ending on the last day of the month. The Subcontractor shall submit progress payment applications to the Contractor no later than the twentieth (20th) day of each payment period for the Subcontract Work performed up to and including the last day of the payment period indicating work completed and, to the extent allowed under Subparagraph 8.2.4, materials suitably stored during the preceding payment period.
- 8.2.4 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered to and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills

of sale and applicable insurance or such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Contractor's interest including transportation to the site.

- 8.2.5 TIME OF PAYMENT Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than seven (7) days after receipt by the Contractor of payment from the Owner for the Subcontract Work. If payment from the Owner for such Subcontract Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed.
- 8.2.6 PAYMENT DELAY If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within seven (7) days after the date such payment is due, as defined in Subparagraph 8.2.5, or, if the Contractor has failed to pay the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed, the Subcontractor, upon giving seven (7) days' writter, notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may step work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.
- 8.2.7 PAYMENTS WITHHELD The Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably by necessary to protect the Contractor from loss or damage based upon:
 - .1 the Subcontractor's repeated ailure to perform the Subcontract Work as required by this
 - .2 loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;
 - .3 the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work;
 - .4 rejected, nonconforming or defective Subcontract Work, which has not been corrected in
 - .5 reasonable evidence of delay in performance of the Subcontrac. Work such that the Work will not be completed within the Subcontract Time, and that the vapaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Contractor as a result of the anticipated delay caused by the
 - .6 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work;
 - .7 third party claims involving the Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed unless and until the Subcontractor furnishes the Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established.

The Contractor shall give written notice to the Subcontractor, at the time of disapproving or nullifying an application for payment stating its specific reasons for such disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

8.3 FINAL PAYMENT

- 8.3.1 APPLICATION Upon acceptance of the Subcontract Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Subparagraph 8.3.2, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the reasons therefor.
- 8.3.2 REQUIREMENTS Before the Contractor shall be required to incorporate the Subcontractor's application for final payment into the Contractor's next application for payment, the Subcontractor shall submit to the Contractor:
 - .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
 - .1 consent of surety to final payment, if required;
 - .3 sausraction of required closeout procedures;
 - .4 certification that insurance required by the Subcontract Documents to remain in effect beyond final payment pursuant to Clauses 9.2.3.1 and 9.2.6 is in effect and will not be cancelled or allo ved to expire without at least thirty (30) days' written notice to the Contractor unless a longer period is stipulated in this Agreement;
 - .5 other data, if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extern and in such form as may be designated by the Contractor or
 - .6 written warranties, equipment manuals, startup and testing required in Paragraph 3.28;
 - .7 as-built drawings if required by the Subcorus ct Documents.

All final waivers must be submitted along with any warranties and closeout documents as required. Subcontractor must submit final lien waiver from all material suppliers and subcontractors. Final payment will only be issued after completion of all punchlist items and receipt of all warranties, operation and maintenance readurals, extra stock, etc. as applicable to the work of this contract. If Subcontractor fails to complete all punchlist items within five (5) days after notification. Contractor will have the right to complete at Subcontractor's expense.

- 8.3.3 TIME OF PAYMENT Final payment of the balance due of the Subcontract A nount shall be made to the Subcontractor within seven (7) days after receipt by the Contractor of fine payment from the Owner for such Subcontract Work.
- 8.3.4 FINAL PAYMENT DELAY If the Owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontract Work. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest. If final payment from the Owner for such Subcontract Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time.
- 8.3.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the

Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraphs 3.21 and 3.22, or for faulty or defective work or services discovered after final payment.

- 8.4 LATE PAYMENT INTEREST Progress payments or final payment due and unpaid under this Agreement, as defined in Subparagraphs 8.2.5, 8.3.3 and 8.3.4, shall bear interest from the date payment is due at the prime rate prevailing at the place of the Project. However, if the Owner fails to timely pay the Contractor as required under the Owner-Contractor agreement through no fault or neglect of the Contractor, and the Contractor fails to timely pay the Subcontractor as a result of such due and unpaid under this Agreement shall be extinguished by the Contractor promptly paying to the Contractor the Subcontractor's proportionate share of the interest, if any, received by the Contractor from the Owner on such late payments.
- 8.5 CONTINE ING OBLIGATIONS Provided the Contractor is making payments on or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any costs and expenses for any claim, obligation or lien asserted Subcontractor shall reimburse the Contractor for costs and expenses including attorneys' fees and costs and expenses including attorneys' fees and claims, obligation or lien including any action brought or judgment recovered. In the event that any expiration of the reasonable time for payment referred in Subparagraph 8.2.5 in order to preserve or Subcontractor may take that action prior to the expiration of the reimbursement obligation recited above nor be in violation of this Agreement or considered premature for purposes of preserving and protecting the Subcontractor's rights.
- 8.6 PAYMENT USE RESTRICTION Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received from the Contractor before it is used for any other purpose. In the same dedicated to payment to the Subcontractor. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the parties to this Agreement accounts, or that there be other restrictions on commingling of funds. Neither shall these mutual any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.
- 8.7 PAYMENT USE VERIFICATION If the Contractor has reason to believe that the Superinfractor is not complying with the payment terms of this Agreement, the Contractor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.
- 8.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall or final, prior to receiving payment or in an amount in excess of what it has been paid.
- 8.9 SUBCONTRACTOR PAYMENT FAILURE Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the

performance of the Subcontract Work are not being paid, the Contractor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

- 8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS The Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Co.nmercial Code. Should the Subcontractor assign all or any part of any moneys due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument or assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract
- 8.11 PAYMENT NOT ACCEPTANCE Payment to the Subcontractor does not constitute or imply

ARTICLE 9

INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

9.1 INDEMNITY

- 9.1.1 INDEMNITY To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants and employees (the Indemnitees) from all claims for bodily injury and property damage that may arise from the performance of the Subcontract Work to the extent of the negligence attributed o such acts or omissions by the Subcontractor, the Subcontractor's subcontractors or anyone engioned directly or indirectly by any of them or by anyone for whose acts any of them may be liable
- 9.1.2 NO LIMITATION ON LIABILITY in any and all claims against the Indemnitees by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification oblication shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 INSURANCE

- 9.2.1 SUBCONTRACTOR'S INSURANCE Before commencing the Subcontract Work, and as a condition of payment, the Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
- 9.2.2 MINIMUM LIMITS OF LIABILITY The Subcontractor shall maintain at least the limits of liability in a company satisfactory to the Contractor as set forth in Exhibit A.

9.2.3 PROFESSIONAL LIABILITY INSURANCE

9.2.3.1 PROFESSIONAL LIABILITY INSURANCE The Subcontractor shall require the

Designer(s) to maintain Project Specific Professional Liability Insurance with a company satisfactory to the Contractor, including contractual liability insurance against the liability assumed in Paragraph 3.8, and including coverage for any professional liability caused by any of the Designer's(s') consultants. Said insurance shall have specific minimum limits as

Limit of \$___ per claim.

General Aggregate of \$__ for the subcontract services rendered.

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the Designer. Said insurance shall be continued in effect with an extended period of years following final payment to the Designer.

Such insurance shall have a maximum deductible amount of \$_ per occurrence. The deductible shall be paid by the Subcontractor or Designer.

- 9.2.3.2 The Subcontractor shall require the Designer to furnish to the Subcontractor and Contractor, before the Designer commences its services, a copy of its professional liability policy evidencing the coverages required in this Paragraph. No policy shall be cancelled or modified without thirty (30) days' prior written notice to the Subcontractor and Contractor.
- 9.2.4 NUMBER OF POLICIES Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.
- 9.2.5 CANCELLATION, RENEWAL AND MODIFICATION The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies ac eptable to the Contractor. The policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days' prior written notice has been given to the Contractor. Certificates of insurance showing required coverage to be in force pursuant to Subparagraph 9.2.2 shall be filed with the Contractor prior to commencement of the Subcontract Work. In the event (nr. Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or terminate this Agreement.
- 9.2.6 CONTINUATION OF COVERAGE The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least two (2) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is earlier. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment and one

9.2.7 BUILDER'S RISK INSURANCE

9.2.7.1 The Subcontractor shall maintain full and complete insurance on their work until final acceptance of the Prime Contractor and Owner. The Subcontractor assumes all risk of loss for their work. The Contractor and/or Owner are not responsible to provide any protective service for the subcontractor's benefit. If Builder's Risk insurance is purchased -Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Contractor. The Contractor will advise the Subcontractor if a Builder's Risk policy of insurance is not in force.

Any deductible amount applied to any loss payable under the Builder's Risk insurance shall be borne by the party's interest whose work is damaged in direct proportion as their individual losses shall bear to the total loss. Contractor and the Owner neither represent nor assume responsibility for the adequacy of the Builders Risk insurance to protect the

interests of the Subcontractor. Subcontractor assumes the obligation to purchase and maintain any additional property insurance that it deems necessary to protect its interests in

- 9.2.7.2 If the Owner or Contractor has not purchased Builder's Risk insurance satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the
- 9.2.7.3 If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an apprication for payment under Article 8.

9.2.8 WAIVER OF SUBROGATION

- 9.2.8.1 The Contractor and Subcontractor waive all rights against each other, the Owner and the Architect Ergineer, and any of their respective consultants, subcontractors, and sub-subcontractors, agents and employees, for damages caused by perils to the extent covered by the proceed s of the insurance provided in Clause 9.2.7.1, except such rights as they may have to the insurance proceeds. The Subcontractor shall require similar waivers
- 9.2.9 ENDORSEMENT If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

ARTICLE 10

CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT

10.1 FAILURE OF PERFORMANCE

- 10.1.1 NOTICE TO CURE If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Progress Schedule, or rails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guil'y of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:
 - .1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;
 - .2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Clause 10.1.1.1; and/or
 - .3 withhold any payments due or to become due the Subcontractor pending corrective

action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

10.1.2 TERMINATION BY CONTRACTOR If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) days after written notification issued under Subparagraph 10.1.1, then the Contractor may, in lieu of or in addition to Subparagraph 10.1.1, issue a second written notification, to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default withinseven (7) days of the written notification, the Agreement will be deemed terminated terminate the Sucontract. A written notice of termination shall be issued by the Contractor to the Subcontractor at the time the Subcontractor is terminated. The Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Contractor snall provide a detailed accounting of the costs to finish the Subcontract

10.1.3 USE OF SUBCONTRACTOR'S EQUIPMENT If the Contractor performs work under this Article, either directly or through other subcontractors, the Contractor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, or belonging to the Subcontractor and located at the Project site for the purpose of completing any remaining Subcontract Work. In relediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when ney were taken, normal wear and tear excepted.

10.2. BANKRUPTCY

10.2.1 TERMINATION ABSENT CURE If the Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Subcontractor or the Succontractor's trustee rejects the Agreement or, if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.2.2 INTERIM REMEDIES If the Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Progress Schedule. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorneys' fees. The Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Price.

10.3 SUSPENSION BY OWNER Should the Owner suspend the Work or any part which includes the Subcontract Work and such suspension is not due to any act or omission of the Contractor, or any

other person or entity for whose acts or omissions the Contractor may be liable, the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

- 10.4 TERMINATION BY OWNER Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing within three (3) days of the termination and upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's half under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim name of the Contractor for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.
- 10.5 CONTINGENT ASSIGNMENT OF THIS AGREEMENT. The Contractor's contingent assignment of this Agreement to the Owner, as provided in the Owner-Contractor agreement, is effective when the Owner has terminated the Owner-Contractor agreement for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a subject that may be obligated under the Contractor's bond, if any. Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Contractor.
- 10.6 SUSPENSION BY CONTRACTOR The Contractor, may order the Subcontractor in writing to suspend all or any part of the Subcontract Work for such policid of time as may be determined to be appropriate for the convenience of the Contractor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Contractor's order, shall notify the Contractor in writing in sufficient time to permit the Contractor of such order upon the Subcontract Work. The Subcontract Amount or Proceess Schedule shall be adjusted by Subcontract Change Order for any increase in the time or cost of porformance of this incurred more than fourteen (14) days prior to the Subcontractor's notice to the Contractor. Neither the that performance would have been suspended, due in whole or in part to the fault or negligence of the Amount shall not be adjusted for any suspension to the Subcontractor would have been responsible. The Subcontract suspended by a cause for which Subcontractor would have been entitled only to a time extension under this Agreement.
- 10.7 WRONGFUL EXERCISE If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made, together with reason of such action.
- 10.8 TERMINATION BY SUBCONTRACTOR If the Subcontract Work has been stopped for thirty (30) days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then

the Subcontractor may terminate this Agreement upon giving the Contractor seven (7) days' written notice. Upon such termination, Subcontractor shall be entitled to recover from the Contractor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit and attorneys' fees, costs and expenses. However, if the Owner has not paid the Contractor for the satisfactory performance of the Subcontract Work through no fault or neglect of the Contractor, and the Subcontractor terminates this Agreement under this Article because it has not received corresponding progress payments, the Subcontractor shall be entitled to recover from the Contractor, within a reasonable period of time following termination, payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead and profit. The Contractor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, in the manner provided for in Subparagraphs 10.3 and 10.4 of this Agreement.

ARTICLE 11

DISPUTE RESOLUTION

- 11.1 INITIAL DISFUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties sha'r endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Media for Rules of the American Arbitration Association before recourse to any other form of binding dispute resolution. The location of the mediation shall be the location of the Project. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to commence such mediation within thirty (30) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other orm of binding dispute resolution.
- 11.2 WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If the Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.
- 11.3 NO LIMITATION OF RIGHTS OR REMEDIES Nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien
- 11.4 MULTIPARTY PROCEEDING The parties agree that to the extent permitted by Subcontract Document all parties necessary to resolve a claim shall be parties to the same dist ute esolution proceeding. To the extent disputes between the Contractor and Subcontractor involve in the contractor and subcontractor and part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the
- 11.5 DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTOR In the event that the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Subcontractor and the Contractor shall be submitted again to mediation pursuant to Paragraph 11.1. Any disputes not resolved by mediation shall be decided in the manner selected in the agreement between the Owner and the Contractor.
- 11.6 COST OF DISPUTE RESOLUTION The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this

Agreement or its breach that is resolved by a dispute resolution procedure designated in the Subcontract Documents shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process.

ARTICLE 12

MISCELLANEOUS PROVISIONS

- 12.1 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.
- 12.2 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 12.3 NO WA!VER OF PERFORMANCE The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any or 's jights, shall not be construed as a waiver or relinquishment of term, covenant, condition or right with respect to further performance.
- 12.4 TITLES The title's given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.
- 12.5 OTHER PROVISIONS AND DOCUMENTS Other provisions and documents applicable to the Subcontract Work are set forth in I xhit Exhibits B and C.
- 12.6 JOINT DRAFTING The parties excressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its torie and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral reanner.
- 12.7 THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT BETWEEN THE CONTRACTOR AND SUBCONTRACTOR AND SUPERCEDES PRIOR NEGOTIATIONS. REPRESENTATIONS OR AGREEMENTS, EITHER WRITTEN OR ORAL. THIS AGREEMENT MAY BE AMENDED ONLY BY WRITTEN INSTRUMENT SIGNED BY POTH THE CONTRACTOR AND

ARTICLE 13

EXISTING SUBCONTRACT DOCUMENTS

As defined in Paragraph 2.2 (1.4)	
As defined in Paragraph 2.3, the following Exhibits are a part of this Agreement.	
The Subcontract Work.	
information. (Attach a complete listing by title, date and number of	
EXHIBIT Progress Schedule, 3 pages.	
EXHIBIT Alternates and Unit Prices, include dates when alternates and unit prices no	
EXHIBIT Temporary Services, stating specific responsibilities of the Subcontractor,	
EXHIBIT A Insurance Provisions, 1 pages.	
EXHIBIT B Affirmative Action Policy, 1 page. EXHIBIT C Subcontractor Change Order Procedure, 2 pages	

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Other Provisions and Documents, pages.

This Agreement is entered into as of the date entered in Article 1.

CONTRACTOR HOWARD IMMEL ING
BY: NO
PRINT NAME: MARK K. DOUBEK
PRINT TITLE: PROJECT MANAGER
ATTEST
SUBCONTRACTOR PICKUS COMPANY
BY:
PRINT NAME: James L. Pickus
PRINT TITUE: President
ATTEST
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Howard Immel Inc. Genèral Contractor

P.O. Box 8208 Green Bay, WI 54308-8208

1820 Radisson Street Green Bay, WI 54302

920-468-8208 ■ Fax 920-468-7160 www.immel-builds.com



EXHIBIT A

CRITERIA FOR CERTIFICATE OF INSURANCE FOR HOWARD IMMEL INC.:

MUST NAME HOWARD IMMEL INC. (CONTRACTOR) AND THE HOME DEPOT (OWNER) AS ADDITIONAL INSURED.

EACH PROJECT NAME MUST APPEAR ON THE CERTIFICATE CONCERNING THAT PROJECT.

GENERAL LIABILITY TO BE AT LEAST \$2,000,000.00

EXCESS LIABILITY AGGREGATE TO BE \$2,000,000.00

WORKER'S COMPENSATION REQUIRES ALL EMPLOYERS WORKING ON JOBSITE TO BE COVERED. SOLE PROPRIETORS OR FARTNERS IN A PARTNERSHIP ARE NOT SPECIFICALLY COVERED. WE WILL REQUIRE A LIST OF ALL EMPLOYEES WHO WILL BE WORKING ON EACH NEW JOB. IF AN OWNER IS GOING TO BE WORKING ON THE JOB, WE WILL REQUIRE THAT HE/SHE IS COVERED UNDER WORKMAN'S COMPENSATION AND WILL REQUIRE VERIFICATION FROM THE INSURANCE COMPANY ON THIS.

STATE WHAT YOUR AUTO COVERAGE LIMITS ARE ON CERTIFICATE.

WE REQUIRE A THIRTY (30) DAY CANCELLATION NOTICE FROM ISSUING INSURANCE COMPANY.

THIS INFORMATION WILL BE REQUIRED AT THE TIME THE SUBCONTRACT OR PURCHASE ORDER IS ISSUED.

SUBCONTRACTOR'S NOT COMPLYING WITH THESE REQUIREMENTS, WILL NOT BE ALLOWED ON THE JOBSITE AND WILL NOT BE PAID ANY AMOUNTS DUE UNTIL THESE REQUIREMENTS ARE MET. ANY SUBCONTRACTOR ON OUR SITE WILL BE ASKED TO LEAVE AND WILL BE IN BREACH OF CONTRACT UNTIL PROPER INSURANCE DOCUMENTATION IS RECEIVED BY HOWARD IMMEL INC.



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Howard Immel Inc. General Contractor

P.O. Box 8208
Green Bay, WI 54308-8208

1820 Radisson Street
Green Bay, WI 54302

920-468-8208 Fax 920-468-7160
www.immel-builds.com

IMEL

EXHIBIT B

AFFIRMATIVE ACTION POLICY STATEMENT

HOWARD IMMEL, INC.

The policy of Howard Implet Inc. prohibits discrimination against any employee or applicant for employment because of age race, religion, color, handicap, sex, physical condition, developmental disability, medical condition, sexual orientation or national origin. Our policy includes, but is not limited to employment, upgrading, demotion, transfer, recruitment and selection for training including apprenticeship.

Howard Immel Inc. further agrees to take affirmative action to ensure equal employment opportunities.

Gregory M. Immel has been appointed the Affirmative Action Officer for Howard Immel Inc. He will handle all complaints that allege discrimination or sexual harassment.

Anyone who believes that he or she has been discriminated against should report this fact promptly.

Gregory M. Immel can be reached by telephone at 414/468-8208. His effice address is 1820 Radisson Street, Green Bay, WI 54308.

Gregory M. Immel Gresiden

Dated:

April 1, 2003



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EXHIBIT C-PAGE 1

SUBCONTRACTOR CHANGE ORDER PROCEDURES

The following procedures must be followed when performing extra work for Howard Immel, Inc.

- 1. Obtain written authorization from Howard Immel, Inc. project manager prior to proceeding with the work.
- 2. Complete the attached request for change order form and submit it to the Howard Immel, Inc. project manager with appropriate supporting documentation.
- 3. Upon receipt of written Change Order the extra work can be billed to Howard Immel, Inc.

ANY INVOICES THAT INCLUDE EXTRA WOPL FOR WHICH A WRITTEN CHANGE ORER HAS NOT BE RECEIVED WILL BE RETURNED.

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EXHIBIT 1

THE PICKUS COMPANIES

July 2, 2003

Via Fax: 920/468-7160

Phone: 920/468-8208

Dave Rajkovich Howard Immel Construction, Inc. P.O. Box 8208 Green Bay, WI 54308-8208

Re:

Home Depot Store No. 6701

600 Mecham Road, Elk Grove Village, IL

5: Utilities

Dear Dave:

Pickus Construction & Equipment Co., Inc. is pleased to submit our Proposal for site utilities one the above referenced project in the amount of Seven Hundred Ninety-two Thousand and No/100 Dollars (\$792,001.0) (\$192,000.C0) 1.

- We have included the following items in our proposal:
 - Water main piping
 - Sanitary and storm piping and manholes
 - Hydrant relocation
 - Sales tax
- We have excluded the following items for our Proposal: 2.
 - b. Fees
 - C. Bonds
 - Latent soil conditions d.
 - e. Electrical
 - Asphalt patching f.
 - Curb replacement g.
 - h. Testing
 - Survey/layout i.
 - Traffic control j.
 - k. Spoil removal
 - Clart's Office Interior trench drains (Garden Center and Buildings) 1.
 - m. Grease and oil interceptors
 - n. All utilities to be plugged and left 5' outside of building Downspout relocation

 - Irrigation sleeves

Thank you for this opportunity to bid this project. Our Proposal is valid for thirty (30) days.

PICKUS CONSTRUCTION & EQUIPMENT CO., INC.

James L. Pickus President

1220 GRAND AVENUE

P.O. BOX 710

WAUKEGAN, ILLINOIS 60079-0710

847.336.5490

FAX 847.336.9913