

11.3 Retainage.

11.3.1 Ten percent (10%) of the amounts due by Construction Manager to its Subcontractors shall be held by Owner hereunder as retainage until the Work performed by each such Subcontractor is fifty percent (50%) complete, after which time the retainage on further payments to the Subcontractor by Owner and Construction Manager shall be five percent (5%), so long as Construction Manager withholds no more than five percent (5%) retainage from its payments to the Subcontractor and the manner of completion and progress of the Work under the Subcontract and this Agreement are satisfactory to Owner. Upon Acceptance of Substantial Completion, the retainage withheld pursuant to this Paragraph 11.3.1 shall be reduced to two and one-half percent (2.5%) of the total Cost of the Work incurred.

11.3.2 The retainage withheld as to each Subcontractor under Paragraph 11.3.1 shall, subject to Paragraph 12.5, be released only upon request for its release by Construction Manager and (i) Acceptance by Owner of the Work included in the Final Punch List for the Project worked on by said Subcontractor, (ii) release by Construction Manager of corresponding retainage to the Subcontractor, and (iii) certification by Owner and Architect that said Work is complete and satisfactory. Retainage may be withheld if such grounds exist for withholding payment under this Agreement.

11.3.3 Ten percent (10%) of the amounts due Construction Manager as progress payments on its Construction Manager's Fee under Article 9 shall be held by Owner hereunder as retainage, which retainage shall be subject to release, as provided herein, upon Acceptance by Owner of the Work included in the Final Punch List for the Project. The releasable retainage amount shall be paid to Construction Manager upon its request for same, and upon certification by Owner and Architect that said Work is complete and satisfactory, unless grounds exist for withholding payment on account of other breach or default by Construction Manager under this Agreement.

11.4 Substantial Completion.

11.4.1 When the Construction Manager believes that the Project is Substantially Complete, Construction Manager shall provide Owner a Notice to that effect, accompanied by a Certificate of Occupancy, Architect's Certificate, and Construction Manager's punch list. Owner shall furnish Construction Manager with a Notice stating whether Owner agrees that the Project is Substantially Complete and therefore is Accepted by Owner (and, if not, the reasons why the Project is not Substantially Complete), and irrespective of whether the Project is so Accepted, any additional items that Owner believes should be included in the punch list, which list shall then become the Final Punch List for the Project.

11.4.2 Upon receipt of the Final Punch List, Construction Manager shall promptly pursue the completion of the items on such Final Punch List. Within five (5) business days of Construction Manager's receipt of the Final Punch List, Owner and Construction Manager shall establish a schedule for the completion of each item and a process for verifying such completion. When established, Construction Manager shall complete each item within such schedule and shall cooperate fully in the verification process.

11.4.3 Good faith shall be required in Owner's determination of whether to Accept the Project, determinations of the work necessary to cause the Project to be Substantially Complete, and determinations of items that should be included on the Final Punch List for the Project. Upon Acceptance of the Project as Finally Complete, Construction Manager shall be issued a Notice evidencing same. Notwithstanding any provision contained herein, Construction Manager acknowledges that the ultimate decision to Accept or not Accept the Project rests with Owner. Any dispute regarding same shall be subject to the Disputes Clause.

11.4.4 Upon the Acceptance of Final Completion of the Project, and upon application by Construction Manager, Owner shall pay Construction Manager an amount equal to the entire unpaid balance of the Cost of the Work allocable to the Work performed on the Project, plus any retainage held pursuant to Paragraph 11.1.4, and less such