



# **SUPPLEMENTAL GENERAL CONDITIONS FOR CONSTRUCTION AGREEMENTS**

July 15, 2008

**Article 1. Intent and Purpose: Senate Bill 220 – 2008.**

The 2008 Utah Legislature passed Senate Bill 220 entitled “Cause of Action for Defective Construction” which law became effective May 5, 2008 (hereinafter “SB220”). The intent purpose of Article 1 through 3 of these Supplement General Conditions is to provide the necessary provisions to the General Conditions as a result of such Bill.

**Article 2. “Entities under the Contractor”** shall mean any and all agents, independent contractors, subcontractors, suppliers, manufacturers and providers at every tier under the General Contractor.

**Article 3. General Provisions**

**3.1 Conditions.** The General Conditions impose duties and performance obligations on the parties. This includes, but is not limited to, the provisions of Article 5.2.1 (regarding subcontractor’s compliance with Contract Documents), Article 4.13 (indemnification which discusses acts, omissions, and negligence responsibility) and other provisions of the General Conditions which list many performance obligations of the General Contractor and those under the General Contractor.

**3.2 Third Party Beneficiary.** The State of Utah and DFCM shall be an intended third party beneficiary to all contracts entered into with Entities under the Contractor. Upon written request by DFCM, DFCM shall be entitled to obtain copies of all such contracts. The General Contractor shall be responsible for assuring that all such third party beneficiary agreements are in place and shall bear the responsibility for any lack of required language in any contracts with an Entity under the Contractor which does not contain this required provision.

**3.3 “Economic Loss Rule.”** The “Economic Loss Rule” as it has been referred to in Utah law shall be deemed to be interpreted in accordance with prevailing Utah law.

- 3.4 Toxic Torts.** “Defective Construction” for purposes of any limitation of any cause of action or right as contemplated by SB220 does not, under these Supplemental General Conditions and for purposes of any Entities under the Contractor, include the use or installing of a defective or inherently dangerous, hazardous or toxic product, substance, or material. The State has third party beneficiary rights and other rights allowed by law to pursue a direct cause of action against the manufacturer and/or distributor of such defective or inherently dangerous, hazardous or toxic product, substance or material, except that the General Contractor and other subcontractors, exclusive of manufacturers and distributors, under the General Contractor shall not be responsible to the State of Utah for said “product, substance or material” unless the General Contractor or such subcontractor knew or should reasonably have known that the product, substance or material was defective or inherently dangerous, hazardous or toxic at the time it was provided or installed on the Project.
- 3.5 Subsection 3 of SB 220.** For purposes of Subsection (3) of SB 220, the phrase “property damage” shall be deemed to refer to damage to “other property” meaning property that is other than the exact specific construction defect itself.
- 3.6 “Failure of the Construction to Function as Designed.”** The language “failure to function as designed” as used in SB 220 shall not be deemed to refer to the failure of the construction to be constructed in accordance with the Contract Documents.
- 3.7 Independent Duty.** The State of Utah and DFCM maintain the right to pursue a cause of action against the General Contractor and directly against any Entities under the Contractor, for violation of any independent duty owed to the State of Utah or DFCM.
- 3.8 Not create Contract Right by Entity under the Contractor with State of Utah or DFCM.** These Supplemental General Conditions shall not be construed in any manner which would create a contract between the State of Utah/DFCM and any Entity under the Contractor, except for the Third Party Beneficiary rights of the State of Utah/DFCM provided herein. Any pursuit of a claim by an Entity under the Contractor, including payment claims, shall be maintained either against the payment bond or the upper tier Contractor in accordance with Utah law.

#### **Article 4. Warranties and Obligations**

Every Entity under the Contractor has an obligation to comply with the requirements of this Contract, including the indemnification of the Owner for negligent or intentional construction defects and to provide materials and construction that meets all express or implied warranties under the Uniform Commercial Code, including fitness for a particular purpose, merchantability, workmanlike construction (work completed in a skillful manner and is non-defective) and habitability, and is performed with the reasonable care to protect persons and property. In regard to toxic, hazardous materials and other matters of construction where applicable statutory and case law allows, strict liability shall apply.



# **SUPPLEMENTAL GENERAL CONDITIONS FOR DESIGN AGREEMENTS**

July 15, 2008

## **Article 1. Intent and Purpose: Senate Bill 220 – 2008.**

The 2008 Utah Legislature passed Senate Bill 220 entitled “Cause of Action for Defective Construction” which law became effective May 5, 2008 (hereinafter “SB220”). The intent purpose of these Supplement General Conditions is to provide the necessary provisions to the General Conditions as a result of such Bill.

**Article 2. “Entities under the Designer”** shall mean any and all agents, independent contractors, consultants, subconsultants, subcontractors, suppliers, manufacturers and providers at every tier under the Designer.

## **Article 3. General Provisions**

- 3.1 Design Agreement.** The Design Agreement for the subject Project imposes duties and performance obligations on the parties. This includes, but is not limited to, the standard of care provisions provided in said Design Agreement.
- 3.2 Third Party Beneficiary.** The State of Utah and DFCM shall be a third party beneficiary to all contracts entered into with Entities under the Designer. Upon written request by DFCM, DFCM shall be entitled to obtain copies of all such contracts. The Designer shall be responsible for assuring that all such third party beneficiary agreements are in place and shall bear the responsibility for any lack of required language in any contracts with an Entity under the Designer which does not contain this required provision.
- 3.3. “Economic Loss Rule.”** The “Economic Loss Rule” as it has been referred to in Utah law shall be deemed to be interpreted in accordance with prevailing Utah law.
- 3.4 Toxic Torts.** “Defective Construction” for purposes of any limitation of any cause of action or right as contemplated by SB220 does not, under these Supplemental General Conditions and for purposes of any Entities under the Designer, include the use or installing of a defective or inherently dangerous,

hazardous or toxic product, substance, or material. The State has third party beneficiary rights and other rights allowed by law to pursue a direct cause of action against the manufacturer and/or distributor of such defective or inherently dangerous, hazardous or toxic product, substance or material, except that the Designer and other consultants/subconsultants under the Designer, exclusive of manufacturers and distributors, shall not be responsible to the State of Utah for said “product, substance or material” unless the Designer or such consultants/subconsultants knew or should reasonably have known that the product, substance or material was defective or inherently dangerous, hazardous or toxic at the time it was made a part of the Contract Documents by the Designer.

- 3.5 Subsection 3 of SB 220.** For purposes of Subsection (3) of SB 220, the phrase “property damage” shall be deemed to refer to damage to “other property” meaning property that is other than the exact specific construction defect itself.
- 3.6 “Failure of the Construction to Function as Designed.”** The language “failure to function as designed” as used in SB 220 shall not be deemed to refer to the failure of the construction to be constructed in accordance with the Contract Documents.
- 3.7 Independent Duty.** The State of Utah and DFCM maintain the right to pursue a cause of action against the Designer and directly against any Entities under the Designer, for violation of any independent duty owed to the State of Utah or DFCM.
- 3.8 Not create Contract Right by Entity under the Designer with State of Utah or DFCM.** These Supplemental General Conditions shall not be construed in any manner which would create a contract between the State of Utah/DFCM and any Entity under the Designer, except for the Third Party Beneficiary rights of the State of Utah/DFCM provided herein. Any pursuit of a claim by an Entity under the Designer, including payment claims, shall be maintained against the upper tier entity in accordance with Utah law