

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

SUPPLEMENTARY GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

CCDC2 - 2008

DESIGN-BUILD AGREEMENT

(BCH Procured Property)

May 2010 Version

The Agreement is amended as follows:

Add:

“ARTICLE A - 1A CONDITION PRECEDENT

It is a condition precedent to the *Owner's* obligation to fulfill the terms and conditions of this *Contract*, but not to there being a binding agreement between the *Owner* and the *Contractor*, that *B.C. Housing* has issued a Loan Commitment for the *Project*. The *Owner* will provide to the *Contractor* a letter confirming that the Loan Commitment for the *Project* has been issued.”

ARTICLE A-1 THE WORK

Add:

- “1.4 The *Contractor* shall properly design and fully construct the *Work* in accordance with B.C. Housing requirements, the requirements of all federal, provincial and local government authorities having jurisdiction and the rules and customs of best trade practice (meaning practice of the industry and not necessarily “local practice”) with the object of constructing modestly priced housing. Without limiting the generality of the foregoing, the *Work* shall include:
- .1 the provision of all professional design and engineering services necessary to properly prepare fully detailed and professionally sealed plans and specifications which meet, as determined by B.C. Housing, the requirements of the applicable *BC Housing Design and Construction Standards*;
 - .2 inspection during and upon completion of construction by the *Consultant* to ensure conformance of the *Work* to the *Contract Documents*; and
 - .3 all necessary approvals, licences, permits, charges and certificates including the building permit for the *Work*.
- 1.5 The *Contractor* shall at all times be fully responsible to the *Owner* for any errors, omissions, or deficiencies in the *Contract Documents*, including any revisions and addenda thereto and shall be fully liable for all direct, consequential and additional costs incurred by the *Owner* as a direct or indirect result of such errors, omissions or deficiencies.

- 1.6 At least 7 calendar days prior to the commencement of construction, the *Contractor* shall deliver to the *Owner* all of the following:
- .1 Proof of all necessary permits, licences, certificates and other authorizations required by all municipal, provincial or federal authorities, for the *Work* and proof of payment of all applicable fees;
 - .2 Certified copies of all insurance policies required by this *Contract*;
 - .3 The performance and labour and material payment bonds required by this *Contract*;
 - .4 A construction schedule satisfactory to the *Owner* as required by paragraph 3.5.1 of the Supplementary Conditions of the *Contract* including, in a graphic form, the proposed dates of commencement and completion of each of the various subdivisions of the *Work*, and corresponding to the breakdown of work shown on the schedule of values, as required by paragraph 5.2.4 of the *Contract* so as to facilitate evaluation of applications for payment;
 - .5 A schedule of values of the various parts of the *Work* as required by paragraph 5.2.4 of the *Contract*;
 - .6 A schedule of anticipated monthly progress payments as required by paragraph 5.2.5 of the Supplementary Conditions of the *Contract*;
 - .7 Proof that the *Contractor* has obtained Workers' Compensation Board registration and clearance; and
 - .8 A statutory declaration pursuant to B.C. Housing's Conflict of Interest Guidelines.
- 1.7 The *Contractor* will give to the *Owner* a minimum of 45 calendar days' written notice that the *Contractor* will meet the date set in Article A-1 for *Substantial Performance of the Work*.
- 1.8 The *Owner* requires, subject to the review of the BladeRunners Provincial Coordinator, that the *Contractor* and its *Subcontractors* participate in the BladeRunners program (the "Program"). The level of involvement with the program will be developed in consultation with the BladeRunners Provincial Coordinator and the Program's local Project Coordinator.

The objective of the Program is to provide entry level work experience and training in the construction industry for individuals who are employment disadvantaged. The Program provides wage funding assistance available to the employer and ongoing support will be provided by the BladeRunners Provincial Coordinator to employers and BladeRunners placed-participants during the term of such participants' work on the *Project*.

The following conditions shall apply to participation in the Program:

- .1 the *Contractor* is required to contact the BladeRunners Provincial Coordinator prior to the start of construction to review the *Contractor's* participation. Contact the Provincial Coordinator at telephone (604) 913-7938; and

- .2 the individuals selected for placement from the Program will be employees of each *Contractor* or *Subcontractor* and may be registered as apprentices if working in a trade area.”

ARTICLE A-3 CONTRACT DOCUMENTS

3.1 Add the following:

- “• The Supplementary General Conditions of the Stipulated Price Contract.

Add:

“3.2: The *Contractor* acknowledges that it has reviewed and satisfied itself as to the *Contract Documents*, including without limitation, the plans, specifications, consultant reports, and other materials referred to in this Article, the observable site conditions, and all other materials it desires, prior to execution of this *Contract*. The *Contractor* agrees that, on execution of this *Contract*, the *Contractor* will assume full responsibility for completion of the *Project*, notwithstanding any defect or deficiency or incompleteness in any of the foregoing, it being acknowledged that, since this is intended to be a turnkey contract, the *Contractor* is taking the risk of any defects, deficiencies or incompleteness in any of the foregoing.”

ARTICLE A-4 CONTRACT PRICE

Add:

“4.6 The *Contract Price* includes all costs of the *Work*, including, without limitation, all costs incurred in the design and construction of the *Work*, whether foreseen or unforeseen, save and except for those costs which are the responsibility of the *Owner* as specifically set out in this *Contract*, and the *Contract Price* shall include, without limitation:

- .1 all professional design, engineering and construction services and products reasonably necessary to properly perform the *Work* and to permit the *Project* to operate as contemplated following *Substantial Performance of the Work*;
- .2 all labour and materials;
- .3 all refrigerators, stoves and window coverings and other appliances, furnishings and fixtures for each unit, the amenity room and common areas as and where specified;
- .4 all permits, fees, licences and certificates of inspection and insurance in connection with the *Work* required by all authorities having jurisdiction including residential builder licensing fees, the building permit, the plumbing, electrical, sewer, water, and gas connections permits, and the gas, electricity and telephone service connection fees;
- .5 all inspections required for specific warranty conditions;
- .6 all inspections by all authorities having jurisdiction;

- .7 all material testing required under bylaws, ordinances, rules, regulations, orders and approvals of all public authorities having jurisdiction;
- .8 an updated survey of the Place of the Work prepared by a British Columbia Land Surveyor confirming the exact area of the property, the location of all registered easements or statutory rights of way, and confirming that the position of the buildings, including foundations and overhangs, building heights and finish grades comply with all municipal requirements;
- .9 all required soils reports;
- .10 a *Project* sign mutually agreed to between the *Owner* and the *Contractor*;
- .11 all warranties required under the *Contract*;
- .12 all bonds required under the *Contract*;
- .13 all insurance required under the *Contract*;
- .14 the construction or installation of all off site services or payments in lieu thereof as may be required by all authorities having jurisdiction to be constructed or installed as a condition of the construction of the *Project*;
- .15 two (2) complete sets of white prints and CAD file of all as built drawings for the *Project*; and
- .16 all requirements of any subdivision, site plan, development or other agreement with the municipality.

ARTICLE A-5 PAYMENT

In paragraph 5.1, line 3, after the words “the *Owner*” add:

“, after receiving the prior written approval of *B.C. Housing*,”.

Add:

“ARTICLE A-9 THE CONSULTANT

- 9.1 The *Contractor* will provide the architectural and engineering services required for the *Project* through the *Consultant* and the *Sub-Consultants*. The *Consultant* and *Sub-Consultants* will be:

<i>Consultant/Sub-Consultant</i>	Full Legal Name
<i>Consultant</i>	
Architect (if not the <i>Consultant</i>)	
Certified Professional	
Electrical Engineer	
Mechanical Engineer	
Structural Engineer	
Geotechnical Engineer	
Landscaping Consultant	

The *Contractor* shall not change any *Sub-Consultant* without cause and without the written consent of the *Owner*, which consent will not be unreasonably withheld. The *Consultant* shall not be changed excepted in accordance with paragraph 2.1.3 of GC 2.1.

The *Contractor* will ensure that the *Consultant* and all *Sub-Consultants* will sign an agreement and acknowledgement with the *Owner* in which such party:

- .1 agrees that, without regard to payment by the *Contractor*, the *Owner*, its successors and assigns, will have a licence to use the *Contract Documents* for the purposes of the *Project* and such party will act in an even handed fashion in the administration of the *Contract*; and
- .2 consents to an assignment to the *Owner* of the agreement between it and the *Contractor* effective on any default under this *Contract* by the *Contractor*, provided however that such party will not be obligated to provide services thereunder unless and until all payments then due thereunder are made in full,

and the form of such agreement will be subject to the approval of both the *Owner* and *B.C. Housing*. Notwithstanding such agreements, acknowledgements and assignments, the *Contractor* will remain fully liable for defects or deficiencies in the *Work*, even if the parties to such agreements and acknowledgements are also liable.

ARTICLE A-10 LATE COMPLETION

- 10.1 If *Substantial Performance of the Work* is not certified on or before the date that *Substantial Performance of the Work* is to be certified as set out in paragraph 1.3 of Article A-1 THE WORK or as subsequently extended pursuant to GC6.5 DELAYS (the “*Scheduled Substantial Performance Date*”), the *Contractor* shall pay to the *Owner* an amount equal to all costs and damages incurred by the *Owner* as a result of the failure of the *Contractor* to attain *Substantial Performance of the Work* by the *Scheduled Substantial Performance Date*, whether the costs and damages are a direct or indirect result of a default by the *Contractor*. The costs and damages suffered by the *Owner* are understood by the *Contractor* to include, without limitation:
- .1 The interest costs incurred by the *Owner* under its mortgage to finance the construction of the *Project* for each day from and including the *Scheduled Substantial Performance Date* until *Substantial Performance of the Work* is certified pursuant to GC5.4 SUBSTANTIAL PERFORMANCE OF THE WORK;
 - .2 Consequential losses and pure economic losses suffered by the *Owner* as a direct or indirect result of the default of the *Contractor*;
 - .3 Temporary housing costs incurred by, or by the *Owner* on behalf of, the tenants of the *Owner*; and
 4. Transportation and storage costs incurred by, or by the *Owner* on behalf of, such tenants due to the unavailability for occupancy of the housing units.
- 10.2 Notwithstanding anything to the contrary contained in this *Contract*, the *Owner* shall have the right to set off against any amount owing by the *Owner* to the *Contractor* pursuant to this *Contract* any and all such costs and damages due to the *Owner* by the *Contractor* pursuant to paragraph 10.1 of this Article A-10 LATE COMPLETION.

ARTICLE A-11 TIME OF THE ESSENCE

- 11.1 All time limits stated in this *Contract* are of the essence of the *Contract*.”

DEFINITIONS

4 Consultant

Delete “the *Owner*” and replace with the *Contractor*”.

19 Subcontractor

Delete and replace with the following:

“*Subcontractor* means any “subcontractor” as defined under the *Builders Lien Act*, in respect of any part or parts of the *Work*.”

20 Substantial Performance of the Work

Delete and replace with the following:

“*Substantial Performance of the Work* shall have been reached when:

- .1 the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Consultant*; and
- .2 a Certificate of Completion has been issued for the *Work* as a whole.”

22 Supplier

Delete and replace with the following:

“*Supplier* means any “supplier” as defined under the *Builders Lien Act*, in respect of any *Products* forming part of the *Work*.”

Add:

“27. **B.C. Housing**

B.C. Housing means the British Columbia Housing Management Commission and its authorized agents or representatives.

28. Builders Lien Act

Builders Lien Act means the *Builders Lien Act*, S.B.C. 1997, c.45, as amended, and all regulations thereto, and any successor legislation in the Province of British Columbia in relation to builders liens.

29. Certificate of Completion

A *Certificate of Completion* is a certificate of completion as defined in the *Builders Lien Act* issued by the *Consultant*.”

30. Sub-Consultant

“*Sub-Consultant*” means the person(s) or entity(entities) retained by the *Contractor* and identified as such in the Agreement. A *Sub-Consultant* is an architect, engineer or entity

licensed to practice in British Columbia. The term *Sub-Consultant* means a *Sub-Consultant* or a *Sub-Consultant's* authorized representative.

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC1.1 CONTRACT DOCUMENTS

1.1.2.2 Delete.

1.1.7 Add:

.5 structural drawings shall govern over mechanical and electrical drawings;

.6 subject to the above, if any specifications or drawings conflict with any other specifications or drawings, the more stringent shall govern.”

1.1.8 Delete and replace with the following:

“The *Contractor* will provide to the *Owner*, without charge, sufficient copies of the *Contract Documents* to allow the *Owner* to monitor the *Work*.”

1.1.9 Add:

“The *Owner* and its successors and assigns may use the *Contract Documents* for additions or alterations to the *Project*, without obtaining any consent or permission or making any payment. The *Contractor* warrants that it has and shall obtain any and all waivers, assignments and approvals needed to confer this perpetual right and license.”

Add:

“1.1.11 The table of contents and the headings of all the articles, paragraphs, parts and sections of any of the *Contract Documents* are provided for convenience of reference only and shall not affect the construction or interpretation of the *Contract Documents*.”

GC1.3 RIGHTS AND REMEDIES

Add:

“1.3.3 No inspection, review, approval, consent or any other act or omission on the part of the *Owner* or the *Consultant* shall relieve the *Contractor* of any obligations under the *Contract* to complete the *Work* strictly in conformance with all applicable plans and specifications.”

GC1.4 ASSIGNMENT

Add:

“1.4.2 Notwithstanding paragraph 1.4.1, the *Owner* may assign its interest in the *Contract* and any of its rights and remedies available at law to *B.C. Housing* at any time without the consent of the *Contractor* and, upon receipt of written notice as to the effective date thereof from *B.C. Housing*, the *Contractor* shall thereafter be bound thereunder to *B.C. Housing* for the performance of the *Contractor's* covenants and warranties.”

PART 2 ADMINISTRATION OF THE CONTRACT

GC2.1 AUTHORITY OF THE CONSULTANT

2.1.2 Add at the end: “and *B.C. Housing*.”

2.1.3 Delete and replace with the following:

“If the employment of the *Consultant* is terminated, the *Contractor* will forthwith appoint a replacement for the *Consultant* following such termination or resignation, provided that the *Owner* and *B.C. Housing* first consent in writing to the replacement, which consent will not be unreasonably withheld or delayed.”

GC2.2 ROLE OF THE CONSULTANT

2.2.1 Delete and replace with the following:

“The *Consultant's* duties and responsibilities will include, without limitation:

- .1 The coordination required to integrate all parts of the design of the *Work*;
- .2 The provision of assistance to the *Contractor* to obtain approvals, permits, and licenses for the construction of the *Work*;
- .3 The conducting of general review of the progress of the construction, to the extent necessary, in order to determine to the *Consultant's* satisfaction that the construction of the *Work* is performed in compliance with the requirements of:
 - (1) the *Contract Documents*; and
 - (2) the applicable statutes, regulations, codes, and bylaws of all authorities having jurisdiction over the *Work*;
- .4 The assurances required to regulatory authorities respecting substantial conformance of the design with the applicable building regulations, excluding construction safety issues;
- .5 The reviewing of any defects or deficiencies in the *Work* during the period described in GC 12.3 - WARRANTY and the issuance of appropriate instructions for the correcting of same; and

.6 Such other work that may be required from time to time that is agreed to by the *Contractor*, the *Consultant*, and the *Owner* in writing.”

2.2.3 In line 1, delete “If the *Owner* and the *Consultant* agree.”

2.2.13 Add:

“The *Consultant* will deliver a copy of any *Supplemental Instructions* to the *Owner* at the same time as they are delivered to the *Contractor* and such *Supplemental Instructions* will not be effective until confirmed by the *Owner* if they are:

.1 Inconsistent with items in the *Contract Documents*; or

.2 Material or substantial.”

2.2.16 Delete and replace with the following:

“The *Consultant* will conduct reviews of the *Work* from time to time and, based upon such reviews will determine the date of *Substantial Performance of the Work*, issue *Certificates of Completion* for all or designated portions of the *Work* and identify and estimate values for deficient and incomplete items of work as provided in GC5.4 SUBSTANTIAL PERFORMANCE OF THE WORK, GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, GC5.6 PROGRESSIVE RELEASE OF HOLDBACK and GC5.7 FINAL PAYMENT.”

GC2.3 REVIEW AND INSPECTION OF THE WORK

2.3.5 In line 3, at the beginning of the last sentence, add:

“The *Owner* acting reasonably may require the *Consultant* to order an examination of any portion or portions of the *Work*. If the *Consultant* makes such an order and”.

GC2.4 DEFECTIVE WORK

2.4.1 Add:

“If the *Contractor* does not remove such defective work within the time fixed by written notice to the *Contractor*, the *Owner* may remove the same and may store any materials at the expense of the *Contractor*. If the *Contractor* does not pay the expense of such removal and storage within 5 *Working Days* thereafter, the *Owner* may, upon 10 *Working Days* written notice to the *Contractor*, sell such materials at auction or at private sale and shall account for the net proceeds thereof after deducting all the costs and expenses of removal and storage and sale or auction of such materials. If the *Contractor* refuses or neglects to replace or re-execute such defective work promptly in accordance with the *Contract Documents* to the satisfaction of the *Consultant*, the *Owner* may have the work done by others and for such purpose use the *Contractor's* plant and equipment, and all expense and costs consequent or incidental thereto shall be charged to the *Contractor* provided that the employment of such others shall in no way affect the *Contractor's* duties and liabilities hereunder nor relieve it from the performance of any or all of its obligations under the *Contract*.”

PART 3 EXECUTION OF THE WORK

GC3.1 CONTROL OF THE WORK

Add:

“3.1.3 The *Contractor* warrants and represents that it possesses and will provide and apply all the skill, expertise and experience normally provided in the performance of professional design and construction services and reasonably required to complete the *Work* and ensure that the *Work* is performed in a good, proper and workmanlike manner. If, in the opinion of the *Consultant* or the *Owner*, the *Contractor* makes use of methods or appliances which will not permit the proper execution of the *Work* or employs inefficient or insufficient labour which will not permit the proper execution of the *Work* within the *Contract Time*, the *Consultant* or the *Owner* may notify the *Contractor* to improve its construction methods whereupon the *Contractor* will comply without delay with such notification and will not be entitled to claim additional compensation or extension of the *Contract Time* as a result of such improvement in construction methods. If the *Contractor* refuses or neglects to comply with such notification within 5 *Working Days* of receipt of the notification, such refusal or neglect will be deemed to be a default by the *Contractor* with respect to its contractual obligations under the *Contract*. If the *Owner* approves or suggests any construction means, methods, techniques, sequences or procedures, it will be considered to mean only that no objection is taken thereto by the *Owner* and the adoption thereof, in whole or part, by the *Contractor* shall be at the full risk and responsibility of the *Contractor*.”

GC3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

Add:

“3.2.3.4 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors.”

Add:

“3.2.7 If the *Contractor* has caused damage to the work of another contractor on the *Project*, the *Contractor* agrees to settle the matter with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the *Owner* on account of damage alleged to have been so sustained, the *Owner* shall notify the *Contractor* and may require the *Contractor* to defend the action at the *Contractor's* expense. The *Contractor* shall satisfy a final order or judgment against the *Owner* and pay the costs incurred by the *Owner* arising from such action. Paragraph 12.1.6.2 of GC 12.1 INDEMNIFICATION shall apply.”

GC3.3 TEMPORARY SUPPORTS, STRUCTURES, AND FACILITIES

3.3.3 Delete.

GC3.4 DOCUMENT REVIEW

3.4.1 Delete and replace with the following:

“It is the intent of this *Contract* that the *Work* will be in conformance with all applicable building codes and standards and the rules and customs of best trade practice and, if ambiguities appear within the *Contract Documents*, the *Contractor* will immediately notify the *Owner* if revisions to the *Contract Documents* are necessary and, subject to any written agreement with the *Owner* to the contrary, the *Contractor* will make such revisions without charge to the *Owner*.”

GC3.5 CONSTRUCTION SCHEDULE

3.5.1.1 Delete “prior to the first application for payment” and replace with the following “at least 7 calendar days prior to the commencement of construction”.

Add:

“3.5.2 The construction schedule must show and correspond to the breakdown of work shown on the schedule of values required by paragraph 5.2.4 and on the monthly progress claims so as to facilitate evaluation of applications for payment.”

GC3.7 SUBCONTRACTORS AND SUPPLIERS

3.7.1.3 Add:

“and shall take all reasonable steps to ensure that *Subcontractors* pay for their labour, products, tools, construction machinery and equipment, water, heat, light, power, transportation and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.”

3.7.2 Delete and replace with the following:

“Subject to paragraph 3.7.3, the *Contractor* agrees to employ only those *Subcontractors* proposed in writing, including the *Contractor's* own forces, if any, and accepted by the *Owner* with the acceptance of the tender or on entering into this *Contract*. The *Contractor* shall not change any *Subcontractor* without cause and without the written consent of the *Owner*, which consent will not be unreasonably withheld.”

GC3.8 LABOUR AND PRODUCTS

3.8.1 Add:

“The *Contractor* agrees, with respect to the employment of all persons in the performance of the *Work*, including employment of *Subcontractors* and of persons employed by *Subcontractors*, to perform any and all obligations imposed upon employers under any employment insurance, pension, income tax and other similar and applicable Federal or Provincial laws now or hereafter in force, including the payment or deduction and remittance of any and all contributions, taxes, fees or charges under such laws and the *Contractor* agrees fully to comply with and to make all returns required by any and all such laws and agrees to indemnify the *Owner* against all cost, loss, liability, obligation and lien which the *Owner* may sustain or incur by reason of the failure of the *Contractor*, or any *Subcontractor*, to perform any of the aforesaid obligations. The *Contractor* agrees immediately to qualify, and will require all of its *Subcontractors* to qualify, and remain qualified throughout the term of this *Contract*, as an employer or employers under any and all such laws.”

3.8.3 Add: “The *Contractor* shall take all reasonable precautions to avoid labour disputes.”

Add:

“3.8.4 A *Product*, construction method or system singly named is considered exclusive and its use is mandatory, unless an equal is approved in advance by the *Owner*. Where plurally named, each named *Product*, construction method or system is approved for use under the *Contract Documents* and the choice rests with the *Contractor*.

3.8.5 All *Products* shall be used strictly according to manufacturers' printed directions or recommendations unless specifically stated otherwise in the specifications. All *Products* shall be properly packed for delivery, must be delivered in their original containers, crates or wrappings, etc. as applicable and must be clearly identified with manufacturers' name and address, product type and name. All *Products* shall be stored as recommended by the manufacturer and kept dry at the recommended temperature where applicable. Any damaged *Products* shall be rejected and the *Contractor* shall remove such *Products* from the *Place of the Work* at the *Contractor's* own expense.

3.8.6 The *Contractor* shall provide to the *Owner* at least 2 weeks prior to the *Contractor's* deadline for choices, or such earlier time as is agreed between the *Owner* and the *Contractor*, for approval by the *Owner* such manufacturer's standard samples as the *Consultant* may reasonably require. Samples shall be labelled as to origin and intended use in the *Work* and shall conform to the requirements of the *Contract Documents*.

3.8.7 The *Contractor* shall provide tests by an engineering firm satisfactory to the *Consultant* for the following as required: compaction of backfill and testing of subgrade; concrete mix design; concrete testing; roofing to Roofing Contractors Association of British Columbia (“RCABC”) requirements; and other tests as may be required for *B.C. Housing* approval or the approval of the local authority having jurisdiction.”

GC3.11 USE OF THE WORK

Add:

“3.11.3 The *Owner* reserves the right to take possession of and use any completed or partially completed portion of the *Work*, regardless of the date of *Substantial Performance of the Work*, providing it does not interfere with the *Contractor's* work. Such taking of possession or use of the *Work* or part thereof shall not be construed as *Substantial Performance of the Work* or an acknowledgement of fulfilment of the *Contract*.

3.11.4 The *Contractor* shall not use any service, plant or equipment installed as part of the *Work* without first receiving the written approval of the *Consultant* and the *Owner*. On receipt of such approval, the *Contractor* shall be subject to any conditions set out as part of such approval and shall be responsible for all costs including damage and compensation for wear.”

PART 5 PAYMENT**GC5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

Delete.

GC5.2 APPLICATIONS FOR PROGRESS PAYMENT

5.2.3 In line 2, delete: “and *Products* delivered to the *Place of the Work*”.

At the end thereof, add:

“No claim will be made by the *Contractor*, and no payment will be made by the *Owner*, for *Products* fabricated for the *Project* but stored off-site, or for *Products* delivered to the *Place of the Work* but not incorporated into the *Project* unless agreed to in writing by the *Owner*.”

5.2.5 Add:

“The schedule of values shall be prepared in such a manner that each major item of work and each subcontracted item of work is shown as a separate line item and, in the case of each subcontract, shall accurately represent the subcontract price, and the *Consultant* and the *Owner* shall be entitled to rely on same. Separate amounts shall be shown for initial start up, continuing expenses and *Project* closeout. A schedule stating the anticipated monthly progress payments shall be submitted with the schedule of values.”

5.2.7 Delete.

Add:

“5.2.8 The *Contractor* shall submit one copy of all applications for payment to the *Consultant* and all applications for payment, except the first, shall be accompanied by a form of statutory declaration approved by the *Owner*, completed and sworn before a Notary Public or a Commissioner for Oaths for the Province of British Columbia, which statutory declaration must include a statement that all accounts for labour, subcontracts, *Products*, construction machinery and equipment and other indebtedness which may have been incurred by the *Contractor* in the performance of the *Work* covered by the immediately preceding progress claim, and for which the *Owner* might in any way be held responsible, have been paid in full, except holdback monies properly retained.

5.2.9 Before any payment is made by the *Owner* to the *Contractor*, the *Consultant* or the *Owner* may, by written notice, require that the *Contractor* furnish such further detailed information as the *Consultant* or the *Owner* may determine is necessary to establish compliance by the *Contractor* with the *Contract Documents*.

5.2.10 Notwithstanding any application for payment or claim by the *Contractor*, the *Owner* will not be obligated to pay the *Contractor* an amount greater than that approved by *B.C. Housing*.

5.2.11 Every application for payment shall identify the *Value Added Taxes* payable by the *Owner* to the *Contractor* as a separate entry.”

GC5.3 PROGRESS PAYMENT

5.3.1 Delete and replace with the following:

“No certificate for payment will be issued for any of the *Work* and no payment shall be approved, authorized or made unless the *Contractor* has provided all documents as required to be provided at that time under this *Contract*. After the receipt of a complete application for payment from the *Contractor* submitted in accordance with GC5.2 APPLICATIONS FOR PROGRESS PAYMENT, the *Consultant* will issue to the *Owner* a certificate for payment in the amount applied for or in such other amount as the *Consultant* determines to be properly due, provided that if the *Consultant* amends the application, the *Consultant* will promptly notify the *Contractor* in writing giving reasons for the amendment.”

Add:

“5.3.2 “Subject to the *Owner* receiving the written approval of *B.C. Housing*, the *Owner* shall make payment of 90% of the amount as determined by the *Consultant* to be due to the *Contractor* on account in accordance with the provisions of Article A-5 PAYMENT no later than 30 calendar days after the certificate for payment has been issued, provided that the *Owner*, at its sole and absolute discretion, may retain out of such payment the amount of any outstanding liens or claims or any other indebtedness which may have been incurred by the *Contractor* in performing the *Work* and for which the *Owner* may in any way be held responsible. “Other indebtedness” means only such debts incurred by the *Contractor* to persons in privity of contract with the *Contractor*, debts arising out of statutory requirements and, in the case of the *Contractor's* workers, any debts arising out of collective bargaining agreements, legislation applying to workers compensation, employment insurance and minimum wage standards where applicable. Upon request by the *Owner*, the *Contractor* shall forthwith provide a full accounting as to the disbursement of all monies paid by the *Owner* to the *Contractor*, including a complete list of all persons to whom monies remain due and the amounts due.”

Add:

“5.3.3 Subject to the *Owner* receiving the written approval of *B.C. Housing*, the *Owner* shall make payment of 10% of the amount as determined by the *Consultant* to be due into a holdback account established pursuant to Section 5 of the *Builders Lien Act* to be paid out of such account in accordance with the requirements of this *Contract* and the Act.”

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

5.4.1 Delete “permitted by the lien legislation applicable to the *Place of the Work*” on the first two lines.

Add at the end of paragraph 5.4.1:

“The *Contractor* shall submit the following documents with its request for *Substantial Performance* review by the *Consultant*. These requirements do not limit the *Contractor’s Substantial Performance* obligations noted elsewhere in the *Contract*. A deficiency holdback will be retained for the estimated value of correcting or supplying the following items until they are all submitted, reviewed and accepted by the *Consultant*:

- .1 The list of all deficient and incomplete items of work including the estimated value of each item;
- .2 Complete reports including a balancing report for the mechanical system and certification by all testing, cleaning or inspection authorities or associations as specified in the *Contract Documents*;
- .3 A complete demonstration of all mechanical and electrical systems and electrically-operated devices to the *Owner’s* operating and maintenance staff and any training required by the specifications, to the *Owner’s* satisfaction;
- .4 All maintenance manuals, operating instructions, maintenance and operating tools, replacement parts or materials and warranties as specified in the *Contract Documents*;
- .5 A complete set of marked up construction drawings and other data in the form specified in the *Contract Documents*, or as required by the *Consultant*, for the production of as built drawings to show all significant *Changes to the Work* made during construction;
- .6 Current certification by the Workers Compensation Board that the *Contractor* and all *Subcontractors* are in good standing;
- .7 A statement that all claims and demands for extra work or otherwise, under or in connection with the *Contract*, have been presented to the *Consultant* and that the *Contractor* expressly releases the *Owner* from all claims and demands except those made in writing prior to that date and still unsettled;
- .8 A statutory declaration in accordance with paragraph 5.2.8 of the Supplementary Conditions of the *Contract*;
- .9 A survey of the *Place of the Work* prepared by a British Columbia Land Surveyor confirming the exact area of the property and the lot and side yard dimensions and confirming that the position of the buildings, the side, front and back yard setbacks, building heights and finish grades comply with all municipal requirements; and
- .10 All keys required for the entire *Project*.

5.4.2 Delete and replace with the following:

“Upon receipt of the *Contractor’s* request for issuance of a *Certificate of Completion* for all or a designated portion of the *Work*, the *Consultant* will forthwith review the *Work* to verify the validity of the request and, no later than 10 calendar days after the date of the request, will notify the *Contractor* and the *Owner* whether the *Work*, or the designated portion of the *Work*, is substantially performed by delivery of the applicable *Certificate of Completion*, together with verification of the holdback amount to be released pursuant to the *Builders Lien Act* with respect to any subcontract. With respect to a request from the *Contractor* for a review by the *Consultant* for issuance of the *Certificate of Completion* for the *Work* in its entirety, the *Consultant* will, in addition to making an inspection and assessment of the *Work* to verify the validity of the request, establish a list of all deficient and incomplete items of work, including an estimated value for each item, subject to the approval of such value by the *Owner* and *B.C. Housing*. The *Contractor* shall be responsible for all additional costs incurred by the *Owner* for inspection of the *Work* prior to the *Contractor* meeting all requirements set out in paragraph 5.4.1, and such costs shall be deducted from the monies due to the *Contractor* upon *Substantial Performance of the Work*.

5.4.3 Delete and replace with the following:

“Immediately following the issuance of the *Certificate of Completion* for the *Work*, the *Contractor*, in consultation with the *Consultant* and the *Owner*, will establish a reasonable date for finishing the *Work*.”

Add:

“5.4.4 No later than 25 calendar days following issuance of the *Certificate of Completion* for the *Work*, the *Contractor* shall provide to the *Owner* all service contracts, manufacturer's inspections, certifications, guarantees and warranties and assignments of all guarantees and warranties as specified in the *Contract Documents*.

5.4.5 No later than 30 calendar days following issuance of the *Certificate of Completion* for the *Work*, the *Owner* shall pay to the *Contractor* the balance of the *Contract Price* less:

- .1 Any holdback monies as required by the *Builders Lien Act* to be released in accordance with GC5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK;
- .2 The aggregate amount, if any, determined pursuant to paragraph 5.4.2 multiplied by two; and
- .3 The amount, if any, determined pursuant to GC5.8 WITHHOLDING OF PAYMENT,

and until all of the deficient and incomplete work for which amounts are withheld pursuant to subparagraphs .2 and .3 of this paragraph 5.4.5 are rectified and completed to the satisfaction of all of the *Consultant*, the *Owner* and *B.C. Housing*, the *Owner* may withhold the full amounts set out in subparagraphs .2 and .3 of this paragraph 5.4.5 respectively.

5.4.6 The *Contractor* shall complete the deficient and incomplete work speedily and at the discretion and convenience of the *Owner*. Acceptance of the *Work* or occupancy of the *Project* or any portion thereof by the *Owner*, the *Consultant* or *B.C. Housing* shall not relieve the *Contractor* from the obligation of correcting deficiencies which are missed at the time of

drawing up the list of deficient and incomplete items of work or those hidden deficiencies which become apparent during the warranty period.”

GC5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

5.5.1 In line 1, delete “the *Certificate of Substantial Performance of the Work*” and replace with the following “the *Certificate of Completion for the Work*”.

Add:

“.3 If specifically requested by the *Owner*, submit acknowledgements by the major *Subcontractors* and *Suppliers* that they have been paid in full, except for amounts properly retained as holdbacks, and that they have received notification of *Substantial Performance of the Work* by delivery of a notice that the *Certificate of Completion for the Work* has been issued, and

.4 Submit a statement that all claims and demands for extra work or otherwise, under or in connection with the *Contract*, have been presented to the *Consultant* and that the *Contractor* expressly releases the *Owner* from all claims and demands except those made in writing prior to that date and still unsettled.”

5.5.3 Delete.

5.5.5 Delete.

GC5.6 PROGRESSIVE RELEASE OF HOLDBACK

5.6.1 Add the following to the end of the first sentence and delete the second sentence:

“provided that:

.1 The *Consultant* has issued a *Certificate of Completion* for such subcontract work or the *Products* supplied by such *Supplier*; and

.2 The *Contractor* and the *Owner* jointly agree to release the holdback amount retained for such subcontract work or the *Products* supplied by such *Supplier*, and the *Owner* has received the written approval of *B.C. Housing* with respect to such release.”

5.6.2 Delete and replace with the following:

Notwithstanding paragraph 5.6.1, the *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.

GC5.7 FINAL PAYMENT

5.7.1 Add:

“The *Contractor* may apply for final payment when the entire *Work*, except those items arising from the provisions of GC12.3 WARRANTY, has been performed to the requirements of the *Contract Documents*; all building systems have been brought to a state of full readiness for operation in accordance with the *Contract Documents* to the satisfaction of the *Consultant* and the *Owner*; all deficient and incomplete work previously identified has been rectified or completed to the satisfaction of the *Consultant* and the *Owner* and the *Owner* has received the written approval of *B.C. Housing* with respect to the same; all landscaping has been completed in accordance with the *Contract Documents* to the satisfaction of the *Consultant* and the *Owner*; the requirements of GC3.13 CLEANUP have been fulfilled; and when the *Contractor* has submitted to the *Consultant* all of the following:

- .1 Current certification by the Workers Compensation Board that the *Contractor* and all *Subcontractors* are in good standing;
- .2 Proof of release and discharge of any builders or other liens;
- .3 Special Project Possession and Warranty Certificates pursuant to the applicable warranty program;
- .4 If specifically requested by the *Owner*, satisfactory evidence that all taxes, employment insurance premiums, Canada Pension Plan contributions, duties, royalties, and all other monies required by law to be paid by the *Contractor* and all *Subcontractors* have been paid in full;
- .5 A statutory declaration in accordance with paragraph 5.2.8; and
- .6 Two (2) complete sets of white prints and CAD file of all as built drawings for the *Project* satisfactory to the *Owner*, showing all significant changes in the *Work* made during construction.”

5.7.2 Add:

“The *Contractor* shall be responsible for all additional costs incurred by the *Owner* for review and inspection of the *Work* where previously identified deficient or incomplete work has not been rectified or completed in a manner satisfactory to all of the *Owner*, the *Consultant* and *B.C. Housing*, making additional inspections by the *Consultant* necessary, or where the *Contractor* has failed to satisfy all requirements set out in paragraph 5.7.1 and such costs shall be deducted from the monies due to the *Contractor* upon issuance of the final certificate for payment.”

5.7.4 In line 2, delete the number “5” and replace with the following the number “30”.

Add at the end thereof:

“less any monies properly retained by the *Owner* pursuant to the terms of this *Contract* and less any other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.”

PART 6 CHANGES IN THE WORK

GC6.1 CHANGES

6.1.1 Add at the outset:

“Subject to the written approval of *B.C. Housing*”

Add:

“6.1.3 Any substitution of *Products* specified in the *Contract Documents* or any variance from the B.C. Housing Non-Profit Housing Program Development Guidelines must be approved by the *Owner* and *B.C. Housing* in writing prior to such substitution or variation.”

GC6.2 CHANGE ORDER

6.2.1 In line 1 after “*Consultant*”, insert “and the *Owner*.” Add at the end:

“The adjustment for the *Contract Price* shall not exceed the actual cost of the *Contractor's* work for the change in the *Work*, plus an allowance for overhead and profit as follows:

- .1 For the *Contractor*, for overhead and profit, 10% of the actual cost of the *Contractor's* work;
- .2 For the *Contractor*, for overhead and profit, 5% of the amount for the *Subcontractor's* work, being the actual cost of the *Subcontractor's* work plus the amount determined as set out in subparagraph .3 below;
- .3 For the *Subcontractor*, for overhead and profit, 10% of the actual cost of the *Subcontractor's* work.”

6.2.2 In line 1 after the word “*Owner*”, insert “, upon the written approval of *B.C. Housing*,”

GC6.3 CHANGE DIRECTIVE

6.3.6.3 Add:

“Unless otherwise agreed between the *Owner* and the *Contractor*, the allowance for overhead and profit shall be calculated as follows:

- .1 For the *Contractor*, for overhead and profit, 10% of the actual cost of the *Contractor's* work;
- .2 For the *Contractor*, for overhead and profit, 5% of the amount for *Subcontractor's* work, being the actual cost of the *Subcontractor's* work plus the amount determined as set out in subparagraph .3 below;
- .3 For the *Subcontractor*, for overhead and profit, 10% of the actual cost of the *Subcontractor's* work.”

GC6.4 CONCEALED OR UNKNOWN CONDITIONS

6.4.2 and 6.4.3 Delete and replace with the following:

“6.4.2 The *Contractor* warrants that it is fully acquainted with the site comprising the *Place of the Work* having physically inspected such site and has obtained and reviewed such reports and tests as to the subsurface conditions as may be necessary for the proper performance of the *Work* and evaluating the cost thereof.

6.4.3 The *Contractor* accepts full responsibility for having satisfied itself as to the nature, location and condition of the site including the existing adjoining buildings and agrees as follows:

- .1 The *Owner* and *B.C. Housing* make no representations or warranties as to any aspect thereof and any information or documentation relating to the same and supplied to the *Contractor* is furnished solely for the *Contractor's* convenience; and
- .2 The failure of the *Contractor* to acquaint itself with any applicable condition will not relieve it from the responsibility for determining the proper methods of construction and properly estimating the difficulties, costs and time for successfully performing the *Contract*.”

GC6.5 DELAYS

6.5.1 In line 1, delete “*Consultant*” and in the 2nd line, delete “them” and replace with “it”.

6.5.2 In line 4 , delete “in consultation with the *Contractor*” and replace with “and as agreed between the *Owner* and the *Contractor*”.

6.5.3.4 In line 1, after the words “by a cause beyond the *Contractor's* control”, insert:

“except for any cause related to the inability or unwillingness of the *Contractor* to make payments of monies for which the *Contractor* is responsible or”

6.5.3 In lines 8 and 9, delete “in consultation with the *Contractor*” and replace with “and as agreed between the *Owner* and the *Contractor*”.

Add the following after "... the *Contractor* agrees to a shorter extension.":

"Any such extension of time shall be deemed to be in full and final satisfaction for all actual and probable losses, claims, damages, causes of action or injuries sustained or sustainable by the *Contractor* in respect of any such extension."

In the last sentence of paragraph 6.5.3, delete ", *Consultant* or anyone employed or engaged by them directly or indirectly".

6.5.4 In line 1, after "*Consultant*", insert "*and the Owner*".

Add:

"6.5.6 During any delays in the performance of the *Work* as set out in GC6.5 DELAYS, the *Contractor* shall maintain adequate surveillance of the *Work* and undertake such maintenance and protection of the *Work* as may be reasonable to maintain safety and when possible to protect *Products* already installed in the *Work* or delivered to the *Place of the Work*.

6.5.7 Under no circumstances will the *Contract Time* be extended by reason of weather conditions unless such extension is approved by both the *Owner* and *B.C. Housing*."

PART 7 DEFAULT NOTICE

GC7.1 OWNER'S RIGHT TO PERFORM THE WORK, STOP THE WORK, OR TERMINATE THE CONTRACT

7.1.1 In line 1, after the word "bankrupt", insert "commits an act of bankruptcy or threatens to commit an act of bankruptcy,"

In line 2, after the word "insolvency" where it appears for the second time, insert:

"or if the *Contractor* at any time is in a conflict of interest as described in B.C. Housing's Conflict of Interest Guidelines unless the *Contractor* rectifies such conflict of interest within such time as may be specified by *B.C. Housing* or *B.C. Housing* approves the continuation of the *Contract* notwithstanding such conflict of interest,"

7.1.2 In line 2, after "*Contractor*" add "or if the *Owner* has given a written statement to the *Contractor* and the *Consultant*,".

Add:

"7.1.7 If the *Owner* terminates the *Contractor's* right to continue with the *Work* in whole or in part or terminates the *Contract*, the *Contractor* shall at the *Contractor's* expense, safeguard the *Work* then completed and the materials and equipment then delivered to the *Place of the Work* and do such other extra work as may be ordered by the *Consultant* for the purpose of leaving the *Work* in a safe and useful condition.

7.1.8 Except as provided in paragraphs 7.1.5.3 and 7.1.5.4, the *Contractor* shall have no claim or right of action against the *Owner* for any damages, costs, expenses, loss of profits or otherwise as a result of the termination by the *Owner* of the *Contractor's* right to continue with the *Work* in whole or in part or the termination by the *Owner of the Contract*."

GC7.2 CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT

7.2.3.1 Delete.

7.2.3 Delete 7.2.3.2.

Add the following as a new paragraph after paragraph 7.2.3.4:

“The foregoing defaults in contractual obligations shall not apply to the withholding of certificates of payment or payment, or both, following receipt of court ordered garnishments of monies owing to the *Contractor*, notice of the *Contractor's* failure to pay claims against the *Contractor* or the filing of liens against the *Project* for as long as they remain outstanding.”

7.2.4 In line 2, delete the number “5” and replace with the following the number “20”.

Add to the end of the paragraph:

“provided that if the default is of the nature set out in paragraph 7.2.3.4 and such default cannot be reasonably corrected within 20 *Working Days*, the *Owner* shall no longer be considered to be in default if the *Owner*:

- .1 provides the *Contractor* with a reasonable schedule for correction within 20 *Working Days*; and
- .2 corrects the default in accordance with such schedule.”

7.2.5 Delete and replace with the following:

“If the *Contractor* terminates the *Contract* under the conditions set out above, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination, including a reasonable profit thereon, for loss sustained upon *Products* and construction machinery and equipment and for reasonable wind-up costs for the removal of construction machinery and equipment from the *Place of the Work*.”

PART 8 DISPUTE RESOLUTION

GC8.1 AUTHORITY OF THE CONSULTANT

8.1.3 Delete the last sentence.

GC8.2 NEGOTIATION, MEDIATION AND ARBITRATION

8.2.2 In line 4, after the word “*Consultant*” insert “and *B.C. Housing*”.

Add:

“8.2.9 Unless both parties agree, the *Contractor* shall not stop the *Work*, or any part of the *Work*, pending the resolution of any dispute under the *Contract* between the parties.”

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC9.1 PROTECTION OF WORK AND PROPERTY

Add:

“9.1.5 The *Contractor* shall be responsible generally for the care, maintenance and protection of the *Work* during construction and during any shut-down or suspension of the *Work*.

9.1.6 The *Contractor* shall ensure that all rights and privileges presently accorded to all properties adjacent to the *Place of the Work* are maintained.”

GC9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

Delete GC9.2.1 to GC9.2.9 and replace with the following the following:

“9.2.1 The *Contractor* acknowledges that any environmental assessment report with respect to the *Place of the Work* provided by the *Owner* or *B.C. Housing* has been furnished solely for the *Contractor's* information and convenience and neither the *Owner* nor *B.C. Housing* has any obligations with respect to the presence of any toxic or hazardous substances at the *Place of the Work*.

9.2.2 The *Contractor* shall be deemed to have control and management of the *Place of the Work* with respect to any toxic or hazardous substances which may be on or in the *Place of the Work* or brought on to the *Place of the Work* by the *Contractor* or the *Subcontractors*. Prior to the *Contractor* commencing the *Work*, the *Contractor* shall:

- .1 Take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work* as may be recommended in any environmental assessment report or as may be prudent; and
- .2 Provide the *Consultant* and the *Owner* with a written list of any such substances.

9.2.3 The *Contractor* shall take all reasonable steps to ensure that no person suffers injury, sickness or death and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances at the *Place of the Work*.

9.2.4 The *Contractor* shall take all necessary steps in accordance with all applicable legislation to treat, store or otherwise dispose of toxic or hazardous substances present at the *Place of the Work*.

9.2.5 If the *Contractor*:

- .1 Encounters toxic or hazardous substances at the place of building; or
- .2 Has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*

which were not identified pursuant to paragraph 9.2.2, or which were identified but have not been dealt with as required under paragraph 9.2.4, the *Contractor* shall:

- .3 Take all reasonable steps, including stopping the *Work*, to ensure that no person suffers injury, sickness or death and that no property is damaged or destroyed as a result of exposure to or the presence of the substances; and
 - .4 Immediately report the circumstances to the *Consultant* and the *Owner* in writing and take all necessary steps in accordance with the instructions of the *Consultant* and all applicable legislation to treat, store or otherwise dispose of the substances or materials.
- 9.2.7 The *Contractor* shall indemnify and hold harmless each of the *Owner* and *BC Housing*, their respective assigns, agents, directors, officers, authorized representatives and employees, from and against any claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances which are on or in the *Place of the Work* or brought on to the *Place of the Work* by the *Contractor* or its *Subcontractors*. This obligation will not be construed to negate, abridge, or reduce any other rights or obligations of indemnity set out in GC12.1 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.
- 9.2.8 In the event of conflict between the provisions of this GC9.2 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIAL and any other General Condition, the provisions of this GC9.2 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIAL will govern.”

GC9.4 CONSTRUCTION SAFETY

Add the following to the end of paragraph 9.4.1:

The *Contractor* acknowledges and agrees that the *Contractor* shall be the “prime contractor” for the workplace. The *Contractor* shall, as the “prime contractor”, comply with, and ensure compliance by *Subcontractor* and *Suppliers* with, the Workers Compensation Act of British Columbia and its regulations including the *Occupational Health & Safety Regulations*, *WHIMIS* regulation and the transportation of hazardous substances or dangerous goods requirements and obligations and shall pay assessments or compensation required to be paid under applicable legislation. If *Contractor* or any *Subcontractor* fails to pay any due assessment or compensation, the *Owner* may make such payment on behalf of *Contractor* or any *Subcontractor*, but will not be obliged to do so. *Contractor* shall reimburse *Owner* the amount of such payment on demand. The *Owner* may set off any amounts paid against money otherwise owed to the *Contractor*.”

Add the following to GC 9.4”

- “9.4.2 The *Contractor* shall be responsible for and ensure the safety not only of the workers, *Subcontractors*, tradesmen and suppliers and their plant and equipment but also of all other persons who enter the *Place of the Work* whether during working hours or not and for that purpose shall erect such boardings and signs and shall employ such safety measures as may be necessary to ensure the safety of such persons.

PART 10 GOVERNING REGULATIONS

GC10.1 TAXES AND DUTIES

Add:

“10.1.3 Where documentation may be required for tax refund purposes, the Contractor shall be responsible for providing the Owner with such invoices and records as may be necessary to substantiate the amount of tax paid during the performance of the Work for which the Owner may lawfully claim exemption.

10.1.4 The timing for delivery of Work will straddle the phase-out of the PST on June 30, 2010 and implementation of the HST in British Columbia on July 1, 2010. It is the Contractor’s responsibility to determine which materials will be acquired to perform the Work after the PST is phased-out on June 30, 2010. As PST will no longer be payable by the Contractor on these materials, the reduced cost of the materials should be reflected in the Contract Price. If the delivery of Work is delayed for any reason, and materials that would otherwise be acquired on or before June 30, 2010 are acquired after that date, an Equitable Adjustment will be used to reduce the Contract Price based on the PST savings.

PST Savings - The Contractor is required to incur and bear any PST that is eligible on materials consumed or installed under this Contract. The Contract Price only includes PST that is payable by the Contractor on materials that are acquired before July 1, 2010. With the phase-out of the PST on June 30, 2010 and the introduction of HST on July 1, 2010 the Contractor may experience PST savings resulting from a delay in taking delivery of materials until after June 2010 in order to complete the Work. The cause of a delay in taking delivery of materials is not a factor when determining if the Contractor has experienced a PST saving. If the Contractor has experienced a PST saving, the Contractor shall report the total amount of PST savings to BC Housing. The Contractor and BC Housing agree that 80% of the PST savings shall be paid to BC Housing as a reimbursement.”

GC10.2 LAWS, NOTICES, PERMITS AND FEES

10.2.2 Delete and replace with the following:

“The *Owner* shall be responsible for obtaining and paying for all required permanent easements and rights of servitude.”

10.2.3 In the 3rd line, delete “after the issuance of the building permit.” and replace with: “, including but not limited to the development permit and the building permit.”

10.2.5 Delete and replace with the following:

“The *Contractor* shall be responsible for verifying that the *Contract Documents* are in substantial compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If after the *Contract* is executed, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract*

Documents, the Contractor shall notify the Owner in writing immediately upon such variance or change becoming known.”

Add:

“10.2.8 The *Contractor* shall provide to the *Consultant* copies of all inspection reports from the various authorities having jurisdiction forthwith as they are received from time to time.”

GC10.3 PATENT FEES

10.3.2 Delete.

GC10.4 WORKERS COMPENSATION

10.4.1 In line 3, after the word “compliance” insert “by the *Contractor* and *Subcontractors*”.

Add:

“10.4.3 The *Contractor* shall abide by and comply with all provisions of the *Workers' Compensation Act* with respect to the performance of the *Work* and will make all payments, contributions and other remittances and all reports, returns and statements required of employers under the said Act. The *Contractor* shall ensure full compliance with the said Act by all *Subcontractors* and other persons employed by the *Contractor* or with whom the *Contractor* may make any contract for the performance of any part of the *Work*. The *Contractor* agrees to indemnify the *Owner* against all cost, loss, liability, obligation and lien which may arise as a consequence of any failure by the *Contractor* or any *Subcontractor* or other person fully to comply with the said Act. The *Contractor* agrees immediately to qualify, and shall require all *Subcontractors* to qualify, as an employer or employers under the said Act.”

PART 11 INSURANCE – BONDS

GC11.1 INSURANCE

11.1 Delete in its entirety and replace with the following:

“11.1.1 The *Owner* shall obtain, maintain and pay for, through *BC Housing*, the following types of insurance coverages described in this paragraph 11.1.1 issued by insurance companies licensed to carry on business in British Columbia:

.1 Course of Construction Policy

- (1) The policy shall cover “all risks” of direct physical loss or damage to the property described in (2)(a) below, including the perils of earthquake and flood, subject to customary exclusions.
- (2) The policy shall:
 - (a) be written in the joint names of the *Owner*, the fee simple owner of the *Place of the Work*, *BC Housing*, the *Contractor* and *Subcontractors*, all consulting architects, engineers, *suppliers* who perform work at the *Place of the Work*,

- (b) cover all property forming part of the *Project*, including goods and materials to be incorporated in the *Project* while in storage at the *Place of the Work* or in transit to the *Place of the Work* and within Canada or the U.S.A., including while on a ferry, railway car or transfer barge in connection with land transportation thereof, but such coverage shall not include coverage for the *Contractor's* construction machinery and equipment of any description; and
 - (c) Provide for a limit of coverage not less than the estimated final completed value of the *Project*, with a sub-limit of \$1,000,000 Transit.
- (3) Each claim under the foregoing insurance shall be adjusted separately.
 - (4) Claims under the foregoing insurance shall be subject to a deductible of \$10,000 for each and every claim, except for projects with a project value in excess of \$10,000,001, in which case the deductible shall be \$25,000 and, except for the following peril, which shall be subject to the following higher deductible:
 - (a) 5% of the value of the *Project* at the time and place of loss when the loss arises as a consequence of the peril of earthquake shock, with a minimum deductible of \$250,000;
 - (5) In addition, a minimum waiting period of 1 day for each month of the project term, subject to a minimum of 30 calendar days, shall apply to costs and expenses described in the insurance policy as “soft costs”.
 - (6) The foregoing insurance shall be maintained continuously from commencement of the *Work* until *Substantial Performance of the Work*.
 - (7) The foregoing insurance shall contain a waiver of the insurer’s subrogation rights against all insureds and their officers, employees and servants, except where a loss is caused by or results from any error or omission in design or any other professional error or omission.
 - (8) The foregoing insurance shall provide that, in the event of loss or damage, payment shall be made to *BC Housing* and the *Owner* on their own behalf and on behalf of any and all insureds.
 - (9) Exclusions under the foregoing insurance will be as prescribed by the insurer
 - (10) The Contractor shall, at the Contractor’s own expense, comply with all insurance warranties applicable to the foregoing insurance, including watchman, open flame, fence, fire hydrant and hot works operations.

.2 **Wrap Up Liability Policy**

- (1) This shall be a wrap up liability policy that shall:
 - (a) be written in the joint names of the *Owner*, the fee simple owner of the *Place of the Work*, *BC Housing*, the *Contractor* and *Subcontractors*, the *Consultant*, all *Sub-consultants* and any other *consulting* engineers or

consulting architects and *Suppliers* who perform work at the Place of the Work provided however that such policy shall exclude *Suppliers* whose only function is to supply materials, machinery or other supplies to the project and who do not carry out any installation, construction, or supervisory work on the project and shall exclude security protection organizations or persons providing site protection on or at the project.

- (b) provide the following coverages:
- (i) Premises and Operations Liability;
 - (ii) Products and Completed Operations Liability;
 - (iii) Blanket Contractual Liability;
 - (iv) Cross Liability;
 - (v) Elevator and Hoist Liability;
 - (vi) Contingent Employer's Liability;
 - (vii) Personal Injury Liability;
 - (viii) Shoring, Blasting, Excavating, Underpinning, Demolition, Pile driving and Caisson Work, Work Below Ground Surface, Tunneling and Grading, as applicable;
 - (ix) Broad Form Completed Operations;
 - (x) Broad Form Property Damage; and
 - (xi) Employees as Additional Insureds,

provided however that the insurance does not extend to any activities, work, jobs or undertakings of the insureds other than those directly related to the *Work* under this *Contract*; and

- (c) Provide for a limit of liability not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, subject to a general aggregate limit of \$20,000,000 and a limit of liability not less than \$10,000,000 annual aggregate for completed operations.

- (2) Exclusions under the foregoing insurance will be as prescribed by the insurer.
- (3) Each claim under the foregoing insurance shall be adjusted separately.
- (4) Claims under the foregoing insurance shall be subject to a deductible of \$10,000 for each and every claim, except with respect to hot roofing activities, the deductible shall be \$50,000.00.
- (5) The foregoing insurance shall be maintained continuously from commencement of the *Work* until the insured project is completed and accepted by or on behalf of the *Owner* and *B.C. Housing*, provided that the Broad Form Completed Operations coverage shall be maintained for 24 months.

11.1.2 The *Contractor* shall be responsible for deductible amounts under all policies described in paragraph 11.1.1 except where such amounts may be excluded from the Contractor's responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY.

11.1.3 The *Owner* shall promptly provide a copy of each insurance policy described in paragraph 11.1.1 to any insured party upon request.

- 11.1.4 The *Owner* does not represent that the insurance policies described in paragraph 11.1.1 will be sufficient to protect the *Contractor* against all of its responsibilities under the *Contract* or as required by law. The *Contractor* shall obtain such additional insurance as it may consider necessary at its own expense. The insurance coverage described in paragraph 11.1.1 shall in no way limit the *Contractor's* obligations under GC 12.1 INDEMNIFICATION.
- 11.1.5 If there is any conflict between the provisions of this paragraph 11.1 and the provisions of the insurance as procured by the *Owner*, then the provisions of the insurance as procured shall govern and take precedence, and this paragraph 11.1 shall be deemed to be amended to conform to the provisions of the actual insurance.
- 11.1.6 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Contractor* shall obtain, maintain and pay for the following types of insurance coverages issued by insurance companies licensed to carry on business in British Columbia and shall cause all of its *Subcontractors* to maintain insurance in forms and with limits appropriate to the work conducted by the subcontractors engaged on the *Project*. If any of the insurance coverage required by the *Contract* is not provided or lapses for any reason whatsoever, the *Contractor* shall, if requested to do so by the *Owner* at the *Contractor's* risk and expense, stop all work on the *Project* until satisfactory evidence of coverage is produced. The insurance coverage required by this paragraph 11.1.6 shall be in forms and amounts acceptable to the *Owner* and shall be issued by an insurer licensed to conduct insurance business in British Columbia. The approval of any insurance policy by the *Owner* shall in no way relieve the *Contractor* of the obligation to provide the insurance referred to in this paragraph 11.1.6:

.1 Automobile Insurance

- (1) This policy shall cover all vehicles owned by the *Contractor* or leased by the *Contractor* and shall provide for third party liability limits not less than \$2,000,000.00 inclusive for bodily injury and property damage.
- (2) Automobile liability insurance shall cover any motor vehicle, trailer or semi-trailer owned, used or operated by or on behalf of the *Contractor* and obligated by law to carry a licence (other than a special licence issued in respect of any motor vehicle, trailer or semi-trailer, chiefly used or operated off highways) as well as self-propelled equipment unlicensed but required to be insured in accordance with the *Motor Vehicle Act*.

.2 Contractor's Equipment Insurance

- (1) This policy shall cover all *Contractor's* tools and equipment used at the *Place of the Work* against "all risks" of direct physical loss or damage, including the perils of earthquake and flood, subject to customary exclusions.
- (2) All such contractor's equipment insurance policies shall contain a waiver of subrogation against the *Owner*, the fee simple owner of the *Place of the Work*, *BC Housing*, the *Contractor*, the *Consultant*, the *Subcontractors*, architects, engineers, consultants and sub-consultants engaged on the *Project*, and shall provide for 60 calendar days prior written notice of cancellation or material change to be given by the insurer(s) to the *Owner* and *BC Housing*.

.3 Errors and Omission Insurance

The *Contractor* shall ensure that the *Consultant* engaged by the *Contractor* in the design of the *Work* carries Professional Errors and Omissions Insurance that has limits of not less than TWO HUNDRED FIFTY THOUSAND (\$250,000) per claim, and a minimum annual aggregate of TWO HUNDRED FIFTY THOUSAND (\$250,000). The *Contractor* shall ensure that any *Sub-Consultants* engaged by the *Contractor* in the design of the *Work* each carry Professional Errors and Omissions Insurance that has limits appropriate to the risk arising out of the work conducted. The *Consultant* or other consultants found to be at fault will be responsible for the deductible amount. This insurance shall be maintained continuously from the commencement of the *Work* until 72 months after *Substantial Performance of the Work*, unless there is agreement by the *Consultant* and the *Owner* that such coverage is not available or not available at reasonable cost. The insurance policy shall include a requirement that no cancellation of the insurance shall be made except with at least thirty (30) calendar days' written notice from the insurer to the *Consultant*. The *Consultant* shall advise the *Owner* in writing of any reduction in the level of insurance coverage.

- 11.1.7 The *Contractor* shall be responsible for deductible amounts under all policies described in paragraph 11.1.6 except where such amounts may be excluded from the *Contractor's* responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY.
- 11.1.8 The *Contractor* shall, prior to the commencement of the *Work*, provide the *Owner* with *Certificates of Insurance* evidencing compliance with paragraph 11.1.6. For automobile liability the standard I.C.B.C. *Certificate of Insurance* Form #APV-47 shall be used.
- 11.1.9 The *Owner* shall not be responsible for injury to the *Contractor's* employees or for loss or damage to the *Contractor's* or to the *Contractor's* employees' machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the premises during construction and which may from time to time, or at the termination of the contract, be removed from the premises. The *Contractor* hereby waives all rights of recourse against the *Owner* or any other contractor with regard to damage to the *Contractor's* property.

Delete GC 11.2 CONTRACT SECURITY, including GC 11.2.1 and 11.2.2, and replace with the following:

“GC11.2 BONDS

- 11.2.1 The *Contractor* shall, at least 7 calendar days prior to the commencement of construction, provide to the *Owner* a performance bond and a labour and material payment bond, each in the amount of 50% of the *Contract Price*.
- 11.2.2 All bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in British Columbia and shall be maintained in good standing until the fulfilment of the *Contract* including all warranty obligations pursuant to GC12.3 WARRANTY, provided that the performance bond may be qualified to exclude the following:
- (a) any warranty obligation for events or circumstances occurring or discovered more than one (1) year after the date of *Substantial Performance*;

- (b) errors or omissions in design or engineering or breach of warranty of design by the *Contractor*.

Such bonds shall be in the form of the latest editions of CCDC Document 221 (2003) - Performance Bond and CCDC Document 222 (2003) - Labour and Material Payment Bond. The obligee on the bonds shall be the *Owner*, and *B.C. Housing* shall be named as dual obligee on the bonds pursuant to a dual obligee rider acceptable to the *Owner* and *B.C. Housing*.

- 11.2.3 All bonds shall be held and be subject to enforcement by the *Owner* without prejudice to any other legal remedy available to the *Owner*.

PART 12 INDEMNIFICATION--WAIVER--WARRANTY

GC12.1 INDEMNIFICATION

- 12.1.1 Delete and replace with the following:

“12.1.1 Without restricting the parties’ obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, and excepting always losses arising out of the independent acts of the party for whom indemnification is sought, the *Owner* and the *Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this contract, provided such claims are:

- .1 caused by:
 - (a) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (b) a failure of the party to the Contract from whom indemnification is sought to fulfill its terms or conditions; and
- .2 made by Notice in Writing within such periods as prescribed by the Limitation Act of the Province of British Columbia.”

- 12.1.2 Delete and replace with the following:

“12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is to be provided by the owner pursuant to GC 11.1 – INSURANCE, the limit of the GENERAL LIABILITY COVERAGE – GC11.1(a) or the limit of the PROPERTY COVERAGE – GC11.1(b) whichever is pertinent to the loss.
- .2 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the Contract Price as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.00.

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.”

GC12.2 WAIVER OF CLAIMS

- 12.2.1 Delete “Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable to the *Place of the Work*, the *Contractor* waives and releases the *Owner* from” and replace with the following:

“The *Contractor*’s request or application for the *Certificate of Completion* shall constitute a waiver and release by the *Contractor* of any and”.

- 12.2.1.1 Delete “no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*” and replace with the following: “together with or prior to the *Contractor*’s request or application for the *Certificate of Completion*”.

- 12.2.3 Delete “Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable to the *Place of the Work*, the *Owner* waives and releases the *Contractor* from” and replace with the following:

“The issuance of the *Certificate of Completion* shall constitute a waiver and release by the *Owner* of any and”.

- 12.2.3.1 Delete “no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*” and replace with the following:

“together with or prior to the *Contractor*’s request or application for the *Certificate of Completion*”.

- 12.2.3.4 Delete and replace with the following:

“damages for those claims made in writing within a period of 6 years from the date of *Substantial Performance* of the *Work* as set out in the *Certificate of Completion* for the *Work*, or within such shorter period as may be prescribed by any limitation statute of the Province of British Columbia and those arising from the liability of the *Contractor* for damages resulting from the *Contractor*’s performance of the *Contract* with respect to substantial defects or deficiencies in the *Work* for which the *Contractor* is proven responsible. As used herein “substantial defects or deficiencies” means those defects or deficiencies in the *Work*, including without limitation those due to faulty workmanship or *Products* or architectural, engineering or design errors or omissions by the *Contractor* or any *Subcontractor* or *Supplier* or by any of their respective consultants including the *Consultant*, which affect the *Work* to such extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*.”

12.2.4 Delete “should any limitation statute of the Province or Territory of the Place of the Work permit such agreement. If the applicable limitation period does not permit such agreement, within such shorter time as may be prescribed by:

- .1 Any limitation statute of the Province or Territory of the Place of the Work; or
- .2 If the Place of the Work is the Province of Quebec, then Article 2118 of the Civil Code of Quebec”

and replace with the following:

“or, as to any defect or deficiency or other claim of which the *Owner* is not aware at the end of the said period of six years, a period of one year after the *Owner* has become aware”.

12.2.8 Immediately before the words “further interim” and again immediately before the words “submit a final account”, insert the following: “, upon request”.

12.2.9 Delete.

12.2.10 Delete.

Add:

“12.2.11 For greater certainty, in paragraphs 12.2.1, 12.2.2, 12.2.3 and 12.2.5 of GC 12.2 WAIVER OF CLAIMS, “claims” includes claims based on changes and delay (e.g. under Part 6 CHANGES IN THE WORK).”

GC 12.3 WARRANTY

12.3.1 Add at the end:

“provided that if, as a result of the failure of the *Contractor* to fulfil its obligations under this *Contract*, there are any defects in the *Work* due to professional errors or omissions or defects in the *Work* which affect the *Work* to such extent that a significant part of the *Work* is unfit for the purpose intended, such one year limitation shall not apply and the *Owner* shall be entitled to claim for any losses or damages suffered on or before the date which is 6 years from the date of *Substantial Performance of the Work*.”

12.3.2 Delete “to the extent that the design and *Contract Documents* permit such performance.”

12.3.4 Delete and replace with the following:

“Except for the provisions of paragraphs 12.3.6 and 12.3.7, the *Contractor* shall correct promptly, at the *Contractor's* expense, to the satisfaction of the *Owner* and as approved by *B.C. Housing*, defects or deficiencies in the *Work*, including without limitation those due to faulty workmanship or *Products* or architectural, engineering or design errors or omissions by the *Contractor*, the *Consultant* or any *Subcontractor* or *Supplier* or by any of their respective consultants which appear prior to and during the warranty periods specified in the *Contract Documents*.”

12.3.3 Add at the end thereof:

“Such notice may specify the time within which the defects or deficiencies must be rectified.”

Add:

“12.3.7 Where specific warranties or guarantees are required by the *Contract Documents* relating to the *Work* and including without limitation those relating to any fixtures, improvements, appliances, equipment or other chattels for the *Project*, the *Contractor* shall secure such warranties or guarantees from the *Subcontractors* and *Product* suppliers and they shall be assigned to or addressed to and in favour of the *Owner*. The *Contractor* shall cooperate and assist in the enforcement of such warranties or guarantees. The *Contractor* shall deliver the originals plus two copies of such warranties or guarantees to the *Owner* upon completion of the *Work*.

Add the following General Conditions:

“GC13.1 GAS AND ELECTRICITY

13.1.1 The *Contractor* is responsible for having all required gas and electric meters installed and ready on the date of *Substantial Performance of the Work*. This includes installation of individual meters for units as specified.

13.1.2 The occupancy date will be the date of turnover of all gas and electricity billings to the *Owner*. The *Contractor* shall notify the gas and electricity suppliers and the *Owner* in writing as to the date of billing turnover at least 45 calendar days prior to such date.

13.1.3 The *Owner* shall be responsible for notifying the gas and electricity suppliers of start-up billing, failing which the *Owner* shall reimburse the *Contractor* for all charges accruing thereafter.

GC14.1 PUBLIC STATEMENTS AND SIGNS

14.1.1 The *Contractor* shall not make any public statement with respect to the *Project* without the prior written consent of the *Owner* and *B.C. Housing*.

14.1.2 The *Contractor* shall not erect or permit the erection of any sign or advertising at the *Place of the Work* without the prior written approval of the *Owner*.

GC15.1 LIENS

15.1.1 The *Contractor* will pay or cause to be paid promptly when due all claims, debts and charges against the *Contractor* or *Subcontractors* engaged by the *Contractor* which might become a lien upon the *Project* arising out of the *Work* performed or materials furnished by the *Contractor* or any *Subcontractors* under the *Contract*, and will not suffer or permit any lien or encumbrance of any kind to be filed against or upon the *Project*, regardless of whether the basis of such lien is a claim against the *Contractor* or any *Subcontractor*.

15.1.2 If the *Owner* is not in default in making payment to the *Contractor* as required under this *Contract* and if a claim of builders lien is filed against title to the *Project* by anyone claiming under or through the *Contractor*, the *Owner* may notify the *Contractor* in writing that the

filing of such claim or claims of builders lien is a material default by the *Contractor* of its contractual obligations and instruct the *Contractor* to obtain and file a release of the said claim or claims in the Land Title Office within 7 *Working Days* immediately following receipt of such notice.

- 15.1.3 If such default is not corrected within the time specified or subsequently agreed upon in writing, the *Owner*, without prejudice to any other right or remedy it may have, may:
- .1 pay, settle or compromise, or pay into Court (together with a reasonable amount for costs) the amount of, any such claim or claims of builders lien and deduct the amount of any such payment from the next ensuing payment which may become due to the *Contractor*; or
 - .2 pay into Court from the holdback account established by the *Owner* in accordance with the *Builders Lien Act* the total amount of the claim or claims filed and this provision shall constitute the agreement of the *Contractor* to make such payment as required under Section 5(2)(c) of the *Builders Lien Act*;

and the *Owner* may deduct from the next ensuing payment which may become due to the *Contractor* all costs and expenses thereby incurred by the *Owner*, including any account for legal fees and disbursements incurred by the *Owner*.

- 15.1.4 If the *Owner* is not in default in making payment to the *Contractor* as required under this *Contract*, the *Contractor* will indemnify and save the *Owner* harmless from and against the costs of any and all actions commenced by any lien claimant claiming under or through the *Contractor* against the *Owner* pursuant to the *Builders Lien Act*, including solicitor and client costs.
- 15.1.5 Notwithstanding any other provision of the *Contract*, no payments whatsoever shall be due or owing to the *Contractor* so long as any liens filed by anyone claiming under or through the *Contractor* remain registered against title to the *Project*.”

END OF DOCUMENT