

REQUEST FOR BOARD ACTION / CONTRACT CONTROL FORM

Tracking Number: 112

Date of Request: March 14, 2008

Date Request Received: March 14, 2008

Board Meeting Date Requested: April 7, 2008

Board Meeting Date Assigned: April 7, 2008

Short Title: Consider A Request And Authorization For Partial Release Of Escrow Funds For S&R Grandview.

- Request Status:**
- Request is proceeding to Board of Commissioners
 - More information is needed – see attached
 - Request on hold – no further information needed
 - Other:

Background: S&R Grandview is Requesting an Authorization for partial release of Escrow Funds. The amount in the escrow account as of 1, January 2008 is \$368,287.61. After the payment of the partial release, \$50,000 will be left in the escrow account to cover the remaining work to be done, contracted at \$36,499. This is an amount equal to 135% of the contract price.

(Administrative Use Only)

Specific Action Requested: Consider A Request And Authorization For Partial Release Of Escrow Funds For S&R Grandview.

CONTRACT TYPE

Requested by: Trey Thurman
Department:
Title: County Attorney
Contact Phone: 259-1200
Contact Fax:

- Renewal
- For Service(s)
- Intergovernmental – County as Grantee
 - Federal Grantor
 - State Grantor
 - Grant or
- County as Grantor
 - County Funds
 - Other Funds:
- Revision
- For Equipment

PURCHASING Budgeted Item: Yes No
Date Rec'd: Reviewed and Approved
 Comments on Reverse

Date Sent: Signed:

ATTORNEY Reviewed and Approved
Date Rec'd: Legal Problem(s)
 Comments on Reverse

Date Sent: Signed:

FINANCE Sufficient Funds Available Not Available
Date Rec'd: Budget Amendment Necessary
 Budgeted Amendment is Attached
 Comments on Reverse

Date Sent: Signed:

CLERK Signature(s) Required:
 Board Chairman/County Manager
 Other:

Date Rec'd Approved by Board: Yes No
At meeting on

Ashley Frank

From: Ken Vafier [vafierk@pender-county.com]
Sent: Friday, March 14, 2008 10:12 AM
To: Ashley Frank
Subject: FW: Eagles Watch partial payment

From: Richard Von Biberstein [mailto:rick@bibnunlaw.com]
Sent: Wednesday, February 27, 2008 10:22 AM
To: Cwtiii@aol.com
Cc: vafierk@pender-county.com; Don Rhine; Joel Rhine; Gordon Frieze; mary@bibnunlaw.com
Subject: Eagles Watch partial payment

Trey:

As you may recall, we submitted a request for final payment from the Eagles Watch escrow account. You pointed out that the final payment could not be made until the project was completed totally and warranties etc. were presented. We decided to process as a partial release like we did back in October.

Accordingly, I am attaching copies of the following:

1. Request and Authorization for Release of Escrow Funds in the amount of \$318,287.61.
2. Contractor's final waiver of lien etc. for this contract for Simmons Construction Company.
3. Surveyor's certification for this project.
4. Engineer's certification for this project.
5. Page one and two and the signature page of a contract for \$36,499 for the completion of Gladiolus Road, the one road remaining to be done. This is by the same contractor but a separate contract for this particular road only. This is the emergency road out to Howard's Lane, to provide separate exit from the main road.

The originals of these documents are being hand delivered to Ken Vafier at the Planning Department.

The amount in the escrow account as of 1 January 2008 is \$368,287.61. After the payment of the partial release, \$50,000 will be left in the escrow account to cover the remaining work to be done, contracted at \$36,499. This is an amount equal to 135% of the contract price.

Parentetically, we have in hand a warranty signed by Simmons Construction Company warranting the work for one year from the date of acceptance by the County. Attached is a copy of that warranty. This will be used when the final acceptance is made.

If at all possible, S&R Grandview (the Rhines) would like to have this approved by the County Commissioners Monday night. I realize that this is late notice, but there was an unfortunate delay in getting all of the paperwork together. Please let me know if you think this is doable for Monday night.

If any questions, please advise.

Rick

R. v. Biberstein, Jr.
Biberstein & Nunalee, LLP
102 S. Walker Street
P. O. Box 428
Burgaw, NC 28425
Tel #910-259-2175 x 14
Fax #910-259-6823
Email: rick@bibnunlaw.com

3/14/2008

EXHIBIT "A"

REQUEST & AUTHORIZATION FOR RELEASE OF ESCROW FUNDS

EAGLE'S WATCH SUBDIVISION

Whereas, Pender County and S&R Grandview, LLC ("the Subdivider") have entered into an agreement to escrow funds to insure the completion of improvements in Eagle's Watch Subdivision hereafter referred to as the "Subdivision;" and

Whereas, a certain phase of the improvements in the Subdivision have been completed and the parties, by their execution of this request & authorization, agree to the disbursement of escrowed funds.

Now, therefore the parties to the Escrow Agreement for the Subdivision hereby authorize the Escrow Agent to disburse the sum of \$318,287.61 Dollars in accordance with the Escrow Agreement.

IN WITNESS WHEREOF, the County and the Subdivider have hereunto set their hands and seals, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers by authority of its Board of Directors, the day and year first above written.

TYPE REQUEST: X Partial or _____ Final.

REQUEST FOR RELEASE OF ESCROW FUNDS:

FOR: SUBDIVIDER

S&R Grandview LLC

Print Name



Signature

Manager

Title

2/26/08

Date

AUTHORIZATION FOR RELEASE OF ESCROW FUNDS:

FOR: PENDER COUNTY

Planning Director

Date

**CONTRACTOR'S
FINAL WAIVER OF LIEN,
RELEASE, AFFIDAVIT, AND INDEMNIFICATION AGREEMENT**

FROM: Simmons Construction Company **TO: S&R Grandview, LLC**
(hereinafter "Undersigned" as Contractor) ("Owner")

TO: Cooperative Bank
("Lender")

Project: Eagle's Watch
Topsail Township
Pender County

TO: Investors Title Insurance Company
North Carolina Title Center, LLC
("Title Insurer")

Project description and
Address of the Real Property:
Eagle's Watch S/D

RECEIVED OF OWNER the sum of \$1,443,689.87, which sum represents the total amount paid, INCLUDING THE AMOUNT OF THE CURRENT APPLICATION FOR PAYMENT.

The current Application for Payment, No. 8 dated August 15, 2007 and the previous applications were for work done and materials supplied in connection with the making of improvements on or beneath the Real Property and Project pursuant to the Undersigned's contract with Owner.

The Undersigned, on oath, states that the current payment claimed is due for all work, including but not limited to: labor; professional design or surveying services; equipment; materials, appliances; machinery; fixtures; or furnishings (all of which are herein referred to as "Work") supplied to and for the Project through the above date and that no additional sum is claimed by the Undersigned for any prior Work relating to the Project.

The Undersigned, on oath, states that all persons and firms who supplied Work to the Undersigned in connection with the Project have been paid by the Undersigned for all such Work through the date of the Undersigned's prior payment application to Owner, and will promptly pay for all Work which is included in the current Application for Payment.

In consideration of the payment herewith made and other good and valuable consideration, the Undersigned does fully and finally release, indemnify and hold harmless the Owner, its Lender and Title Insurance Company, if any, THROUGH THE DATE OF THE CURRENT APPLICATION FOR PAYMENT from any and all claims, liabilities, expenses (including attorney fees) or liens, under any applicable bond, law or statute for Work in connection with the Project.

It is understood that this Affidavit is submitted to induce payment of the current Application for Payment and for use by Owner in assuring for itself and others that all liens and claims are paid relating to the Work furnished by the Undersigned in connection with the Project.

DATED: 1-14-2008

CONTRACTOR

Summers Const.

By: Steve Summers

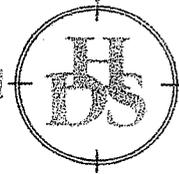
Title: Owner
Authorized Representative

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

Subscribed and sworn to before me this 14 day of Jan, 2008

[Signature]
Notary Public

My Commission Expires: 11/15/10



Surveyor Certification Improvements Major Subdivision

December 13, 2007

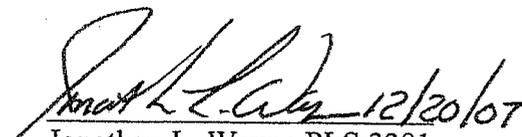
Pender County Planning Dept.
805 S. Walker Street
Burgaw NC 28425

Ref. Installation of Required Survey Items

Eagles Watch Subdivision

This will provide certification that the following improvements have been installed to the specifications noted for Eagles Watch Subdivision – Phase One

1. Control Points or other markers have been set at the point of curvature (PC and PT) or at the point of intersection (PI) of all street centerline curves.
2. Steel or iron pipes, not less than one half inch in diameter at thirty inches long (property markers) have been installed at all property and lot corners, except those located by concrete monuments.
3. This development or a portion thereof is located in a FEMA designated Special Flood Hazard Area and a permanent bench mark is located on the southern line tract line and in the centerline of Grandview Drive and shown on Eagles Watch, Section One map as recorded at map book 42 page 038, slide 564, sheet one.
4. The Homeowner's Association documents for this development have been recorded in book 2997 page 162 and amended and recorded at book 3116 page 222 and the plat for section one has been recorded at map book 42 page 038, slide 564 and all open space and common area areas are shown on said section one plat.


Jonathan L. Wayne PLS 3391



Please Note: Engineer Certification provided for Engineer related items by Stewart Engineering, dated December 7, 2007



STEWART

Engineer/Surveyor Certification Improvements Major Subdivisions

December 7, 2007

Date

Pender County Planning Dept.
805 S. Walker St.
Burgaw NC 28425

Ref. Installation Required Improvements

Eagle's Watch Subdivision

Name and Section of Subdivision

This will provide certification that the following improvements have been installed to the specifications noted for the above referenced subdivision and section:

1. The streets in this development are private, however we have performed periodic inspections during construction of said streets and certify that their construction is complete and meets the Standard NCDOT Subdivision Roads Minimum Construction Standards and the drainage facilities for said streets have been designed and constructed in accord with Minimum Design and Construction Criteria for Subdivision Roads, contained in the NCDOT Subdivision Roads Minimum Construction Standards and NCDOT Guidelines for Drainage Studies and Hydraulic Design.
2. Drainage facilities in addition to the street drainage have been installed for the remainder of the development that will accommodate the ten year, one hour storm event without flooding or substantial ponding of water on any lots in the development or any area of the development to be used for building construction. Drainage easements of at least 20' in width have been reserved astride these facilities where they are located on private property.
3. **Refer to Professional Land Surveyors Certification Form (This item is not certified by the Professional Engineer)** Concrete control monuments or other markers as required in the Pender County Subdivision Ordinance have been set at the points of curvature (PC and PT) or at the point of intersection (PI) of all street centerline curves and the control corners comply with the requirements of Article 5A of GS 39.
4. **Refer to Professional Land Surveyors Certification Form (This item is not certified by the Professional Engineer)** Steel or iron pipes, not less than one half inch in diameter at least thirty inches long (property markers) have been installed at all property and lot corners, except those located by concrete monument.
5. Street name signs have been installed at all street intersections in accord with the specifications and requirements of Pender County Emergency Management Office.
6. Road signs have been installed in accord with NCDOT Standards.



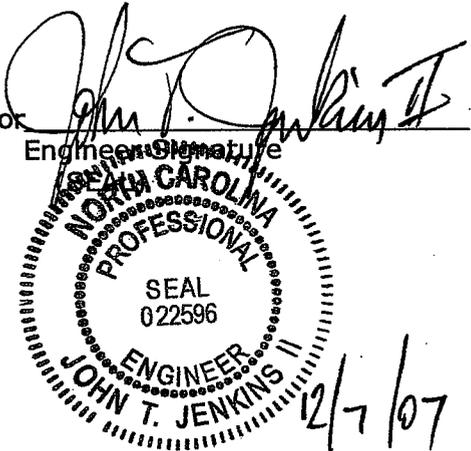
STEWART

- 7. **Refer to Professional Land Surveyors Certification Form (This item is not certified by the Professional Engineer)** This development or a portion thereof is located in a FEMA designated Special Flood Hazard Area and a permanent concrete monument located _____ has been installed and its elevation is shown on the final plat of _____ Section _____. **OR** This development does not contain any FEMA designated Special Flood Hazard Areas and elevation monuments have not been installed.
- 8. **Refer to Professional Land Surveyors Certification Form (This item is not certified by the Professional Engineer)** The Homeowner's Association documents for this development have been recorded in Book ____ Page ____ and the plat for this section has been recorded at Slide _____, Sheet _____ and all open space (15% of total area) and common area and facilities shown on the plat have been transferred to the Homeowner's Association.
- 9. The public water system has been installed meeting the latest minimum design and installation standards of North Carolina.

Surveyor Signature
(SEAL)

and/or

Engineer Signature



Surveyor Name

John T. Jenkins II, PE
Engineer Name

**Please note: Engineer Certification
for Items 1, 2, 5, 6, and 9**

**ABBREVIATED STANDARD FORM OF AGREEMENT BETWEEN OWNER AND
THE CONTRACTOR FOR CONSTRUCTION PROJECTS OF LIMITED SCOPE
WHERE THE BASIS OF PAYMENT IS A STIPULATED SUM**

AGREEMENT made as of the Twenty-fifth (25) day of February in the year Two Thousand Eight (2008)

BETWEEN the Owner:
S & R Grandview, LLC
314 Walnut St
Wilmington, NC 28401

and the Contractor:
Steve B. Simmons Construction Company, LLC
4810 New Britton Loop Road
Ash, NC 28420

the Project is:
Eagle's Watch Subdivision-Gladiola Rd.
Pender County, NC

the Engineer is:
Stewart Engineering Inc.
260 Town Hall Drive
Suite C
Morrisville, NC 27560

The Owner and The Contractor agree as follows:

To Construct Eagle's Watch - Gladiola Rd in its entirety according to construction drawings referenced by this contract; Documents and Quantities attached hereto and made a part of this agreement as Attachment A-1 and A-2.

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The work is generally described as follows:

All construction clearing and grubbing, sediment and erosion control, seeding, excavation, grading, earthwork, curb, and, road base and asphalt to complete Eagle's Watch- Gladola Rd.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

The Date of Commencement shall be on or about February 25, 2008.

2.2 The Contract Time shall be measured from the date of commencement.

2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 60 days from the date of commencement, subject to adjustments of this Contract Time as provided in the Contract Documents.

ARTICLE 3 CONTRACT SUM

3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be **Thirty-Six Thousand Four Hundred Ninty-Nine Dollars and Zero Cents. (\$36,499.00)**, subject to additions and deletions as provided in the Contract Documents.

3.2 The Contract Sum is based upon a lump sum bid for the completion of said project in accordance with the design drawings. Any changes must be approved by owner in writing.

ARTICLE 4 PAYMENTS

4.1 PROGRESS PAYMENTS

4.1.1 Based upon Applications for Payment submitted to the Engineer by the Contractor and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

4.1.2 Provided that an Application for Payment is received and approved by the Engineer not later than the TWENTY FIFTH (25TH) day of the month, owner will make payment to the Contractor not later than the TWENTY FIFTH (25th) day of the following month. If an Application for Payment is received by the Owner after the date fixed above, payment shall be made by the Owner not later than THIRTY (30) days after the Engineer receives the Application for payment and approves the same.

4.1.3 Subject to other provisions of the Contract Documents, the amount of each progress payment will be computed as follows.

1 Take the portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the work in the Schedule of Values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in Work.

- 2 Add the portion of the Contract Sum properly allocable to the materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Completed Construction.
- 3 Subtract the aggregate of previous payments by the Owner; and
- 4 Subtracts amounts, if any, for which the Engineer has withheld or nullified a Certification for Payment as provided in Article 14 of this Document.
- 4.1.4 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

Prime Rate plus 5%

4.2 FINAL PAYMENT

4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Paragraph 17.2, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment has been issued by the Engineer.

4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:
n/a

ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

5.1 The Contract Documents are listed in Article 6 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

5.1.2 The Supplementary and other Conditions of the Contract are as follows:

NONE

5.1.3 The Specifications are those contained in the Project Manual dated as in Subparagraph 5.1.2, and are as follows:

5.1.4 The Drawings are as follows, and are dated July 25, 2006.

Number	Title
2A	General / Construction Notes
2B	Roadway Typical Sections
8	Roadway Plan
14	Grading & Drainage/ Erosion Control Plan
26	Roadway Profile

See Attachment A-1 attached hereto and incorporated by reference.

5.1.5 The Addenda, if any, are as follows: None

Number

Date

Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 5.

5.1.6 Other documents, if any, forming part of the Contract Documents are as follows:

A-1, Construction Drawings

A-2, Construction Proposal / Estimate

GENERAL CONDITIONS

ARTICLE 6 GENERAL PROVISIONS

6.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Engineer. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

6.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and Contractor, (2) between the Owner and a Subcontractor or sub-subcontractor, (3) between the Owner and Engineer or (4) between any persons or entities other than the Owner and Contractor.

6.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

6.4 EXECUTION OF THE CONTRACT

Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

6.5 OWNERSHIP AND USE OF ENGINEER'S, DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

The Drawings, Specifications and other documents, including those in electronic form, prepared by the Engineer and the Engineer's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents. Prepared by the Engineer or the Engineer's consultants, and unless otherwise indicated the Engineer and the Engineer's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Engineer, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Engineer and the Engineer's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer's consultants. The Contractor, Subcontractors, sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Engineer and the Engineer's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Engineer and the Engineer's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Engineer's or Engineer's consultants' copyrights or other reserved rights.

ARTICLE 7 OWNER

7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

7.1.1 The Owner shall furnish and pay for surveys and a legal description of the site.

7.1.2 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

7.1.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for other necessary

approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

7.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after 10 days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Engineer's services made necessary thereby, from the payment then or thereafter due the Contractor.

ARTICLE 8 CONTRACTOR

8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

8.1.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 7.1-1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents; however, any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to the Engineer as a request for information in such form as the Engineer may require.

8.1.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Engineer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

8.2 SUPERVISION AND CONSTRUCTION PROCEDURES

8.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other

specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall be fully and solely responsible for the jobsite safety thereof unless the Contractor gives timely written notice to the Owner and Engineer that such means, methods, techniques, sequences or procedures may not be safe.

8.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

then or thereafter due the Contractor.

8.3 LABOR AND MATERIALS

8.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

8.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

8.3.3 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

8.3.4 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order.

8.4 WARRANTY

The Contractor warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage. Notwithstanding the above and in addition thereto, Contractor warrants to Owner and Pender County that all improvements it has or will undertake at the Eagle's Watch Development by reason of this contract or any other contract, are warranted for a period of one year from the date that the improvements are accepted by Pender County. This Warranty is intended to encompass and comply with the Pender County Ordinance Defects Guarantee Requirements, which is incorporated herein.

8.5 TAXES

The Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded.

8.6 PERMITS, FEES AND NOTICES

8.6.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

8.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Engineer and Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith if the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Engineer and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

8.7 SUBMITTALS

8.7.1 The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals.

8.7.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

8.8 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

8.9 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

8.10 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

8.11 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties. And license fees; shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by

the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Engineer, unless the Contractor has reason to believe that there is an infringement of patent or copyright and fails to promptly furnish such information to the Engineer.

8.12 ACCESS TO WORK

The Contractor shall provide the Owner and Engineer access to the Work in preparation and progress wherever located.

8.13 INDEMNIFICATION

8.13.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by commercial general liability insurance coverage for Premises/Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage, the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 8.13.

8.13.2 In claims against any person or entity indemnified under this Paragraph 8.13 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 8.13.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 9 ENGINEERS'S ADMINISTRATION OF THE CONTRACT

9.1 The Owner will provide administration of the Contract (1) during construction, (2) until final payment is due and (3) from time to time during the one-year period for correction of Work described in Paragraph 17.2.

9.2 The Owner's representative, will visit the site at intervals appropriate to the stage of the Contractor's operations (i) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a

manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections. To check the quality or quantity of the Work. The Engineer will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 8.2.1.

9.3 The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

9.4 Based on the Engineers's evaluations of the Work and of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

9.5 The Engineer will have authority to reject Work that does not conform to the Contract Documents.

9.6 The Engineer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

9.7 The Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Engineer will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions so rendered in good faith.

9.8 The Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

9.9 Duties, responsibilities and limitations of authority of the Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Engineer. Consent shall not be unreasonably withheld.

9.10 CLAIMS AND DISPUTES

9.10.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Engineer but excluding those arising under Paragraph 15.2, shall be referred initially to the Engineer for decision. Such matters, except those relating to aesthetic effect and except those waived as provided for in Paragraph 9.11 and Subparagraphs 14-5.3 and 14-5.4, shall, after initial

decision by the Engineer or 30 days after submission of the matter to the Engineer, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

9.10.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by the Engineer, by mediation or by arbitration.

9.10.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association-currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

9.10.4 Claims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by mediation, except matters relating to aesthetic effect and except those waived as provided for in Paragraph 9.11 and Subparagraphs 14.5.3 and 14.5-4, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Engineer or any of the Engineer's employees or consultants. The agreement herein among the parties to the Agreement and any other written agreement to arbitrate referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

9.11 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives claims against each other for consequential damages arising out of or relating to this Contract. This waiver includes:

1. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

ARTICLE 10 SUBCONTRACTORS

10.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

10.2 Unless otherwise stated in the Contract Documents or the bidding requirement, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the names of the Subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has a reasonable objection to hiring.

10.3 Contracts between the Contractor and Subcontractors shall require each, Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Engineer.

ARTICLE 11 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

11.1 The Owner reserves the right to perform construction or operations related to the project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Paragraph 9.10.

11.2 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

11.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the

Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

ARTICLE 12 CHANGES IN THE WORK

12.1 The Owner, without invalidating the Contract may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Engineer, or by written Construction Change Directive signed by the Owner and Engineer.

12.2 The cost or credit to the Owner from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit.

12.3 The Engineer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

12.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted.

ARTICLE 13 TIME

13.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

13.2 The date of Substantial Completion is the date certified by the Engineer in accordance with Subparagraph 14.4.2.

13.3 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine, subject to the provisions of Paragraph 9.10.

ARTICLE 14 PAYMENTS AND COMPLETION

14.1 APPLICATIONS FOR PAYMENT

14.1.1 Payments shall be made as provided in Article 4 of this Agreement. Applications for Payment shall be in a form satisfactory to the Engineer and shall include a lien waiver acceptable to Owner indicating that the warranties contained in Section 14.1.2 below are satisfied.

14.1.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

14.2 CERTIFICATES FOR PAYMENT

14.2.1 The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding certification in whole or in part as provided in Subparagraph 14.2-3.

14.2.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluations of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

14.2.3 The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Subparagraph 14.2.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Subparagraph 14-2.1. The Engineer may

also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 8.2.2, because of.

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or another contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. failure to carry out the Work in accordance with the Contract Documents.

14.2.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

14.3 PAYMENTS TO THE CONTRACTOR

14.3.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

14.3.2 Neither the Owner nor Engineer shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

14.3.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

14.4 SUBSTANTIAL COMPLETION

14.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

14.4.2 When the Engineer determines that the Work or designated portion thereof is substantially complete, the Engineer will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Upon the issuance of the Certificate of Substantial Completion, the Engineer will submit it to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate

14.5 FINAL COMPLETION AND FINAL PAYMENT

14.5.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions stated in Subparagraph 14-5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

14.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

14.5.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 15 PROTECTION OF PERSONS AND PROPERTY

15.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein; and
3. other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Subparagraphs 15.1.2 and 15.1-3, except for damage or loss attributable to acts or omissions of the Owner or Engineer or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 8.13.

15.2 HAZARDOUS MATERIALS

15.2.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Engineer in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article 12 of this Agreement.

15.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Engineer, Engineer's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 15.2a and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

15.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 16 INSURANCE

16.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

16.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owners usual liability insurance.

16.3 Contractor shall maintain a commercial general liability policy in the amount of \$2,000,000 and provide Owner with Certificate of Insurance.

16.4 PROPERTY INSURANCE

16.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 14.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 16.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

16.4.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be

canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

16.5 WAIVERS OF SUBROGATION

16.5.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Engineer, Engineer's consultants, separate contractors described in Article 11, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Paragraph 16.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Engineer, Engineer's consultants, separate contractors described in Article 11, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

16.5.2 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

ARTICLE 17 CORRECTION OF WORK

17.1 The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

17.2 In addition to the Contractor's obligations under Paragraph 8.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 14.4.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the

requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

17.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 7.3.

17.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

17.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 17.

ARTICLE 18 MISCELLANEOUS PROVISIONS

18.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract without written consent of the other.

18.2 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

18.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall notify Owner and Engineer to schedule arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and Owner shall bear all related costs of passing tests, inspections and approvals, and Contractor shall bear all related costs of tests, inspections and approvals that fail and are thereafter reinspected. The Contractor shall bear all costs necessary to cure (to Owner's satisfaction) any deficiency causing a failure.

ARTICLE 19 TERMINATION OF THE CONTRACT

19.1 TERMINATION BY THE CONTRACTOR

If the Engineer fails to recommend payment for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment thereon for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner payment for Work executed.

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

19.3.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 20 LIQUIDATED DAMAGES

Should contractor fail to complete his work by the end of the contract period, liquidated damages may be assessed in the amount of \$250.00 per day for each consecutive calendar day thereafter in which the project is incomplete. The Contractor fully understands the importance of completing the project on time and agrees to pay any liquidated damages which may be assessed as described herein.

ARTICLE 21 OTHER CONDITIONS OR PROVISIONS

Eagle's Watch Subdivision

Contract Between S & R Grandview, LLC and Steve B. Simmons Construction Co., LLC.

Contractor shall provide lien waivers as the Contractor and those from subcontractors and material men with all draw requests. In the event any subcontractors or material man should file a mechanics lien against the project after Owner has paid Contractor for such work and material, Contractor shall have such lien removed and/or bonded off within ten calendar days of being notified of such lien.

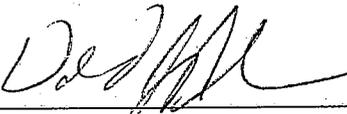
All monthly draw requests will be submitted to the Construction Observer (Sandy Brown) for review and approval by Engineer. All revisions required once the review is complete shall be made by the Contractor, and the draw request will be re-submitted. Contractor is expected to make necessary revisions within five(5) calendar days. Should resubmittal take more than five calendar days, Owner's period to pay such invoice will be extended by one day for each day past five calendar days Contractor takes to resubmit. Monthly draw request will only be paid once the Contractor, the Construction Observer, and the Engineer have approved and signed the draw request.

The Owner's representative is:

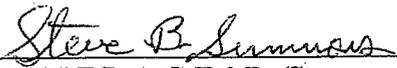
Sandy Brown
232 Loder
Wilmington, NC 28409

The Contractor's representative is: Steve Simmons
4810 New Britton Loop Road
Ash, NC 28420

This Agreement entered into as of the day and year first written above.



OWNER (Signature)
S & R Grandview, LLC



CONTRACTOR (Signature)
Steve B. Simmons Construction Co.

DONALD J. RHINE MANAGER
(Printed name and title)

STEVE B. SIMMONS
(Printed name and title)

Attachment A-1

Attachment A-2

STEVE B. SIMMONS CONSTRUCTION CO., LLC
4810 New Britton Loop
Ash, N.C. 28420
Phone 910-287-6744

Attachment A-1
CONSTRUCTION ESTIMATE

PROJECT: EAGLE'S WATCH - Gladiola Paved Extension

DATE: February 15, 2008

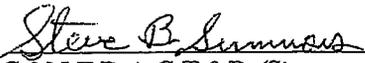
Item	Description	Est. Quantity	Unit	Unit Price	Total
1	Clear & Grubb	1.00	LS	\$3,500.00	\$3,500.00
2	Temporary Silt Fence	250.00	LF	\$4.50	\$1,125.00
3	Prepare subgrade	750.00	SY	\$3.60	\$2,700.00
4	Ditching	540.00	LF	\$2.55	\$1,377.00
5	18" Ribbon Curb	550.00	LF	\$11.30	\$6,215.00
6	8" ABC	660.00	SY	\$16.96	\$11,193.60
7	2" BCSC (Asphalt)	660.00	SY	\$15.74	\$10,388.40
				TOTAL	\$36,499.00

The Contractor's representative is: Steve Simmons
4810 New Britton Loop Road
Ash, NC 28420

This Agreement entered into as of the day and year first written above.



OWNER (Signature)
S & R Grandview, LLC



CONTRACTOR (Signature)
Steve B. Simmons Construction Co.

DONALD J. R. HINE MANAGER
(Printed name and title)

STEVE B. SIMMONS
(Printed name and title)

Attachment A-1

Attachment A-2

WARRANTY

The undersigned hereby acknowledges that all improvements it undertook at the Eagle's Watch Development are warranted for a period of one year from the date that the improvements are accepted by Pender County. This Warranty is intended to encompass and comply with the Pender County Ordinance Defects Guarantee Requirements, which is incorporated herein.

This the 13 day of FEB., 2008.

SIMMONS CONSTRUCTION COMPANY

Steve Simmons

Steve Simmons, Owner