

**GENERAL CONDITIONS OF  
THE CONSTRUCTION CONTRACT  
(For Projects with Federal Assistance)**

Department of Labor and Economic Growth  
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY  
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# GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE I - CONTRACT DOCUMENTS

### 1.1 BASIC DEFINITIONS

1.1.1 The **Contract Documents** are defined in Section 101 of the Contract. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral, including any bidding documents. The Contract Documents may be amended or modified only by a modification as defined in Section 1.1.2 hereof.

1.1.2 A **Modification** shall be part of the Contract Documents. A Modification is (1) a written amendment to the Contract Documents signed by both parties and approved by the Authority; (2) a Change Order under Section 13.1.2 hereof; (3) a written interpretation issued by the Architect pursuant to Section 1.2.4 hereof; or (4) a written order for a minor change in the Work issued by the Architect pursuant to Section 2.2.12 hereof. A Modification may be made only after execution of the Contract Documents.

1.1.3 The **Work** includes all labor, materials, supplies, tools, equipment, and professional and non-professional services, and includes the performance of all other acts and the supplying of all other things (including, but not limited to, all light, power, water and sanitary facilities for workmen during the progress of the Work) necessary to complete the Development as designed, including all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 The **Development** is the total construction designed by the Design Architect and evidenced by the Contract Documents with all Modifications, if any, and includes the Property.

1.1.5 The **Drawings** are the graphic and pictorial portions of the Contract Documents described in Section 101 of the Construction Contract, showing the design, location and dimensions of the Work.

1.1.6 The **Specifications** are that portion of the Contract Documents described in Section 101 of the Construction Contract, consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and the performance of related services.

### 1.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATION

1.2.1 The Contract Documents shall be signed by the Owner and Contractor, unless such document does not require the signature of one of the parties. If either the Owner or the Contractor or both do not sign any of the Contract Documents, those accepted for filing by the Authority shall control and be binding upon the parties.

1.2.2 All capitalized terms used in this document, if not defined herein, shall have the meaning ascribed to them in the Construction Contract. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

1.2.3 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.4 Written interpretations necessary for the proper execution or progress of the Work, in the form of

drawings or otherwise, will be issued with reasonable promptness by the Architect and in accordance with any schedule agreed upon. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents, and may be effected by Field Order.

### 1.3 COPIES FURNISHED AND OWNERSHIP

1.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall be furnished, without charge, six (6) complete sets of the Drawings and Specifications.

1.3.2 All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain the property of the Architect. They are not to be used on any other housing development, and, with the exception of one Contract set for each party to the Contract and one set for the Authority, are to be returned to the Architect on request at the completion of the Work.

## **ARTICLE II - ARCHITECT**

### 2.1 DEFINITION AND RELATIONSHIP

2.1.1 The term "Architect" shall mean the person or organization identified in the Construction Contract as the Architect administering the Construction Contract, and his authorized representative. The term "Design Architect" shall mean the Design Architect identified in the Construction Contract as having prepared the Drawings and Specifications and his authorized representative. The Architect is referred to throughout the Contract Documents as if singular in number.

2.1.2 When, in the course of the Work, the Architect is requested to perform work of the Design Architect or the Architect becomes aware of work to be performed by the Design Architect, it shall be the duty of the Architect to notify the Design Architect to perform such work, and the performance of such work by the Design Architect shall be coordinated with the performance of other elements of the Work. If the Design Architect is unable or unwilling to perform such design work, the Architect shall do so.

2.1.3 Nothing contained in the Contract Documents shall create any contractual relationship between the Architect and the Contractor.

### 2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Architect will provide general administration of the Construction Contract, including performance of the functions hereinafter described.

2.2.2 The Architect will be the Owner's representative during construction and until final payment and for purposes of one or more inspections during the applicable warranty period. The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified in writing, copies of which written modification shall be delivered to the Contractor and the Authority. The Architect will advise and consult with the Owner and the Authority, and all of the Owner's instructions to the Contractor shall be issued through the Architect.

2.2.3 The Architect shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access adequate for the Architect to perform his functions under the Contract Documents.

2.2.4 The Architect will make periodic visits to the site to familiarize himself with the progress and quality of Work and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations, he will guard the Owner against defects and deficiencies in the Work of the Contractor. The Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

2.2.5 Based on the Architect's observations and the Contractor's application for payment on Form PSD 10:001 or CD 260, the Architect will determine the amounts owing to the Contractor and will execute the Certificate for Payment on the Application for Disbursement of Mortgage Loan Proceeds in accordance with Article X hereof.

2.2.6 The Architect will be, in the first instance, the interpreter of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor. In the event of a disagreement between the Architect and the Authority as to interpretation of the Contract Documents or as to performance of the Owner and Contractor thereunder, then the interpretation of the Authority shall control. The Architect will render promptly such interpretations as may be necessary for the proper execution or progress of the Work.

2.2.7 Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect for decision, which decision he will render promptly in writing.

2.2.8 All interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge, he will exercise his best efforts to insure faithful performance by both the Owner and the Contractor and will not show partiality to either.

2.2.9 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents except as provided in Section 2.2.18 hereof.

2.2.10 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, he will have authority to require the Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work as provided in Section 18.5.2 hereof whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Section 2.2.10 nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.2.11 The Architect will review Shop Drawings and Samples as provided in Sections 4.8.1 through 4.8.8 hereof inclusive.

2.2.12 The Architect will prepare Change Orders in accordance with Article XIII hereof, and will have authority to order minor changes in the Work as provided in Section 12.3.1 hereof.

2.2.13 The Architect will conduct inspections to determine the date of Final Completion as provided in the Construction Contract, will receive written guarantees and related documents required by the Contract and assembled by the Contractor, and will execute a final Certificate for Payment as required by the Construction

Contract.

2.2.14 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in these General Conditions will not be modified or extended without written consent of the Owner, the Architect and the Authority, a copy of which written consent shall be provided to the Contractor.

2.2.15 The Architect will not be responsible for the acts or omissions of the Contractor, any Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.16 In case of the termination of the employment of the Architect, the Owner shall appoint an architect as to whom the Contractor and the Authority make no reasonable objection, whose status under the Contract Documents shall be that of the former Architect.

2.2.17 The Architect immediately shall furnish the Owner and the Authority with copies of all Field Orders, proposed Change Orders, proposed Orders for Extra Work, interpretations and all other documents prepared and executed by him during the construction period and until final payment.

2.2.18 The Architect will furnish all color and material samples to the Authority or its representative. The Architect's decision regarding color or material samples shall be subject to the approval of the Authority.

### **ARTICLE III - OWNER**

#### **3.1 DEFINITION**

3.1.1 The Owner is the person or organization identified as such in the Construction Contract and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative.

#### **3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

3.2.1 The Owner shall furnish an initial survey describing the physical characteristics, legal description, easements, boundaries and utility locations for the Property.

3.2.2 Except for those fees and permits paid for and provided by the Contractor pursuant to the Construction Contract, the Owner shall secure and pay for all zoning and planning approvals, easements, taxes, assessments and all other permits, approvals and fees necessary for permanent structures or permanent changes in existing facilities.

3.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.4 The Owner shall issue all instructions to the Contractor through the Architect.

3.2.5 The foregoing are in addition to other duties and responsibilities of the Owner.

## **ARTICLE IV - CONTRACTOR**

### **4.1 DEFINITION**

4.1.1 The Contractor is the person or organization identified as such in the Construction Contract and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

### **4.2 CONTRACT DOCUMENTS**

4.2.1 The Contractor shall carefully study and compare the Construction Contract, these General Conditions, the Drawings and Specifications, and all Addenda and Modifications and shall at once report to the Architect any error, inconsistency or omission he may discover. The Contractor shall do no Work without consulting the Drawings and Specifications and any Addenda or Modifications.

4.2.2 If the Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall notify promptly the Architect and the Authority in writing, and any necessary changes shall be made as provided in the Contract Documents for changes in the Drawings and Specifications. If the Contractor performs any Work knowing it to be contrary to such codes, laws, ordinances, rules or regulations, or protective covenants without giving such notice to the Architect and the Authority, it shall bear all cost arising therefrom, including the cost of correcting any such Work

4.2.3 The Contractor shall prepare and submit to the Architect and the Authority an estimated progress schedule for the Work, for their approval. The progress schedule shall be related to the entire Development to the extent required by the Contract Documents. This schedule shall indicate the dates for the starting and completion of the various stages of construction and shall be revised as required by the conditions of Work, subject to the approval of the Architect and the Authority.

4.2.4 The Contractor shall maintain at the site for the Owner and the Authority one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications, in good order and marked to record all changes made during construction. These shall be available to the Architect and the Authority. The Drawings, marked to record all changes made during construction, shall be delivered to the Architect for the Owner upon completion of the Work.

### **4.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents. The Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules, and regulations, and protective covenants, including all laws and regulations governing occupational safety and health. The Contractor shall notify immediately the Owner and the Authority of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to the Owner and the Authority upon request.

4.3.2 The Contractor shall assume full responsibility for the maintenance of all landscaping which may be required by Drawings and Specifications until Final Completion, unless the Owner consents in writing to the Owner's assumption of such responsibility prior to Final Completion. The Contractor will provide safe and

adequate approaches and assure uninterrupted access to all dwelling units which have been approved for occupancy by the Authority, turned over to and accepted by the Owner.

4.3.3 The Contractor shall be responsible to the Owner for the acts omissions of all his employees, all subcontractors and all sub-Subcontractors, their agents and employees, and all other persons performing any of the Work under a Contract with the Contractor. The Contractor shall enforce strict discipline and good order among his employees.

4.3.4 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

#### 4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, all building and other permits, licenses, tools, equipment, machinery, water, heat, utilities, transportation, temporary structures and other facilities and services necessary for the proper execution and completion of the Work and the construction of the Development.

#### 4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner and the Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified by the Contract Documents and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards including substitutions not properly approved and authorized, may be considered defective. If required by the Architect or the Authority, the Contractor shall furnish satisfactory evidence as to the kind and quality of the Work.

4.5.2 The Contractor shall assign to the Owner all rights under any manufacturer's warranty or materials, equipment or appliances purchased for and incorporated or installed in the Development. The assignment shall be made at the time of application for final payment, however the assignment shall not relieve the Contractor of any such obligation under the Guarantee set forth in Section 13.2.1.

4.5.3 The Warranty provided in this Section 4.5 shall be in addition to and not in limitation of any other Warranty or remedy required or provided by law or by the Contract Documents, specifically the Guarantee set forth in Section 13.2.1.

#### 4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes required by law.

#### 4.7 SUPERINTENDENT

4.7.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Development site during the progress of the Work. The superintendent shall be satisfactory to the Architect, and shall not be changed except with the consent of the Architect, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.



#### 4.8 SHOP DRAWINGS AND SAMPLES

4.8.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

4.8.2 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and, if accepted, to establish standards by which the Work will be judged.

4.8.3 The Contractor shall review, stamp with his approval and submit, with reasonable promptness and in order sequence so as to cause no delay in the Work or in the work of any other contractor, all Shop Drawings and Samples required by the Contract Documents or subsequently by the Architect as covered by Modifications. Shop Drawings and Samples shall be properly identified as specified, or as the Architect may require. At the time of submission the Contractor shall inform the Architect in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.

4.8.4 By approving and submitting Shop Drawings and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents.

4.8.5 The Architect will review and approve Shop Drawings and Samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Development and with the information given in the Contract Documents. The Architect's approval of a separate item shall not indicate approval of an assembly in which the item functions.

4.8.6 The Contractor shall make any corrections required by the Architect or the Authority and shall resubmit the required number of corrected copies of Shop Drawings or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections requested by the Architect on previous submissions.

4.8.7 The Architect's approval of Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall the Architect's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

4.8.8 No portion of the Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and Samples.

#### 4.9 USE OF THE PROPERTY

4.9.1 The Contractor shall confine operations at the Property to activities permitted by law, ordinances, permits and the Contractor Documents and shall not unreasonably encumber the Property with any materials or equipment.

#### 4.10 CUTTING AND PATCHING OF WORK

4.10.1 The Contractor shall do all cutting, fitting or patching of the Work that may be required to make its

several parts fit together properly, and shall not endanger any Work by cutting, excavating or otherwise altering the Work or any part of it.

#### 4.11 CLEANING UP AND BROKEN GLASS

4.11.1 The Contractor at all times shall keep the premises free from of waste materials or rubbish caused by his operation. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Development as well as all his tools, construction equipment, machinery and surplus materials. The Contractor shall be responsible for all broken glass, and at the completion of the Work he shall replace, at his own expense, all such damaged or broken glass. After all broken glass has been replaced, the Contractor shall remove all labels and wash and polish both sides of all glass. In addition, to general broom cleaning and subcontractors' cleaning, the Contractor shall perform the following final cleaning for all trades at completion of the Work:

- a. Remove temporary projections;
- b. Remove marks, stains, fingerprints and other soil and dirt from painted, decorated, and other finish materials and wash or wipe clean;
- c. Remove spots, mortar, plaster, soil and paint from ceramic tile, marble and wash or wipe clean;
- d. Clean fixtures, cabinetwork and equipment, removing stains, paint, dirt and dust and leave in undamaged, new-appearing condition; and
- e. Clean floors thoroughly with a well-rinsed mop containing only enough moisture to clean off any surface dirt or dust.

4.11.2 If the Contractor fails to clean up, the Owner may do so and the cost thereof shall be charged to the Contractor as provided in Section 7.4 hereof.

#### 4.12 COMMUNICATIONS

4.12.1 The Contractor shall forward all communications to the Owner through the Architect.

4.12.2 The Contractor, Owner and Architect shall forward all communications to the Authority as indicated for the purpose of notice in the Construction Contract.

### **ARTICLE V - THE AUTHORITY**

#### 5.1 DEFINITION

5.1.1 The Authority is the Michigan State Housing Development Authority, a public body corporate and politic of the State of Michigan.

#### 5.2 RIGHTS OF THE AUTHORITY

5.2.1 For the purpose of protecting its interest in the Development as lender under the Act, the Authority has been granted the rights provided in the Contract Documents.

### 5.3 AUTHORITY APPROVALS

5.3.1 No Change Order, order for extra work or other instrument which changes the terms of the Contract Documents may be made without the written approval of the Authority. Such approvals shall be a condition precedent to any compensation to the Contractor for extra or additional work performed pursuant to any Change Order or other instrument which changes the terms of the Contract Documents.

5.3.2 Except as otherwise provided herein, whenever any approval or notice by the Authority is required under these General Conditions, or whenever any action by the Authority is required or permitted, an Authorized Officer of the Authority as described in Section 204 of the Construction Contract (Legal 016) shall have the power and right to approve, give notice or act on behalf of the Authority.

## **ARTICLE VI - SUBCONTRACTORS**

### 6.1 DEFINITION

6.1.1 A Subcontractor is a person or organization who has a direct Contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representatives.

6.1.2 A sub-Subcontractor is a person or organization who has a direct or indirect Contract with a Subcontractor to perform any of the Work on the Property. The term sub-Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a sub-Subcontractor or an authorized representative thereof.

6.1.3 Nothing contained in the Contract Documents shall create any contractual relation between the Owner or the Architect and any Subcontractor or sub-Subcontractor.

### 6.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

6.2.1 The Contractor shall not Contract with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the Owner and the Architect and as to whom no objection has been made by the Authority within ten (10) days after written notice of the proposed selection of such Subcontractor has been given to the Authority by the Contractor. The Contractor will not be required to Contract with any subcontractor or person or organization against whom he has a reasonable objection.

6.2.2 If the Owner or the Architect requires a change of any proposed Subcontractor or person or organization previously accepted by them, the Total Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued, subject to the written approval of the Authority.

6.2.3 The Contractor shall not make any substitutions for any Subcontractor or person or organization who has been accepted by the Owner, the Architect and the Authority, unless the substitution is acceptable to the Owner, the Architect and the Authority.

### 6.3 SUBCONTRACTUAL RELATIONS

6.3.1 All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate

agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and sub-Subcontractors) which, in addition to requirements of the Construction Contract shall contain provisions that:

- a. preserve and protect the rights of the Owner and the Architect under the Contract with respect to the work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
- b. require that such Work be performed in accordance with the requirements of the Contract Documents;
- c. require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with the Construction Contract;
- d. require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or sub-Subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner; and
- e. obligate each Subcontractor to consent to the provisions of this Section 6.3.

#### 6.4 PAYMENTS TO SUBCONTRACTORS

6.4.1 The Contractor shall pay each Subcontractor an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's Work. The Contractor shall also require each Subcontractor to make similar payments to his subcontractors.

6.4.2 The Architect may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of Work done by such Subcontractors.

6.4.3 Neither the Owner, the Authority nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

### **ARTICLE VII - SEPARATE CONTRACTS**

#### 7.1 OWNER'S RIGHT TO AWARD

7.1.1 The Owner reserves the right to award other contracts in connection with other portions of the Development under these or similar General Conditions of the Contract for Construction, subject to the prior written approval of the Authority.

7.1.2 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Section 7.2.

7.1.3 When separate contracts are awarded for different portions of the Development, "the Contractor" in the Contract Documents in each case shall be the contractor who signs each separate Contract.

7.2 MUTUAL RESPONSIBILITY OF CONTRACTORS

7.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall properly connect and coordinate his Work with theirs.

7.2.2 If any part of the Contractor's Work depends for proper execution or results upon the Work of any other separate contractor, the Contractor shall inspect and promptly report to the Architect any apparent discrepancies or defects in such Work that render it unsuitable for such proper execution and results. Failure of the Contractor so to inspect and report shall constitute an acceptance of the contractor's Work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's Work after the execution of the Contractor's Work.

7.2.3 Should the Contractor cause damage to the Work or property of any separate contractor on the Development, the Contractor shall, upon due notice, settle with such other contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense, and if any judgment against the owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all Attorney's fees and court costs which the Owner has incurred.

7.3 CUTTING AND PATCHING UNDER SEPARATE CONTRACTS

7.3.1 The Contractor shall do all cutting, fitting or patching of his Work that may be required to fit it to receive or be received by the Work of other contractors shown in the Contract Documents. The Contractor shall not endanger any Work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Architect.

7.3.2 Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefor.

7.4 OWNER'S RIGHT TO CLEAN UP

7.4.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Section 4.15 hereof, the Owner may clean up and charge the cost thereof to the several contractors as the Architect may determine to be just.

**ARTICLE VIII - TIME**

8.1 DEFINITIONS

8.1.1 The Contract Time is the period of time allotted in the Contract Documents for completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Construction Contract.

8.1.3 The word "day" as used in the Contract Documents means calendar days unless otherwise specifically designated.

## 8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation which was not reasonably foreseeable, adverse weather conditions not reasonably foreseeable, unavoidable casualties or any causes beyond the Contractor's control which were not reasonably foreseeable, or by delay authorized by the Owner pending settlement of a dispute, or by any cause which the Architect, with the written approval of the Authority, determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine with the approval of the Authority. The time for completion of the Work shall be extended only by a change order signed by the Owner, the Architect, and the Authority and only for the causes set forth in this Section. The Contractor shall not be entitled to any extension of time for delays resulting from any such causes, unless it shall have notified the Owner in writing within five (5) days after the commencement of each such cause of the occurrence thereof and the probable duration. The Contractor shall not be entitled to and hereby waives any and all damages which it may suffer by reason of delay, the extension of time granted being the Contractor's sole remedy.

8.2.2 All claims for extension of time shall be made in writing to the Architect, with a copy to the Authority, no more than five (5) days after the occurrence of the cause for delay; otherwise they shall be waived. Any such claim shall have a caption at the top of the first page, in capital letters, as follows: "NOTICE OF CLAIM FOR EXTENSION OF TIME". The Contractor, shall, as a part of such claim, provide an estimate of the probable effect of such delay on the progress of the Work.

8.2.3 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Section 1.2.4 hereof shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after demand is made for them, and not then unless such claim is reasonable.

8.2.4 Except as provided in the Construction Contract, the recovery of damages for delay under other provisions of the Contract Documents is not precluded.

## **ARTICLE IX - PAYMENTS AND COMPLETION**

### 9.1 CERTIFICATES FOR PAYMENT

9.1.1 If the Contractor has made Application for Payment as provided in the Construction Contract, the Architect will, with reasonable promptness but not more than seven (7) days after the receipt of the Application, execute a Certificate for Payment to the Owner, with copies to the Contractor and Authority, for such amount as he determines to be properly due, or state in writing his reasons for withholding a Certificate as provided in Section 9.2 hereof. Such Certificate shall be in the form contained in Form No. CD 260, or such other form as may be prescribed or approved by the Authority.

9.1.2 The execution of a Certificate for Payment will constitute a representation by the Architect to the Owner and the Authority, based on his observations at the Development site as provided in Section 2.2.4 hereof and the data comprising the Application for Payment that:

- a. the Work has progressed to the point indicated;
- b. to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and

c. the Contractor is entitled to payment in the amount certified. In addition, the Architect's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment, as set forth in Section 701 of the Construction Contract, have been fulfilled.

However, by executing a Certificate for Payment, the Architect shall not thereby be deemed to represent that he has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Total Contract Sum.

## 9.2 PAYMENTS WITHHELD

9.2.1 The Architect may decline to approve an Application for Payment and may withhold his Certificate in whole or in part if, in his opinion, he is unable to make representations to the Owner as provided in Section 9.1.2 hereof. If the Architect is unable to make representations to the Owner as provided in Section 9.1.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Section 9.1.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he is able to make such representation to the Owner. The Architect may also decline to approve any Applications for Payment, or because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- a. defective Work not remedied;
- b. claims filed or reasonable evidence indicating probable filing of claims;
- c. reasonable doubt that the Work can be completed for unpaid balance of the Total Contract Sum;
- d. damage to another contractor;
- e. reasonable evidence that the Work will not be completed within the Contract Time; or
- f. persistent failure to carry out the Work in accordance with the Contract Documents.

9.2.2 When the grounds for the withholding of payments in Section 9.4.1 hereof are removed to the extent applicable, payment shall be made for amounts withheld because of them.

## 9.3 FAILURE OF PAYMENT

9.3.1 If:

- a. the Architect shall fail to execute any Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment; or
- b. the Owner shall fail to pay the Contractor the amount certified by the Architect and approved by the Authority, within seven (7) days after the date the Contractor becomes entitled to payment under the Construction Contract,

then the Contractor may, upon seven (7) additional days written notice to the Owner and the Architect, stop the Work until it receives payment of the amount owing.

## ARTICLE X - FINAL COMPLETION AND COST CERTIFICATION

### 10.1 FINAL COMPLETION

10.1.1 The Work shall be at the point of Final Completion upon the strict performance of all the Contractor's obligations under the Contract Documents and upon:

a Evidence that all Work requiring inspection by municipal or other governmental authorities having jurisdiction over the Work has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction, and receipt of any inspection certificates or approvals from any government or organization which the Owner or the Authority considers necessary to insure the health or safety of the occupants;

b Receipt by the Owner of Certificates of Occupancy from any governmental unit having jurisdiction and the issuance by the Authority's Construction Division of "Permissions to Occupy" (Form PSD 10:006), for all of the residential units in the Development;

c Written acknowledgment by the Owner, the Contractor, the Architect and the Authority of the satisfactory completion of the Work as evidenced by the execution of Form PSD 12:002, (a) certifying that the Development has been substantially completed in accordance with the Drawings and Specifications, and (b) establishing the Cut-Off Date. The certificate must also be signed by the Authority's Director of Finance.

### 10.2 AS-BUILT SURVEY

10.2.1 Upon the completion of construction, the Contractor shall furnish to the Owner, the Authority and the Title Insurance Company insuring the interest of the Authority, an As-built ALTA/ACSM Land Title Survey prepared in accordance with the Minimum Standard Detail Requirements adopted in 1992, showing the location on the Property of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing easements and/or rights-of-way. Such survey shall be prepared by a licensed professional surveyor or civil engineer acceptable to the Authority, who shall certify to the Owner, the Authority and the Title Insurance Company insuring the interest of the Authority that the Work is installed and erected entirely upon the Property and within any building restriction lines on the Property, and does not overhang or otherwise encroach upon any easement or right-of-way of others.

### 10.3. ACTUAL COST OF CONSTRUCTION

10.3.1 The Actual Cost of Construction, as used in this Article, shall be determined in accordance with the Authority's Cost Certification Guide for Mortgagors, Contractors and Certified Public Accountants dated September 24, 1992 (the "Cost Certification Guide"), which is incorporated in and made a part of this Agreement, and shall include all items of cost and expense incurred by the Contractor in the performance of this Agreement, including costs and expenses of labor, materials for construction, equipment and fixtures, field engineering, sales taxes, workmen's compensation insurance, social security, general liability insurance and all other expenses directly connected with construction, but excluding kickbacks, rebates, discounts, except trade discounts for early payment as set forth in the Cost Certification Guide, penalties or fines received or receivable, or paid or payable, in connection with the rehabilitation of the Development; and excluding any return on or cost of the Contractor's working capital.

10.3.2 With its final application for payment, but no later than 90 days after the cut-off date for cost certification established by the Director of Finance in Authority Form PSD 12:002, the Contractor shall furnish to the Owner and the Authority a completed Contractor's Certificate of Actual Costs, prepared in



accordance with the Cost Certification Guide. If the Contractor fails to comply with the requirements of this Section within the time limits provided, he agrees that any damages incurred by the Owner as a result of Contractor's failure to perform may be deducted from amounts due the Contractor.

10.3.3 At their own expense, the Authority or its representative or the Owner may make independent audits of the Contractor's costs during the course of the Work and upon completion of the Work. The Contractor shall cooperate fully with the Owner and the Authority in this regard.

10.3.4. The Contractor agrees that authorized representatives of the Authority shall have full and free access, during working hours, to all books of account and records of the Contractor relating to the Work, including the right to make photostatic copies of or excerpts or transcripts from such books of account and records and related and supporting documents and statements, including but not limited to bank statements, checks paid by banks and checkbook stubs. All such items shall be retained by the Contractor for a period of 6 years.

10.3.5 The Contractor shall keep separate and accurate records of account of the Actual Cost of Construction in a manner acceptable to the Authority, and shall, upon demand, make such records and invoices, receipts, subcontracts and other information pertaining to the construction of the Development available for inspection by the Owner and the Authority.

10.3.6 The Contractor shall include in all subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its cost incurred in connection with the Development, in the event the Authority determines at any time prior to or within one (1) year after the Contractor has furnished its Certificate of Actual Costs required under Section 10.3.2 hereof, that there is an identity of interest as defined in Section 302 of the Construction Contract between either the Owner and the Contractor or the Owner and any such subcontractor, equipment lessor or supplier.

## **ARTICLE XI - PROTECTION OF PERSONS AND PROPERTY**

### **11.1 SAFETY OF PERSONS AND PROPERTY**

11.1.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- a. all employees engaged in the Work and all other persons who may be affected thereby;
- b. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Property, under the care, custody or control of the Contractor or any of his Subcontractors or sub-Subcontractors; and
- c. other property at the site or adjacent thereto, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.1.2 When the use or storage of explosive or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

11.1.3 All damage or loss to any property referred to in Sections 11.1.1a or 11.1.1b above, caused in whole or in part by the Contractor, any Subcontractor or sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty Drawings or Specifications or to the acts or omissions

of the Owner or Architect or anyone employed by either of them or for whose acts either of them may be liable, and not attributable to any fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Article IV of these General Conditions.

11.1.4 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner and the Architect.

11.1.5 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

## 11.2 EMERGENCIES

11.2.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article XIII of these General Conditions for Changes in the Work.

## **ARTICLE XII - CHANGES IN THE WORK**

### 12.1 CHANGE ORDERS

12.1.1 Without invalidating the Contract, the Owner may order Changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such Changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.2 A Change Order is a written order to the Contractor signed by the Owner and the Architect, and approved in writing by the Authority, issued after the execution of the Contract authorizing a Change in the Work or an adjustment in the Total Contract Sum or the Contract Time. The Total Contract Sum and the Contract Time may be changed only by Change Order.

12.1.3 The cost or credit to the Owner resulting from a Change in the Work shall be determined in one or more of the following ways:

- a. By mutual acceptance of a lump sum properly itemized, and supported by sufficient substantiating data to permit evaluation;
- b. By unit prices stated in the Contract Documents or subsequently agreed upon; or
- c. By cost and a mutually acceptable fixed or percentage fee.

12.1.4 If none of the methods set forth in Section 12.1.3 hereof are appropriate because of the unusual nature of the Change in the Work, upon receipt of a Change Order, the Contractor shall proceed promptly with the Work involved. The cost of such Work shall then be determined by the Architect with the written approval of the Authority, on the basis of the Contractor's reasonable expenditures and savings, including, in the case of an increase in the Total Contract Sum, a reasonable allowance for overhead and profit. In such case, and for a change under Section 12.1.3a above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales

tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' compensation insurance; contractor's overhead costs and profits directly attributable to the change. Pending final determination of cost to the Owner, amounts not in dispute may be included on the Architect's Certificate for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in labor and materials, including taxes, but without a reduction in builder's profit and overhead as confirmed by the Architect. When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any.

12.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.

12.1.6 If the Contractor claims that additional cost or time is involved because of: (1) any written interpretation issued pursuant to Section 1.2.4 hereof, (2) any order by the Architect to stop the Work pursuant to Section 2.2.10 hereof where the Contractor was not at fault, or (3) any written order for a minor change in the Work issued pursuant to Section 12.3.1 hereof, the Contractor shall make such claim as provided in Section 12.2 hereof.

## 12.2 CLAIMS FOR ADDITIONAL COST OR TIME

12.2.1 If the Contractor wishes to make a claim for an increase in the Total Contract Sum or an extension in the Contract Time, he shall give the Architect and the Authority written notice thereof within five (5) days after the occurrence of the event giving rise to such claim. Any notice for an increase in the Total Contract Sum shall have a caption at the top of the first page, in capital letters, as follows: "NOTICE OF CLAIM FOR INCREASE IN TOTAL CONTRACT SUM". Claims for extension of the Contract Time shall be made as provided in Section 8.2.2 hereof. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Section 11.2.1 hereof. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Total Contract Sum or the Contract Time, it shall be determined by the Architect with the written approval of the Authority. Any change in the Total Contract Sum or Contract Time resulting from such claim must be authorized by Change Order. Notwithstanding any language in the Contract Documents to the contrary, it is expressly provided that the issuance of a written approval signed by the Authority is a condition precedent to any payment for extra work, and proceeding upon oral orders is a waiver by the Contractor of any claim for compensation for any extra work done without such prior written approval.

## 12.3 MINOR CHANGES IN THE WORK

12.3.1 The Architect shall have authority to order minor changes in the Work not involving an adjustment in the Total Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Order. Such changes shall be binding on the Owner and the Contractor.

## 12.4 FIELD ORDERS

12.4.1 The Architect may issue written Field Orders which interpret the Contract Documents in accordance with Section 1.2.4 hereof or which order minor changes in the Work in accordance with Section 12.3 hereof without change in the Total Contract Sum or Contract Time. The Contractor shall carry out such Field Orders promptly.

## 12.5 UNFORESEEN CONDITIONS

12.5.1 The Contractor understands that no adjustments for unanticipated soil conditions will be made in the earth work estimate set forth in the Trade Payment Breakdown unless the Owner and Authority determine that there is a surplus of funds in other trade items. The Contractor recognizes that if the Development is to be constructed on previously developed urban land, the estimated cost of earth work includes an allowance for the possibility of encountering old foundations, improper fill and other underground obstructions, established from the Contractor's cost estimates and is recognized in this Agreement.

12.5.2 Mortgage loans involving the rehabilitation of existing structures include a contingency fund for unforeseen conditions. Unforeseen conditions are defined as additional Work that could not have reasonably been anticipated by the Contractor or Architect. If the Contractor encounters such unforeseen conditions, it must submit a Change Order in order to obtain an increase in the Total Contract Sum, which increase may not exceed the amount of the contingency for unforeseen conditions. Such an increase must be approved by the Owner, the Architect and the Authority in the same manner as all other Change Orders.

## **ARTICLE XIII - UNCOVERING AND CORRECTION OF WORK**

### 13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Architect or the Authority, it must, if required by the Architect or the Authority, be uncovered for observation and replaced, at the Contractor's expense.

13.1.2 If any other Work has been covered which the Architect or the Authority has not specifically requested to observe prior to being covered, the Architect or the Authority may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by a separate contractor employed as provided in Article VI hereof, and in that event the Owner shall be responsible for the payment of such costs.

### 13.2 CORRECTION OF WORK

13.2.1 If the Contractor, within a reasonable time after receiving notice from the Owner that Work or material has been found defective or deficient, fails to remedy or remove and replace that Work or material which has been found defective or deficient, then the Owner may remedy or replace the defective or deficient Work at the Contractor's expense. The Contractor shall immediately pay the expenses incurred by the Owner.

If the Owner is not paid within ten (10) days, the Owner may pursue any and all legal remedies it may have against the Contractor. Where there exists an identity of interest between the Owner and the Contractor, as defined by Section 302 of the Construction Contract, the Authority may exercise any right or claim the Owner may have against the Contractor under this Section in its own name without establishing its right to act, or acting as the Owner's attorney-in-fact.

13.2.2 Within one year after the date of final completion as established by the Authority on Authority Form PSD 12:002, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Contractor shall correct or remove and replace any such defective or deficient materials or Work, promptly after receipt of a written notice from the Owner and correct or pay for any damage to other Work resulting therefrom. Furthermore, the Contractor shall correct any defect in Work that was incomplete at the time of final payment within one year after said incomplete Work is completed as determined by the date payment is made for the Work. The foregoing obligations of the Contractor shall be referred to as the Guarantee. If the Contractor, within a reasonable time

after receiving notice from the Owner that Work or material has been found defective or deficient, fails to remedy or remove and replace that Work or material which has been found defective or deficient, then the Owner may remedy or replace the defective or deficient Work at the Contractor's expense in accordance with Section 13.2.1. The Contractor shall immediately pay the expenses incurred by the Owner. If the Owner is not paid within ten (10) days, the Owner may pursue any and all legal remedies it may have against the Contractor. Where there exists an identity of interest as defined by Section 502, between the Owner and the Contractor, the Authority may exercise any right or claim the Owner may have against the Contractor under this Section in its own name without establishing its right to act, or acting as the Owner's attorney-in-fact. The Contractor shall bear the cost of making good all Work of separate contractors destroyed or damaged by such removal or correction. The Contractor shall remove from the site all portions of the Work which are defective or nonconforming and which have not been corrected under Sections 4.5.1, 13.2.1, and 13.2.2, unless removal is waived by the Owner. Neither final acceptance of the Work, nor payment therefore, nor any provision of the Contract Documents shall relieve the Contractor of responsibility for defective or deficient materials or work. If the Contractor fails to correct such defective or nonconforming Work, the Owner prefers to accept defective or nonconforming work, he may correct it. Neither final acceptance of the Work, nor payment therefore, nor any provision of the Contract Documents shall relieve the Contractor of responsibility for defective or deficient materials or work.

13.2.3 Nothing contained in this Article 13 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Section 4.5 of the General Conditions. The establishment of the time period of one year after the date of final completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents (the "Guarantee Period") relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

13.2.4 The Contractor shall promptly correct all Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Final Completion and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected Work, including the cost of the Architect's additional services thereby made necessary.

13.2.5 If, within one year after the date of final completion as established by the Authority in MSHDA Form No. PSD 12:002, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after the receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition and such acceptance of such condition has been approved in writing by the Authority. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

### 13.3 OWNER'S ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

13.3.1 If the Owner prefers to accept defective or nonconforming Work, he may do so after receiving written approval therefor from the Authority instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE XIV - DISPUTES AND ARBITRATION**

14.1 DISPUTES OVER PROPER PERFORMANCE OF THE WORK

14.1.1 All disputes, claims, or questions with respect to the proper performance of the Work shall be submitted to the Authority. The decision of the Authority shall be final and binding upon the Owner and the Contractor, and may be enforced in any court of competent jurisdiction.

14.2 DISPUTES OVER OTHER MATTERS

14.2.1 All disputes, claims, or questions between the Owner and the Contractor on matters other than the proper performance of the Work may be submitted to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then pertaining. The decision pursuant to any arbitration shall be binding upon the parties hereto if accepted by the Authority in writing, and may be enforced in any court of competent jurisdiction. The cost of such arbitration shall be borne equally by the Owner and the Contractor and such expenses incurred by the Contractor shall not be subject to reimbursement.

14.3 CONTINUATION OF THE WORK

14.3.1 In the event of a claim, dispute or any other matters in question arising out of, or relating to this Contract or the breach thereof, except for Owner's refusal to pay the Contractor, upon request of the Authority, such amount as has been previously approved by the Authority, the Contractor warrants that it will carry on the Work and maintain the progress schedule during any proceedings to settle the dispute, unless otherwise agreed by the Contractor and the Owner in writing and approved in writing by the Authority.

**ARTICLE XV - EMPLOYMENT PRACTICES**

15.1. PROVISIONS REQUIRED BY FEDERAL LAW

15.1.1 The Development to be constructed pursuant to the Contract is or will receive assistance from the U.S. Department of Housing and Urban Development. Attached to and made a part of these General Conditions are the Davis-Bacon Prevailing Wage Determination (Exhibit A-GC); the Federal Labor Standards Provisions (HUD Form 4010)(Exhibit B-GC); the Equal Opportunity Clause (Executive Order No. 11246)(Exhibit C-GC); and the "Section 3 Clause" (Exhibit D-GC), all of which are required to be included in the Contract as a condition of receiving such assistance. Other provisions of this Article are required as a condition of the Owner's receiving a mortgage loan from the Authority. The Contractor agrees to comply with all applicable employment practices and other requirements as set forth in this Article and in Exhibits A-GC, B-GC, C-GC and D-GC. Contractor agrees and understands that Contractor is responsible for complying with all applicable federal requirements, including any new or additional requirements that may not be specifically expressed in this Article or the Exhibits to these General Conditions.

15.2 INCLUSION OF PROVISIONS IN SUBCONTRACTS

15.2.1 The Contractor agrees to include the provisions of this Article, including Exhibits B-GC, C-GC and D-GC, in all subcontracts entered into in connection with the construction of the Development.

15.3. AUTHORITY EQUAL EMPLOYMENT OPPORTUNITY

15.3.1 During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, height, weight, handicap, arrest record or marital

status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, age, height, weight, handicap, arrest record or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by or at the direction of the Authority setting forth the provisions of this Equal Opportunity Clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, height, weight, handicap, arrest record or marital status.

c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided by or at the direction of the Authority advising the said labor union or worker's representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all of the Authority's Equal Employment Opportunity and Affirmative Action Plan Compliance Reporting Requirements as established by the Authority's Director of Equal Employment Opportunity/Fair Housing and the provisions of the Authority approved Equal Employment Opportunity Plan attached as Exhibit E of the Construction Contract.

e. The Contractor will comply with all pertinent provisions of Executive Order No. 11246 of September 24, 1965.

f. The Contractor will include the provisions of Sections (a) through (e) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Authority may direct as a means of enforcing such provisions including sanctions for noncompliance.

15.3.2. a. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all Work in the covered area are set forth in Exhibit E of the Construction Contract.

b. The following definition and specifications shall be included in all construction contracts or subcontracts in excess of \$10,000.00 to be performed in the geographical area designated in Exhibit E of the Construction Contract.

(1) As used in these specifications, minority includes:

(a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(c) Asian and Pacific Islander (all person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000.00 the provisions of these specifications and that portion of Exhibit E of the Construction Contract which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

(3) The Contractor shall implement the specific affirmative action standards provided in Sections 6(a) through (p) of these specifications and those contained in Exhibit E of the Construction Contract. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

(4) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under this Agreement.

(5) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(6) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organization when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a



recruitment source of community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Authority's Director of Equal Employment Opportunity/Fair Housing when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Section 15.3.2.b(6)(b).

(f) Disseminate the Contractor's Equal Employment Opportunity ("EEO") policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where the Work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. No later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other than minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(7) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations [Section 15.3.2.b(6)(a) through (p)]. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section 15.3.2.b(6)(a) through (p) of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and the failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(8) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(9) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(10) The Contractor shall not knowingly enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order No. 11246 or other State or Federal statute or regulation relating to Equal Employment Opportunity.

(11) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to this agreement and Executive Order No. 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications.

(12) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Section 15.3.2.b(6), so as to achieve maximum results from its efforts to ensure Equal Employment Opportunity.

(13) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to these provisions as may be required by the Authority and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the Work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(14) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

15.3.3 In addition to compliance with the requirements set forth in Sections 15.3.1 and 15.3.2 of these General Conditions, the Contractor agrees to utilize his best efforts in successfully implementing the provisions of the Equal Employment Opportunity Plan attached as Exhibit E of the Construction Contract. In order to establish a standard of reviewing a contractor's performance in meeting the Equal Employment Opportunity Plan in Exhibit E of the Construction Contract, the Authority will use the following definition of non-awardable contractors:

a. Any contractor who fails either to meet the established affirmative action goals for the employment of minority skilled trades persons or minority business enterprises on a MSHDA financed housing project or to demonstrate a good faith effort to achieve these goals, as determined by the Authority's Director of Equal Employment Opportunity/Fair Housing based on a review of the contractor's performance with respect to the Authority-financed housing project, shall be considered non-awardable for a period of two years. The period of two years is defined as: two calendar years following the date of 95% completion of the housing project in which the affirmative action goals are not met.

b. Any contractor who fails either to meet the established affirmative action goals for the employment of female skilled trades persons or female business enterprises on a MSHDA financed housing project or to demonstrate a good faith effort to achieve these goals, as determined by the Authority's Director of Equal Employment Opportunity/Fair Housing based on a review of the contractor's performance with respect to the Authority-financed housing project, shall be considered non-awardable for a period of two years. The period of two years is defined as: two calendar years following the date of 95% completion of the

housing project in which the affirmative action goals are not met.

c. If, upon evaluation by the Authority's Director of Equal Employment Opportunity/Fair Housing it is determined that the contractor took all feasible steps and made a good faith effort to achieve the affirmative action goals (including but not limited to, requesting assistance from the Equal Employment Opportunity/Fair Housing Office) then the contractor will remain awardable.

15.3.4 The Contractor will comply with the provisions of the Elliott-Larsen Civil Rights Act, Act No. 453 of the Public Acts of 1976 of the State of Michigan, as amended. If the Contractor was directed to do so by the Authority as part of the bid or negotiation of this Contract, the Contractor shall request each labor union or representative to furnish it with a written statement that such labor union or representative will not discriminate because of race, color, religion, sex, national origin, age, height, weight, handicap, arrest record or marital status, and that such labor union or representative either will affirmatively cooperate, within the limit of its legal and contractual authority, in the implementation of the policy and provisions of these Equal Employment Opportunity clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this Agreement, shall be in accordance with the purposes and provisions of these Equal Employment Opportunity clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the State Civil Rights Commission of such failure or refusal.

15.3.5. If the State Civil Rights Commission finds that the Contractor has not complied with these Equal Employment Opportunity provisions, the Owner may, and shall, if directed by the Authority, consider such failure to comply to be a material breach of this Agreement. If the Authority directs the Owner to consider such non-compliance a material breach, the Owner shall take such action as is directed by the Authority.

15.3.6. If the Contractor ceases to perform the Work as a consequence of a default under Section 15.3.5, then, in addition to other rights of the Owner provided in this Agreement upon its breach by the Contractor, the Contractor will hold the Owner harmless against any additional expenses or costs incurred by the Owner or the Authority in completing the Work or in purchasing the services, materials, equipment or supplies contemplated by the Contract Documents, and the Owner, at the direction of the Authority, shall withhold payments from the Contractor in an amount sufficient for this purpose and recourse may be had against the Contractor's Assurance of Completion if necessary.

15.3.7. The Contractor will include the provisions of Sections 15.3.4 through 15.3.6 in every subcontract or purchase order in such manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of Michigan. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the Authority may direct, including sanctions or remedies for noncompliance.

15.3.8 To the extent that any provision of this Section 15.3 is inconsistent or in conflict with any provision of Executive Order No. 11246 of September 24, 1965, the provisions of Executive Order No. 11246 of September 24, 1965 shall control. Notwithstanding the foregoing, whenever the standard or requirement contained in this Article is higher or greater than that contained in Executive Order No. 11246, the higher or greater standard shall be used.

#### 15.4 ENFORCEMENT

15.4.1 The provisions of this Article may be enforced by the Owner, the Authority, the U.S. Department of Housing and Urban Development, the U.S. Department of Labor, and, to the extent permitted by law, any person intended to be benefitted by them. A breach of the provisions of this Article shall be considered a material breach of this Contract and shall give the Owner the right to terminate the Contractor. A breach of

the provisions of this Article may also result in the debarment of the Contractor from future participation in U.S. Government contracts under 29 CFR Part 98.

## **ARTICLE XVI - SUBCONTRACTS AND ASSIGNMENTS**

### **16.1 SUBCONTRACTS**

16.1.1 The Contractor shall not subcontract all of the Work without the prior written consent of the Owner and the Authority. The Contractor shall submit to the Owner and the Authority the names of the subcontractors to whom the Contractor proposes to subcontract any part of the Work, together with such information as to the qualifications and ability of such proposed subcontractors to perform the Work satisfactorily as the Authority may request. On request of the Authority, the Contractor shall submit to the Authority a copy of each Contract the Contractor shall make with such subcontractors. The Contractor shall not subcontract any Work to a subcontractor with regard to which the Contractor has received written notice of objection from the Authority provided that any such notice of objection must be received by the Contractor within ten (10) days of the receipt by the Authority of such subcontractor's name and qualifications. The Contractor shall be as fully responsible to the Owner and the Authority for the acts and omissions of the Contractor's subcontractors and all persons either directly or indirectly employed by such subcontractors as the Contractor. The Contractor shall cause and require provisions to be included in all subcontracts for any part of the Work, binding the subcontractors to comply with the terms of the Contract Documents insofar as applicable to the Work of such subcontractors.

### **16.2 SUBCONTRACTORS TO BE OBLIGATED TO OWNER AND AUTHORITY**

16.2.1 The Contractor shall cause and require to be included in all subcontracts a provision for the benefit of the Owner and the Authority binding the subcontractors to remain bound by the subcontracts in the event the Contractor is replaced by another contractor pursuant to the terms of the Contract Documents.

### **16.3 INSPECTION OF SUBCONTRACTOR'S RECORDS IF IDENTITY OF INTEREST EXISTS.**

16.3.1 The Contractor shall further cause and require to be included in all subcontracts a provision that representatives of the Authority shall have full and free access, during working hours, to all books of account and records of the subcontractor relating to the Work under this Agreement, including the right to make excerpts or transcripts from such books of account and records and related and supporting documents and statements, in the event that the Authority determines that there is an Identity of Interest, as defined in Section 502 hereof, between either the Owner or the Contractor and any such subcontractor.

### **16.4 SUBCONTRACT PROVISIONS**

16.4.1 The Contractor shall, where applicable, include language to the following effect in all subcontracts and agreements with material suppliers:

Although an owner of the Contractor is a general partner of the Owner of the property for which the subcontractor (supplier) is furnishing work (material), this Contract is not entered into by the Contractor in his capacity as a general partner or agent of the Owner, but rather as an independent contractor. This Contract shall not be construed to constitute a contractual relationship between the Owner of the property and the subcontractor (supplier) nor shall the subcontractor (supplier) be relieved from any obligation to give the Owner "Notice of Furnishing."

## 16.5 CONTRACTOR ASSISTANCE PROGRAM (CAP)

16.5.1 The Contractor shall cooperate with the Authority and any lender who makes a loan in connection with the Contractor Assistance Program ("CAP"), by making all payments due any Participating Subcontractor by check(s) jointly payable to the Participating Subcontractor and the designated CAP lender, provided the Participating Subcontractor has agreed in writing in advance to such joint payment with the designated CAP lender. A Participating Subcontractor is defined as a subcontractor who has secured a loan under CAP and the proceeds of the CAP loan were used or were intended to be used to pay for labor and/or materials provided by the subcontractor with respect to a specific Authority-related Contract.

16.5.2 The Contractor acknowledges that the CAP lenders will make or has made a loan to the Participating Subcontractor in reliance upon the Contractor's agreement to make all payments to Participating Subcontractors by check(s) made jointly payable to the Participating Subcontractor and the designated CAP lender.

16.5.3 In the event that the Contractor replaces or terminates employment of any Participating Subcontractor who has an outstanding balance on a CAP loan, and the Participating Subcontractor (or the subcontractor's assignee) has agreed in writing to such withholding, the Contractor agrees to withhold disbursement of any payments or monies owed to the subcontractor (or the subcontractor's assignee) until the CAP loan has been fully satisfied, unless the payment or payments are made by check(s) made jointly payable to the Participating Subcontractor and the CAP lender.

## **ARTICLE XVII - INSURANCE**

### 17.1. TYPE AND AMOUNT

17.1.1 The Contractor shall obtain and pay for and keep in effect from the inception of construction, or from such time as the Authority may require, the following insurance:

a. Broad Form Comprehensive General Liability Insurance covering the Contractor in the minimum amount of \$500,000/\$2,000,000 for bodily injury and \$100,000/\$200,000 for property damage. Such policy shall include contractual liability insurance applicable to the Contractor's obligations under Article 8 of the Construction Contract.

b. Workmen's Compensation and Employer's Liability Insurance covering the Contractor.

### 17.2 FORM, COMPANIES AND ORIGINAL POLICIES

17.2.1 The policies of such insurance shall be in force, shall be issued by companies qualified to do business in the State of Michigan and acceptable to the Authority, shall be in form and amount and with premium charges satisfactory to the Authority, shall provide that the Authority shall be given thirty (30) day advance written notice of the cancellation, expiration or termination of the policy or any material change in the coverage afforded thereunder, and a certificate of insurance which indicates that such a policy(ies) is in force shall be delivered to and deposited with the Authority prior to the initial closing. The cost of such insurance shall be included in the actual cost of construction as defined in Section 501.

### 17.3. UNINSURED CLAIMS

17.3.1 If any action by any person, firm or corporation is brought against the Owner or against the Contractor and the Owner for any alleged loss, damage or injury arising out of or in the consequence of the

performance or non-performance of this Agreement which, in the reasonable opinion of the Owner and the Authority, may not be covered by the contingent liability, public liability or property damage insurance policy, or, which together with other such actions or claims seeks a recovery in excess of the amount payable under such policies, the amount of such recovery sought or so much thereof as the Authority reasonably deems necessary may be withheld by the owner from any money due the Contractor until such time as the commencement of an action as security against such claims would be barred by law or until final adjudication or determination of such action by a court or other tribunal of competent jurisdiction. The Owner and the Authority in their discretion may permit the Contractor to substitute other satisfactory security in lieu of the monies so withheld. If the liability of the Owner or the Contractor, or both, shall be established in an action by final judgment or award of a court or other tribunal of competent jurisdiction, or if such recovery sought shall have been admitted by the Contractor to be valid, the Owner may pay such judgment, award or admitted recovery out of the monies retained by the Owner under the provision of this Article, and return the balance, if any, to the Contractor.

## **ARTICLE XVIII - MISCELLANEOUS PROVISIONS**

### **18.1 LAW OF THE PLACE**

18.1.1 The Contract shall be governed by the laws of the State of Michigan.

### **18.2 SUCCESSORS AND ASSIGNS**

18.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other and the prior written consent of the Authority, nor shall the Contractor assign any monies due or to become due to him hereunder, without the prior written consent of the Owner and the Authority.

### **18.3 CLAIMS FOR DAMAGES**

18.3.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **18.4 ROYALTIES AND PATENTS**

18.4.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

### **18.5 TESTS**

18.5.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the Architect and the Authority timely notice of its readiness and of the date arranged so the Architect

and representatives of the Authority may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals unless otherwise provided.

18.5.2 If after the commencement of the Work the Architect determines that any Work requires special inspection, testing or approval which Section 18.5.1 hereof does not include, upon written authorization from the Owner, he will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as in Section 18.5.1 hereof. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the cost of Architect's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be initiated.

18.5.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Architect and the Authority.

18.5.4 If the Architect is to observe the inspections, tests or approvals required by this Section 18.5, he will do so promptly and, where practicable, at the source of supply.

18.5.5 Neither the observations of the Architect in his Administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

#### 18.6 INTEREST

18.6.1 Any monies not paid when due to either party under this Contract shall bear interest at the legal rate in force in the State of Michigan.

#### 18.7 JOB SIGN

18.7.1 The Contractor shall cause to be erected, in a conspicuous place on the Property and at his sole cost and expense, a sign identifying the Development, which sign shall comply with specifications therefor issued by the Authority.

#### 18.8 RIGHTS AND REMEDIES

18.8.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

18.8.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### 18.9 SUBHEADINGS

18.9.1 All captions and subheadings in this document are intended for reference purposes only and shall have no effect upon the terms and conditions of this document.

\*\*\* LIMITED DIVIDEND  
HOUSING ASSOCIATION LIMITED  
PARTNERSHIP (Owner)



Dated: \*\*\*

By: \_\_\_\_\_  
\*\*\* (for individual GP)  
Its: General Partner

By:\*\*\* (for corporate or partnership GP)  
Its: General Partner

By: \_\_\_\_\_  
\*\*\*  
Its: \*\*\*

\*\*\* (General Contractor)

By: \_\_\_\_\_  
\*\*\*  
Its:

## EXHIBIT C-GC

### FEDERAL EQUAL OPPORTUNITY CLAUSE (EXECUTIVE ORDER 11246)

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## EXHIBIT D-GC

### SECTION 3 CLAUSE

The Contractor and all subcontractors shall be asked to indicate a good faith effort to meet the Section 3 requirement by signing contracts which contain the clause set forth in 24 CFR 135.38 as follows:

A. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (ASection 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD-assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).