# DOCUMENT 00800 -SUPPLEMENTARY CONDITIONS

## GENERAL

American Institute of Architects Document A201, Thirteenth Edition, August 1997, "General Conditions of the Contract for Construction", constitutes the General Conditions of this Contract.

Articles of the AIA General Conditions listed under this Document "Supplementary Conditions" are amended by adding, substituting or omitting material as indicated herein.

All provisions of such articles not so specifically amended herein shall remain in full force and effect.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

**Replace 1.2.1 with :**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. All work indicated in the contract shall be performed by the contractor as part of this contract unless it is specifically indicated in the contract documents that such work is to be done by others

**ADD1.2.4** In case of discrepancies or conflicts in the Contract Documents, the order of precedence shall be as follows:

A. Written Amendments to the Owner - Contractor Agreement signed by both parties - those of a later date shall take precedence over those of an earlier date;
B. Change orders -- those of a later date shall take precedence over those of an earlier date;
C. The Owner - Contractor Agreement (as amended by any rider to the agreement, which rioters shall control any conflict with said agreement);
D. Construction Change Directives;
E. Clarifications;
F. Special Conditions;
G. General Conditions;
H. Specifications;
I. Schedules;
J. Details - Large scale control over small scale drawings;
K. Drawings;
L. Figured Dimensions; and
M. Drawings not dimensioned.

The Contractor shall identify any duplications, discrepancies or conflicts of which the Contractor becomes aware to the Architect, in which event the Architect shall issue clarifications to address all discrepancies and complex identified by the Contractor and such clarifications shall govern in all events.

**ADD 1.2.5** Notwithstanding the order of priority of documents set forth in SubParagraph 1.2.4, any matters contained in the specifications which have been omitted from the drawings or vice versa shall be construed as though contained in both. In the event of any duplication, conflict, or discrepancy between the drawings and specifications or between other contract clauses, so far as the same pertains to the drawings, the specifications or any modifications to the drawings or the specifications, the matter shall be properly brought the attention of the

Architect, without whose instructions the Contractor shall not adjust the matter except as his own risk. Any instructions of the Architect shall be given in writing. Any claim of the Contractor arising out of such instructions shall be governed by the provisions of Paragraph 4.3.

**ADD 1.2.6** Notwithstanding the order of priority of documents set forth in Subparagraph 1.2.4, in the event of any such duplication, conflict or discrepancy, the best quality or method of Work, materials and equipment shall be construed as the requirement. No such duplication of Work, conflict or discrepancy is intended by the Contract Documents, and any duplications specified shall not become a basis for extra cost to the Owner.

**ADD 1.2.7** Wherever in the Contract Documents reference is made to codes, standards, requirements or publications of any public or private bodies, the reference shall be construed as being to the latest revision thereof prior to the date of execution of this agreement unless otherwise indicated. The Contractor warrants that all Work performed hereunder shall meet the requirements of all such codes, standards, requirements and publications; however, the Contractor shall not be responsible for insuring that the design complies with such codes, standards, requirements and publications, except where specifications sections specifically required design certification and registered professional engineer seal and signature as provided in Subparagraph 3.12.10 (all other such compliance being the responsibility of the Architect).

**ADD 1.2.8** In order to complete the Work satisfactorily and to preserve warranties and guarantees, all manufactured articles, materials, and equipment should be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturers written or printed directions and instructions unless otherwise indicated in the Contract Documents.

**REPLACE1.5.2 WITH:**

Execution of the contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor has evaluated in satisfied himself as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, conditioned, layout and physical conditions of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and costs of materials, tools and equipment, and (5) soil in subsurface conditions of the Project site. The Owner shall not be required to pay any amount or make any adjustment in the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Subparagraph.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
2.2.1 **DELETED"**

**REPLACE IN Its ENITIRETY 2.4 WITH:**
2.4 OWNER'S RIGHT TO CARRY OUT THE WORK
2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents in fields within a three day period after receipt of written notice from the Owner to commence correction of such default or neglect with diligence and promptness or if, having commenced such correction, the Contractor fails to continue such correction with diligence, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three date period. If the Contractor within such three date. After receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, upon written notice to the Contractor and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate change order shall be issued deducting from payments than or thereafter due the Contractor the third party actual cost

of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure and the Contractor shall be responsible for all other costs, damages, delays, and associated impacts arising in the event that the Owner exercises its rights under this Subparagraph 2.4.1, the Owner shall have the right to take possession of the site and appalled materials, equipment, tools, and construction equipment in machinery thereon owned by the Contractor or any Subcontractor. Such action by the Owner and amounts charged the Contractor are both subject to prior approval of the Architect. If payments than or thereafter to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

3.1 GENERAL

**3.1.1 ADD an additional line**: The term "Contractor" shall include all Subcontractors (regardless of tier) and all vendors and suppliers (regardless of tier).

**ADD 3.1.5** The Contractor hereby represents and warrants to the Owner that the Contractor is a business entity it is experienced in skilled in the construction of Projects of the type described in the Contract Documents, is licensed to engage in the general construction business in the jurisdiction where the site is located, and is in compliance with all governmental laws and regulations applicable thereto.

**REPLACE THE LAST SENTACE IN 3.2.1 WITH**

Any errors, discrepancies, complex, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as request for information in such form as the Architect may require.

**3.2.2 ADD *and the Owner*, AFTER ARCHITECT IN THE FIRST SENTENCE..**

**IN 3.2.3 ADD UNDERLINED SECTIONS AND WORDS**

If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices, or request for information pursuant to Subparagraph's 3.2.1, 3.2.2 and 3.2.4, the Contractor shall make claims as provided in SubParagraph's 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of SubParagraph's 3.2.1, 3.2.2 and 3.2.4, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had perform such obligations and the Contractor shall be responsible for all associated delays and impacts. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements were conditions in the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference in knowingly failed to reported to the Architect or commenced the Work prior to having received a response.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

**3.3.1 REPLACE ARCHITECT WITH OWNER IN LAST SENTENACE AND ADD THE FOLLOWING:**

If the Contractor is then instructed by the Owner to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage. In no event shall the Contractor employee construction means, methods, procedures or techniques that violate (1) the requirements of any warranties applicable to the Work or (2) laws, ordinances, regulations, rules and orders which we are upon the Contractor's performance of the Work.

**ADD 3.3.4** The Contractor shall furnish sufficient forces, plant and equipment as may be necessary to ensure the progress of the Work in accordance with the Construction Schedule. If, in the opinion of the Owner, the Contractor has fallen behind the Construction Schedule, the

Contractor shall submit his proposal demonstrating the manner in which the desired rate of progress may be increased inch uptake such steps, at the Contractor's own cost, as may be necessary to meet the Construction Schedule. It shall be the responsibility of the Contractor to maintain his schedule so is not to delay the progress of the Work or the scheduled Work of separate contractors.

**ADD 3.5.2** The Contractor further agrees that each Subcontract shall contain a guarantee of the Work performed thereunder in the same form as the above stated guarantee of Contractor. Included in said guarantee shall be the statement that it shall be enforceable directly by the Owner, if the Owner selects. The guarantee of any Subcontractor shall not relieve the Contractor of its guarantee as set forth above in the Owner may look to the Contractor, directly, and in the first instance to correct any defects in the Work.

**ADD 3.5.6** The Contractor agrees to assign to the Owner, at the time of Substantial Completion of the Work, all manufacturers warranties required by the Contract Documents relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve all such manufacturers warranties.

**ADD 3.5.7** In addition to any warranties contained in the description of the Work attached hereto, Contractor agrees to guarantee all Work and to replace without cost to Owner any and all defects due to imperfect Workmanship or defects in materials and equipment and to pay for any damages resulting therefrom which shall manifest themselves within one (1) year from the date of Substantial Completion of the Work.

**REPLACE 3.7.3 WITH:**

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations except as otherwise provided in Paragraph 3.2. However if the Contractor observes that portions of the Contract Documents are in Marianne's bear with, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be made to the Contract Documents if the Architect and Owner make the determination that such conflict exists and a change is required.

**ADD 3.9.2** The Contractor shall arrange for an attend job meetings with the Owner and the Architect in such other persons as the Architect or the Owner may from time to time wish to have present. The Contractor shall be represented by a principal, Project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or sub-Subcontractor shall attend such meetings if the representative's presence is required by the Owner or the Architect. Such representative of the Contractor and the Subcontractors shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any written notices required under the contract may be served on such representative's.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

**REPLACE 3.10.1 WITH:**

The Contractor has prepared and submitted for the Owners and Architects information Contractors Construction Schedule for the Work, a copy of which is attached to the contract as Exhibit D (the "Construction Schedule"). The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project (but in no event less frequently than monthly), shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work in. The Construction Schedule and all updates via two shall be in a detailed, precedents -- styled critical path method (CPM) format satisfactory to the Owner in the Architect and shall: (1) provide a graphic representation of material activities and events that will occur during performance of the Work; (2) identify each

phase of construction and occupancy; and (3) set forth dates better critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents, including but not limited to each and all of the Substantial Completion dates. The acceptance of the Construction Schedule will not impose on Owner or the Architect in the responsibility for the schedule, for timely submittals of complete and Project performing Shop Drawings, the Work sequencing, scheduling milestones, or progress of the Work nor interfere with or relieve Contractor from Contractors full responsibility to complete all Work in accordance with the Contract Documents.

**ADD 3.10.5** In the event (i) that the performance of any element of the Work on the critical path of construction has not progressed or reach the level of completion required by the Construction Schedule, and (ii) the progress of the Work is not brought back into compliance with the Construction Schedule on the date proposed by the corrective plan, or the Contractor shall otherwise fail to comply with the correct as planned, the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the Work, including, without limitation, (1) Working in additional shifts are over time, (2) supplying additional manpower, equipment and facilities, and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such extraordinary measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owners right to require extraordinary measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule.

. 1 The Contractor shall not be entitled to an adjustment in the contract some in connection with extraordinary measures required by the Owner under or pursuant to this subsection 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this subsection 3.10.5 as frequently as reasonably necessary to ensure that the Contractor's performance of the Work complies with the elements of the Work on the critical path of construction set forth in the Construction Schedule.

**ADD 3.11.2** If and to the extent applicable given the Work to be performed hereunder, the Contractor shall prepare and deliver to the Owner four copies of an operating and maintenance manual for the Project, which shall contain, is and to the extent applicable given the Work to be performed here under, (i) full information for each item of mechanical, electrical, or other operating equipment, copies of warranties therefore, schematic diagrams of control systems, circuit directories for each electric and communications panelboard, and charts showing the tagging of all valves; and (ii) complete keying schedules, paint color schedules, and paint color samples. Each volume of manual shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance Contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volume shall be bound in book form. Typewritten, drawn or photographic material shall be protected by clear plastic sleeves.

3.13 USE OF SITE

**3.13.1 ADD THE FOLLOWING AFTER THE LAST SENTENACE** . The right of possession of the site and the improvements made thereon by the Contractor shall remain at all times with the Owner and the Contractor shall in no event have exclusive use of the Project site. On site parking, staging and storage areas may not be available for use by the Contractor and can in no event be guaranteed. The Contractors right to entry in use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Owner shall have the right to refuse admittance to the site to any employee of the Contractor or Subcontractors whose presence the Owner deems hostile to the Owner's interest.

**REPLACE 3.18.1 WITH** The Contractor shall, to the fullest extent permitted by law,

defendant (if requested by Owner with counsel acceptable to Owner), indemnify and save harmless the Owner, Packard Development LLC, Packard Properties Corp., Packard Development Corp., the Owner's representative and any lender and/or Major Occupant, and their respective directors, officers, partners, employees, shareholders, members, managers, beneficiaries and agents (each and "Indemnitee"), from any and all claims (including attorneys fees resulting therefrom) arising out of the performance above or the failure to perform the Work or to comply with any law, ordinance, rule, regulation or other legal requirement or the condition of the Work or the job site, and from any and all claims by Workers, suppliers or Subcontractors who were involved in the performance of the Work.

The obligations set forth in this provision shall specifically include, but shall not be limited to, all claims arising under any scaffolding, structural Work or safe place law or any law with respect to the protection of adjacent landowners, but shall not include any claims arising solely from the negligence of the party asking to be defended, indemnify or saved harmless.

The Contractor shall be notified of any claims against any Indemnitee and given such reasonable information, authority and assistance as may be requested by him to enable him to perform the obligations set forth in this Subparagraph. A failure to notify the Contractor of a claim or to give such information, authority and assistance shall discharge the obligations set forth in this Subparagraph only to the extent that the Contractor has been prejudiced in the defense of such claim.

The Contractor also expressly warrants and guarantees to the Owner that all Work performed by the Contractor and by all workmen, suppliers and Subcontractors of the Contractor shall conform to the requirements of the Contract Documents and shall be performed into safe, competent and careful manner.

The foregoing shall not deprive the Owner or any Indemnitee of any other action, right or remedy otherwise available to them, or any of them, at common law or otherwise.

The term "Work" for purposes of this SubParagraph means the obligations undertaken by the Contractor pursuant to the Contract Documents. The Work includes, unless specifically excepted, the furnishing, installation in construction, as applicable, of all material, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, insurance, taxes and all other services, facilities, and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also includes that which is produced, constructed or built pursuant to the Contract Documents.

An Indemnitee shall have the right to participate in the defense of any claims against such Indemnitee, and no settlement of any claims for which the Contractor is required to indemnify an Indemnitee hereunder may be settled or comprised without the prior written consent of such Indemnitee, not to be unreasonably withheld.

**ADD 3.18.3** To the fullest extent permitted by law, the Contractor shall further indemnify, defend and hold harmless any Indemnitee from and against any and all claims and liens from the Contractor's Subcontractors and suppliers and from lower level Subcontractors and employees or agents of any of them arising out of alleged or actual non-payment, insufficient payment were late payment as required under the applicable Subcontract or purchase order or amounts owed for labor, materials, supplies, equipment of services provided in connection with the Project, unless such claims or liens result from the failure of the Owner to make payments to the Contractor as provided for in the Contract Documents.

**ADD 3.18.5** The Contractor shall be responsible for any and all reasonable expenses incurred by any Indemnitee because of any claim or other matter indemnified against hereunder, including without limitation, attorneys' and consultants' fees and expenses, court costs, and costs related to the defense of, or prepare for the defense against, any such claim. If any such claim

has not been settled or discharged or bonded at the time the final completion of the Work, the Owner may withhold an amount equal to two hundred percent (200%) of the outstanding claim until any such claim is paid or settled or the Contractor provides a bond, acceptable to the Owner, to satisfy such claim.

**ADD 3.18.6** in the event that the Contractor is requested but refuses to honor its Indemnitee obligations hereunder, then the Contractor shall, in addition to its other obligations, pay the cost of bringing the any action to enforce the Contractors Indemnitee obligations, including, without limitation, reasonable attorneys and consultants fees, expenses and court costs, to the party requesting such Indemnitee.

**ADD 3.18.7** The provisions of Paragraph 3.18 shall survive any termination of the contract.

**ADD 3.19 LIENS**

The Contractor shall use its best efforts to prevent any laborer's, material supplier's, mechanic's or other similar liens or claims from being filed or otherwise imposed on any part of the Work or the Project. If any laborer's, materials supplier's, mechanic's or other similar lien or claim is filed or otherwise imposed by the Contractor, any Subcontractor, any material supplier, or any lower tier Subcontractor or material supplier in connection with the Work, the Contractor shall either cause such lien to be released and discharged, or shall file a bond in lieu thereof within three (3) business days of receipt of written notice thereof, unless such lien or claim arising solely as the result of the breach by the Owner of its obligations under this agreement. If the Contractor fails to release and discharge or bond over any such lien or claim, the Owner may, at the Contractors expense, do so. Any costs so incurred by the Owner in doing so may be deducted from any amounts due, or which may become due from the Owner to the Contractor. The Contractor agrees to indemnify, defend, and hold Owner harmless from and against any and all loss, cost or damage incurred by the Owner as the result of the breach by the Contractor in its obligations under this Paragraph 3.19. The Contractor shall, as a condition to Substantial Completion, execute and deliver to the Owner a notice of Substantial Completion in recordable and statutory form. The Contractors obligations under this Paragraph 3.9 shall survive termination of this contract in the completion of the Work.

**4.2.11 ADD THE FOLLOWING AT THE END:**
Upon written request of either the Owner or the Contractor, the Architect shall, in the first instance interpret matters concerning performance of the Contractor under the requirements of the Contract Documents as such requirements relate to the Drawings and Specifications, and as to whether the Contractors performance conforms to the drawings and specifications. Further, if the Owner shall so elect, claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of unit price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and claims seeking changes in the Contract Sum or Contract Time will be referred initially to the Architect in writing. When functioning as interpreter and judge, Architect will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

**4.3.10 "Intentionally Deleted"**

4.4 Resolution of Claims and Disputes

**REPLACE 4.4.1 WITH** Unless another method of dispute resolution is agreed to buy the Owner and the Contractor, all claims shall be resolved by trial in a court of competent jurisdiction.

**4.4.2 – 4.4.8 "intentionally Deleted"**

**4.5 ADD** **IN-PERSON MEETING**; MEDIATION

**ADD AT BEGINNING OF** 4.5.1 The Owner and the Contractor agree that, for any dispute arising out of or related to the interpretation or of compliance with this Agreement or the completion of the Project, responsible persons selected by each party will meet together (with the Architect, to the extent necessary or desirable) and attempt to resolve the dispute between them within twenty one (21) days after the date on which such meeting is first requested in writing by either party. Such an in-person meeting shall be a condition precedent to the initiation pf mediation or litigation, unless legal action must be filed in order to satisfy the requirements of any applicable statute of limitations, in which case such action shall be stayed until such in-person meeting has occurred.

Any claim arising out of or related to the Contract, except claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, and 9.10.5, may be subject to non-binding mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party provided below.

**REPLACE 4.5.2 WITH :** If either party wishes to submit any such Claim to non-binding mediation, the party requesting such mediation shall submit such request in writing to the other party and the American Arbitration Association. In such event, if the other party agrees in writing so to do, the parties shall endeavor for a period of time no to exceed thirty (30) days without the further written agreement of the parties to resolve their claims by non-binding mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect.

**REPLACE 4.5.3 WITH** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. In the event that the parties execute a written agreement as a result of such mediation in settlement of any such Claim, such agreement shall be enforceable as a settlement agreement in any court having jurisdiction thereof.

**6.2.3 ADD THE FOLLOWING AFTER THE FIRST SENTENCE:**
The Owner shall have the right to offset such costs against any amounts owed by the Contractor to the Owner to the extent related to the Project in such offsets are consistent with unit pricing (if applicable).
**ADD THE FOLOWING AT END OF LAST SENTENCE:**
Provided that the Contractor timely notifies the Owner of its Claim based upon the fault of such separate contractor.

**ADD 7.2.3** Unless expressly reserved therein, and executed change order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the change order, including, but not limited to, all direct and indirect costs associated with such change, any adjustments to the contract some, and any and all adjustments to the Construction Schedule and/or Contract Time.

8.3 Delays and Extensions of Time
**REPLACE 8.3.1 WITH**
If the Contractor is delayed at any time in the commencement of progress of the Work by an act or neglect of the Owner or architect, or of an employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by the area-wide labor disputes not directed at the Contractor or any of its Subcontractors, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractors control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Owner determines may justify delay, then the Contract Time should be extended by change order for the

period of the delay caused by such occurrence, subject, however, to the following:

.1 The Contractor acknowledges that no adjustments to any milestone date or the Contract Time should be made unless the events described above have the effect of delaying completion of components of Work on any critical path indicated in the Construction Schedule. The Contractor shall be entitled to reallocate any time saved in the completion of any of the particular activities in the Construction Schedule to the time permitted for the completion of any other activities; provided, however that in no event shall any such reallocation result in any adjustments to any milestone date or the Contract Time and/or result in any extension of the time originally allocated in the Construction Schedule for the completion of components of Work on any critical path indicated in the Construction Schedule.

.2 The Contractor further acknowledges and agrees that adjustments to any milestone dates and the Contract Time should be permitted in connection with any of the events described above only to the extent that the delays resulting therefrom (1) are not caused by, or could not have been avoided by the exercise of reasonable efforts of the Contractor, (2) cannot be limited or avoided by the Contractors timely notice to the Owner of the delay and (3) have an impact of at least one (1) day.

**REPLACE 8.3.3 WITH :**

Except as may be otherwise expressly herein provided, in no event shall Contractor be entitled to any compensation or damages for delay.

9.5 DECISION TO WITHHOLD CERTIFICATION

**9.5.1 ADD THE FOLLOWING AT THE END:**

.8 amounts previously paid to the Contractor in excess of amounts properly due the Contractor;

.9 failure of the Contractor to comply with any of the Contractor's indemnification obligations as set forth in Paragraph 3.18; or

.10 failure of the Contractor to discharge or bond over any lien established by a Subcontractor, supplier or other party for whom the Contractor is responsible.

**9.10.2 ADD THE FOLLOWING AT THE END:**

Without limiting any other conditions to final payment, as set forth in the Contract Documents, the Contractor shall be required to submit the following to the Owner in the architect, as conditions to the issuance of a final Certificate for Payment and final payment:

1. Final documents of similar nature to those required by the Contract Documents for any monthly payments hereunder,
2. All final permits, approvals (including, without limitation, the approval of the Owner's insurance company, if required) certificates (including, without limitation, certificates in respect of electrical systems and life safety systems) and authorizations for use and occupancy of the Project required by any authority having jurisdiction, including any building permits, temporary and unconditioned permanent and full certificate of occupancy and any other necessary occupancy and use permits,
3. Formally prepared "as built" drawings, records and related data including all field notes of all the Work (such drawings should be in the form of "Mylar" reproducible drawings, or as otherwise called for in the Contract Documents),

4. All operating and maintenance manuals, parts list, a final version of the Project directory, and repair source list,
5. All guarantees and warranties to which the Owner is entitled hereunder,
6. Satisfactory proof that all claims, including taxes, arising out of the Work (including any claims of Subcontractors) have been released or bonded,
7. A certificate of insurance for product liability and completed operations, for the three-year period following final completion,
8. A final statement of accounting for all allowances in form satisfactory to the Owner, Owner's Lender and any Major Occupant,
9. If required by the Owner, or the Owner's Lender or any Major Occupant, other data establishing payment or satisfaction of all such obligations, and releases and final unconditional waivers of liens arising out of the contract, to the extent in form reasonably satisfactory to the Owner,
10. Delivery of all spare parts required to be submitted pursuant to the Contract Documents, and
11. A general release of the Owner from the Contractor and each Subcontractor,

If the final documentation submitted by the Contractor is not deemed complete by the Owner or if the Owner deems the Work incomplete in any respect, the Contractor shall promptly complete any such Work and shall promptly resubmit the final documentation.

Should any claims of lien arise during the performance of the Work hereunder or subsequent to final payment, Contractor agrees to save, hold harmless and indemnify Owner against same. The Contractor may defend such claim at his own expense, if such defense is undertaken promptly after the filing of such claim. If Contractor does not so defend or does not defend diligently or does not discharge such Lien promptly, Owner may, in addition to Owner's rights under Paragraph 9.6 hero of, undertake such defense in its own right. In net event Contractor agrees to pay Owner, on demand, all sums which Owner may be required to pay in discharging such Lien or claim whether as a result of litigation or compromise, made in good faith by Owner, including reasonable costs, expenses and attorneys fees incurred.

10.5 **ADD:** *or willful misconduct* **AFTER NEGLIGENCE IN LINE ONE**
**ADD THE FOLLOWING AT THE END**:
Contractor shall be a solely responsible for compliance with all state and federal laws and all government regulations pertaining to environmental matters enacted or adopted and in existence during the time of this contract, excluding any such laws and regulations as may be applicable to or concern any pre-existing hazardous materials (other than any of been Known Materials) on the site. Contractor shall perform all work consistent with reasonable construction practices.

INSURANCE & BONDS

**REPLACE IN ITS ENTIRETY**

**11.1CONTRACTORS LIABILITY INSURANCE**

11.1.1 Prior to commencement of any Work, Contractor shall purchase and maintain the following insurance as will protect it and Owner (on a direct, noncontributory basis) from the claims set forth below which may arise out of or as a result of Contractors operations under the contract whether such operation shall be by Contractor itself, or any Subcontractor for anyone directly or indirectly employed by any of them, or by anyone for whose ask the may be liable:

1. Workers compensation/disability/employers liability insurance:

    a. Covering claims under Workers' Compensation Disability benefits and other similar statutory employee benefit acts which are applicable to the Work to be performed with limits of liability as required by law. These claims may include damages because of bodily injury, occupational sickness or disease, or death

of its employees.

b. Employers liability insurance should be included in the coverage with a minimum limit not less than $1 million for each accident for bodily injury, $1 million policy limit for bodily injury by disease and $1 million each employee for bodily injury by disease

2. Comprehensive Automobile Liability:

a. Covering claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle in an amount not less than $1 million combined single limit each accident.

b. The insurance set forth in clause 2(a) above shall include coverage for owned, non owned and hired automobiles. The Contractor shall require each Subcontractor to include in its liability insurance policies coverage for automobile contractual liability.

3. Commercial General Liability Insurance:

a. Covering bodily injury (including death); broad form property damage (including completed operations) including injury to, or destruction of, tangible property, including loss of use therefrom; premises and operations; personal injury; products and completed operations coverage; contractual liability and sharing the Contractor's Indemnitee obligations under this contract; coverage for "X", "C" and "U" hazards; independent Contractors coverage; incidental malpractice; and host liquor liability, all with the combined single limit of at least $25 million per occurrence. The contractual liability and products and completed operations coverages shall be maintained on Owner is in Indemnitees behalf for a period of at least three years following the final completion date of the Work.

b. Further, even the Contractor or the Contractor's Subcontractor responsible for performing any blasting operations included as part of the Work shall provide coverage in its liability insurance policy, and form and substance satisfactory to the Owner, for any claims which may arise out of the performance of such blasting operations with the combined single limit of at least $25 million per occurrence.

4. Umbrella Liability:

a. The minimum limits required in 3(a) and (b) above may be attained through the combination of primary General liability and umbrella liability policies. These limit shall be available to satisfy any potential claims relating to this Project.

5. Other Requirements.

a. The foregoing policies (other than the Workers Compensation/Disability/Employers Liability Insurance Policy) shall name the Owner and each of the other Indemnities as an additional insured under primary and noncontributory basis and shall contain a provision that coverage afforded under the policies will not be canceled or reduced in amount or allowed to expire without at least thirty (30) days prior written notice given to Owner and each of the other additional insureds. If requested, duplicate

originals of the commercial General liability and umbrella policies will be given to Owner prior to commencement of construction, as well as any renewal policies during the course of construction. All insurance companies must be licensed and duly authorized to conduct business in the state where the Work is being performed with a minimum Best's rating of A+X or better and otherwise satisfactory to the Owner.

b. All such policies shall provide for severability of interests and shall provide that any act or omission of any one (1) of the insureds or additional insureds that would avoid or otherwise reduce coverage shall not reduce or avoid any coverage as to any of the other insureds or additional insureds.

c. None of the foregoing policies shall have a deductible amount greater than $25,000 without the prior written approval of the Owner.

d. The Contractor shall, before the commencement of any part of the Work, file certificates showing existence of such insurance with Owner, which insurance shall be subject to the Owner's approval of adequacy of protection, compliance with this contract, and the satisfactory character of the insurer.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

**REPLACE 14.2.1.1 WITH** .1 Refuses or fails to supply enough properly skilled Workers or proper materials; or fails to meet any of the Substantial Completion Dates set forth in the Construction Schedule and such failure continues beyond fourteen (14) days after receipt of written notice from the Owner thereof; or files for protection under the Federal Bankruptcy Act, or any other creditor protection laws; or there is an involuntary filing against the Contractor under the Federal Bankruptcy Act or any other creditor protection laws.