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NOTICE OF CONSTRUCTION LIEN PURSUANT TO
SECTION 85-7-131
MISSISSIPPI CODE ANNOTATED, 1972 (AS AMENDED)

TO: STEPHEN STANSELL PROPERTIES, INC.
176 East Chickasaw
Memphis, TN 38111

SUNBURST BANK
8819 Northwest Drive
Southaven, MS 38671

COMES NOW, C & C CONTRACTORS, INC., and ROBERT CATES, D/B/A ROBERT CATES CONTRACTORS, who serve notice upon STEPHEN STANSELL PROPERTIES, INC., a Texas Corporation, and SUNBURST BANK, mortgagee that they collectively are claiming a materialmen's lien under the provisions of Section 85-7-131, Mississippi Code Annotated 1972 (As Amended) and who in support of said claim would show and state the following, to-wit:

1. That the property affected by this Notice is described as follows, to-wit:

(See Addendum Attached Hereto)

2. The total amount due and owing unto the lienholder is the sum of \$56,096.00, plus legal interest and attorneys fees as provided by law.

3. The claim arises out of Contract entered into between C&C Contractors, Inc. and Robert Cates, d/b/a Robert Cates Contractors and Stephen Stansell Properties, Inc., dated March 28, 1990, a copy of which is attached hereto as Exhibit "A".

4. That the claimants collectively provided labor and materials in the stripping, clearing, grading and filling of said property in a workmanlike manner as provided for under the Contract attached hereto as Exhibit "A" of this Notice.

5. That suit for enforcement of said lien is not being commenced concurrent with the filing of this Notice.

WHEREFORE, lienors, C & C Contractors, Inc., Robert C. Cates, d/b/a Robert Cates Contractors, claim a materialmen's and laborer's lien against the aforementioned property.

WITNESS OUR SIGNATURES, this the 2nd day of October, 1990.

C & C CONTRACTORS, INC., A CORPORATION

BY: [Signature]
WILLIAM O. COLEY, JR. PRESIDENT

[Signature]
ROBERT C. CATES, D/B/A ROBERT CATES CONTRACTORS

STATE OF Tennessee
COUNTY OF Shelby

PERSONALLY came and appeared before me, the undersigned authority in and for the State and County aforesaid, William O. Coley, Jr., who acknowledged as President for and on behalf of C & C Contractors, Inc., he executed and delivered the above and foregoing instrument on the day and year therein mentioned and for the purposes therein expressed, being first duly authorized so to do.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE, this the 2 day of October, 1990.

[Signature]
Notary Public



My Commission Expires:
Expires 3-24-92

STATE OF Tennessee
COUNTY OF Shelby

PERSONALLY came and appeared before me, the undersigned authority in and for the State and County aforesaid, the within named Robert Cates, d/b/a Robert Cates Contractors, who acknowledged he executed and delivered the above and foregoing instrument on the day and year therein mentioned and for the purposes therein expressed.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE, this the 2 day of October, 1990.

[Signature]
Notary Public



My Commission Expires:
Expires 3-24-92

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ADDENDUM

32.6259, more or less, acre tract of land being located in the Southwest Quarter of Section 26, Township 1 South, Range 8 West, Horn Lake, DeSoto County, Mississippi, more particularly described as BEGIN at an iron stake in the northerly line of Goodman Road (Mississippi State Highway 302) 303.41 feet westwardly and 64.75 feet northwardly from a P.K. Nail (found) at the accepted southeast corner of the southwest quarter of Section 26, Township 1 South, Range 8 West; thence South 84 degrees 41' 42" west 1011.00 feet with the northerly line of Goodman Road to an iron stake; thence South 05 degrees 18' 18" east 25.00 feet to an iron stake; thence South 84 degrees 41' 42" west 190.43 feet with the northerly line of Goodman Road to an iron stake; thence North 06 degrees 15' 00" west 974.21 feet to a "concrete monument" (found); thence South 82 degrees 40' 36" east 221.90 feet to a point in the approximate centerline of Horn Lake Creek; thence continue eastwardly along said centerline the following courses: South 61 degrees 23' 00" east 54.90 feet; South 87 degrees 25' 00" east 103.30 feet; North 87 degrees 39' 00" east 101.40 feet; North 84 degrees 51' 00" east 100.70 feet; North 56 degrees 12' 00" east 107.70 feet; North 39 degrees 22' 00" east 155 feet to a point; thence North 05 degrees 30' 00" west 140.00 feet to an iron stake (found); thence North 85 degrees 17' 00" east 740.12 feet to a "concrete monument" (found) in the westerly line of U.S. Highway 51; thence South 03 degrees 32' 08" east 3.50 feet with the westerly line of said highway to an iron stake; thence North 89 degrees 19' 07" west 15.00 feet to an iron stake; thence northwardly with the westerly line of said highway the following courses: South 08 degrees 34' 00" west 132.40 feet to an iron stake; South 02 degrees 19' 00" east 280.00 feet to an iron stake; South 87 degrees 31' 00" west 45.00 feet; South 02 degrees 19' 00" east 100.00 feet; North 87 degrees 31' 00" east 70.00 feet to an iron stake; South 02 degrees 19' 00" east 120.00 feet to an iron stake; South 03 degrees 52' 47" east 251.03 feet to an iron stake; South 02 degrees 45' 40" east 34.36 feet to an iron stake; thence South 84 degrees 38' 32" west 159.27 feet to an iron stake; thence South 40 degrees 38' 00" west 100.00 feet to an iron stake; thence South 03 degrees 22' 28" east 158.35 feet to the point of beginning containing 32.6259, more or less, acres of land, being subject to all codes, regulations and revisions, easements and right of ways of record.

LESS AND EXCEPT: A 3.7849, more or less, acre tract of land known as the Stansell 1 Lot Subdivision, in Section 26, Township 1 South, Range 8 West, DeSoto County, Mississippi, more particularly described in Plat Book 34, Page 47, in the office of the Chancery Clerk of DeSoto County, Mississippi.

THE AMERICAN INSTITUTE OF ARCHITECTS

1997 Edition AIA®

Standard Form of Agreement Between Owner and Contractor
Short Form Agreement for Small Construction Contracts

When the Form of Payment is a
LUMP SUM

This document is a modification of the Standard Form of Owner-Contractor Agreement and Standard General Conditions of the Contract for Construction for use in connection therewith.

The document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made this twenty-eighth day of March in the year Nineteen

BETWEEN the Owner: STEPHEN STANSELL PROPERTIES, INC.
MEMPHIS, TN 38111

and the Contractor: C & C CONTRACTING COMPANY & ROBERT CATES PERSONALLY &
ROBERT CATES CONTRACTORS
3627 COWDEN AVENUE
MEMPHIS, TN 38111

the Project: GRADING AND FILL OF THE N. W. CORNER OF HIGHWAY 51 AND GOODMAN ROAD.
THE PROJECT SPECIFICALLY EXCLUDES TRACTS 1 & 2 (CENTRAL HARDWARE TRACTS)
& THE MATERIALS & LABOR FOR PLACEMENT OF FILL OF THE SITE TO DATE (IN
ADDITION TO TRACTS 1 & 2) (ESTIMATED TO BE 8,978 C.Y.). THIS CONTRACT
IS ONLY FOR COMPACTED FILL PLACED ON SITE BEGINNING APRIL 15, 1990.

the Architect: J. T. CONSTRUCTION ENTERPRISES, CONSTRUCTION MANAGER
6867 KELMSCOTT DRIVE, MEMPHIS, TN 38119 (901) 755-7308
SMITH ENGINEERING CO., INC., ARCHITECT, 928 GOODMAN ROAD,
SOUTHHAVEN, MS 38671

The Owner and Contractor agree as set forth below

Robert C. Cates

ARTICLE 1
THE WORK

The Contractor shall perform all the Work required by the Contract Documents to

GRADING WORK IN ACCORDANCE WITH THE PROPOSED GRADING PLAN FOR NORTHWEST CORNER OF HWY 51 AND GOODMAN RD. DATED 11/4/89 AND PREPARED BY SMITH ENGINEERING AND ATTACHED HERETO.

ALL SOILS WITHIN THE SITE BOUNDARY SHALL BE COMPACTED IN THIN (6"X8" IN LOOSE DEPTH) LIFTS TO AT LEAST 95% OF THE STANDARD PROCTOR MAXIMUM DRY DENSITY.

REMOVE AND REPLACE, OR SACRIFY AND AIR DRY, SOIL MATERIAL THAT IS TOO WET TO PERMIT COMPACTION TO SPECIFIED DENSITY

SOFT, ORGANIC, HIGHLY PLASTIC OR EXCESSIVELY WET SOILS ENCOUNTERED DURING GRADING OR PROOFROLLING OPERATIONS SHALL BE EXCAVATED AND REPLACED WITH SUITABLE COMPACTED FILL.

THE SEQUENCE OF THE WORK AND AREAS TO BE COMPLETED FIRST WILL BE DETERMINED BY THE CONSTRUCTION MANAGER.

ARTICLE 2
TIME OF COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall be commenced

and completed

IN ORDER TO COMPLY WITH THIS SCHEDULE, CONTRACTOR AGREES TO WORK ON THE SITE FROM DATE OF MUTUAL EXECUTION OF THIS CONTRACT AND CONTRACTOR SHALL WORK ON SATURDAYS AND ALL DAYS (WEATHER ARTICLE 3 PERMITTING) EXCEPT SUNDAYS AND LEGAL HOLIDAYS.

CONTRACT SUM

The Owner shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order as provided in the General Conditions, in current funds, the Contract Sum of

THIS IS A LUMP SUM CONTRACT, PAYABLE BI-WEEKLY, BASED ON 70% ACTUAL WORK PERFORMED DURING THE PAYABLE PERIOD. THE REMAINING 30% (RETAINAGE) WILL BE PAID AFTER OBTAINING THE ENGINEERING CERTIFICATE AND SOIL TEST APPROVAL. UNDER NO CIRCUMSTANCES SHALL THE CONTRACT SUM EXCEED \$273,012.00. THE WORK WILL BE COMPLETED ACCORDING TO THE SMITH ENGINEERING COMPANY GRADING PLAN. NOTWITHSTANDING THE ABOVE, THE OWNER MAY CANCEL THIS CONTRACT AT COMPLETION OF EACH THIRD OF THE ENTIRE JOB AND SHALL PAY THE PRO RATA CONTRACT SUM DUE AT THAT TIME, FOR THAT PRO RATA PORTION OF THE WORK COMPLETED AT THAT TIME. SMITH ENGINEERING HAS ESTIMATED THAT THE AMOUNT OF FILL REQUIRED IS A MINIMUM 115,684 C.Y. THE CONTRACTOR HAS VERIFIED THE QUANTITIES TO SATISFY HIMSELF BEFORE ENTERING INTO THIS AGREEMENT, & HAS DONE EVERYTHING HE NEEDS TO FAMILIARIZE HIMSELF WITH THE SITE AND ITS CURRENT SUITABILITY, & BELIEVES THE AREAS DESIGNATED TO RECEIVE THE FILL ARE STABLE & WILL PROVIDE THE SUITABLE SUBBASE NEEDED FOR THE FILL.

ARTICLE 4
PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect the Owner shall make progress payments on account of the Contract Sum to the Contractor as follows:

ANY WORK NECESSARY TO PERFORM THIS CONTRACT & ANYTHING DISCOVERED TO BE DIFFERENT THAN STATED ABOVE IN REGARD TO COMPLETION OF THIS CONTRACT SHALL BE COMPLETED AND CORRECTED AT THE CONTRACTOR'S EXPENSE. THE OWNER SHALL PAY TO THE CONTRACTOR ON A BI-WEEKLY BASIS AN AMOUNT EQUAL TO 70% OF FILL ACTUALLY PLACED & COMPACTED DURING THIS PAY PERIOD. PAYMENT SHALL BE \$2.00 PER C.Y. OF APPROVED DIRT BROUGHT IN FROM THE CONTRACTOR'S BORROW PIT, PROCESSED & COMPACTED TO 95% STANDARD PROCTOR, WITH QUANTITIES VERIFIED BY OWNER'S AGENT. THE REMAINING 30% (RETAINAGE) WILL BE PAID IN 30 DAYS AFTER EACH THIRD OF THE WORK IS COMPLETED. THE OWNER SHALL PROVIDE AT CONTRACTOR'S EXPENSE (BASED ON \$6.00 PER HOUR) A RESPONSIBLE PERSON TO KEEP A RECORD OF THE NUMBER OF C.Y. BROUGHT IN EACH DAY. THIS RECORD SHALL BE USED BY THE OWNER TO DETERMINE AND APPROVE THE PAYMENT REQUEST. THIS PER HOUR COST SHALL BE DEDUCTED FROM THE BI-WEEKLY PAYMENTS & LUMP SUM PAYMENTS. NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, THE OWNER MAY CANCEL THIS CONTRACT AT THE COMPLETION OF EACH TWO WEEK PAY PERIOD WITHOUT NOTICE AND SHALL PAY CONTRACTOR THE TOTAL AMOUNT OWED TO THAT DATE, IF CONTRACT IS SO CANCELLED.

FINAL PAYMENT

The Owner shall make total payment _____ days after completion of the Work, provided the Contract be then fully performed, subject to the provisions of Article 10 of the General Conditions.

ARTICLE 6
ENUMERATION OF CONTRACT DOCUMENTS

The Contract Documents are as noted in Paragraph 7.1 of the General Conditions and are enumerated as follows: (List below the Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda and accepted Alternates showing page or sheet numbers in all cases and dates where applicable.)

*AND THAT THE CONTRACTOR HAS DELIEVERD LEIH WAIVERS FROM EACH SUPPLIER OF LABOR AND MATERIALS TO THE SITE FOR ALL WORK TO DATE.

1. CONTRACT AGREEMENT PROVISIONS CONTAINED HEREWITHIN (THIS AGREEMENT)
2. GENERAL CONDITIONS OF THE CONTRACT AIA DOCUMENT A201/CM 1980
3. "PROPOSED GRADING PLAN" PREPARED BY SMITH ENGINEERING CO., INC., DATED 11/4/89, WHICH INDICATES THE SITE DIVIDED INTO THIRDS.
4. SPEED LETTER FROM SMITH ENGINEERING CO., INC., DATED 1/9/90

Robert C. [Signature]

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GENERAL CONDITIONS

ARTICLE 7
CONTRACT DOCUMENTS

7.1 The Contract Documents consist of the Agreement (which includes the General Conditions), Supplementary and other Conditions, the Drawings, the Specifications, all Addenda issued prior to the execution of this Agreement, all modifications, Change Orders, and written interpretations of the Contract Documents issued by the Architect. These form the Contract and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided in Paragraph 10.2 necessary for the proper execution and completion of the Work and the terms and conditions of payment therefor, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended result.

7.2 The Contract Documents shall be signed in not less than triplicate by the Owner and the Contractor. If either the Owner or the Contractor do not sign the Drawings, Specifications or any of the other Contract Documents, the Architect shall advise them. By executing the Contract, the Contractor represents that he has visited the site and familiarized himself with the local conditions under which the Work is to be performed.

7.3 The term Work as used in the Contract Documents includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

ARTICLE 8
ARCHITECT

8.1 The Architect will provide general administration of the Contract and will be the Owner's representative during construction and until issuance of the final Certificate for Payment.

8.2 The Architect shall at all times have access to the Work wherever it is in preparation and progress.

8.3 The Architect will make periodic visits to the site to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an architect, he will keep the Owner informed of the progress of the Work, and will endeavor to 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.

8.4 Based on such observations and the Contractor's Applications for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in accordance with Article 16.

8.5 The Architect will be, in the first instance, the interpreter of the requirements of the Contract Documents. He will make decisions on all claims and disputes between the Owner and the Contractor. All his decisions are subject to arbitration.

8.6 The Architect will have authority to reject Work which does not conform to the Contract Documents.

ARTICLE 9
OWNER

9.1 The Owner shall furnish all surveys.

9.2 The Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities.

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

ARTICLE 10
CONTRACTOR

10.1 The Contractor shall supervise and direct the work, using his best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

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

10.3 The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

10.4 The Contractor warrants to the Owner and the Architect that all materials and equipment incorporated in the Work will be new unless otherwise specified, 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 may be considered defective.

10.5 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Work.

10.6 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of

the Work, and shall notify the Architect if the Drawings and Specifications are at variance therewith.

10.7 The Contractor shall be responsible for the acts and omissions of all his employees and all Subcontractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.

10.8 The Contractor shall review, stamp with his approval and submit all samples and shop drawings as directed for approval of the Architect for conformance with the design concept and with the information given in the Contract Documents. The Work shall be in accordance with approved samples and shop drawings.

10.9 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as his tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and shall leave the Work "broom clean" or its equivalent, except as otherwise specified.

10.10 The Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. In any and all claims against the Owner or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 10.10 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts. The obligations of the Contractor under this Paragraph 10.10 shall not extend to the liability of the Architect, his agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 11 SUBCONTRACTS

11.1 A Subcontractor is a person who has a direct contract with the Contractor to perform any of the Work at the site.

11.2 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Architect in writing a list of the names of Subcontractors proposed for the principal portions of the Work. The Contractor shall not employ any Subcontractor to whom the Architect or the Owner may have a reasonable objection. The Contractor shall not be required to employ any Subcontractor to whom he has a reasonable objection. Contracts between the Contractor and the Subcontractor shall be in accordance with the terms of this Agreement and shall include the General Conditions of this Agreement insofar as applicable.

ARTICLE 12 SEPARATE CONTRACTS

12.1 The Owner reserves the right to award other contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract.

12.2 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.

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

ARTICLE 13 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

ARTICLE 14 ARBITRATION

All claims or disputes arising out of this Contract or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. Notice of the demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen.

ARTICLE 15 TIME

15.1 All time limits stated in the Contract Documents are of the essence of the Contract.

15.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which the Architect may determine justifies the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**ARTICLE 16
PAYMENTS**

16.1 Payments shall be made as provided in Article 4 of this Agreement

16.2 Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed, (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment, (4) damage to another contractor, or (5) unsatisfactory prosecution of the Work by the Contractor

16.3 Final payment shall not be 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 indemnifying him against any lien.

16.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from (1) unsettled liens, (2) faulty or defective Work appearing after Substantial Completion, (3) failure of the Work to comply with the requirements of the Contract Documents, or (4) terms of any special guarantees required by the Contract Documents. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.

**ARTICLE 17
PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. He shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any 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 but which are not attributable to the fault or negligence of the Contractor.

**ARTICLE 18
CONTRACTOR'S LIABILITY INSURANCE**

The Contractor and each separate Contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and

other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the Contractor's operations under this Contract, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than any limits of liability specified as part of this Contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under Paragraph 10.10. Certificates of such insurance shall be filed with the Owner and each separate Contractor.

**ARTICLE 19
OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may maintain such insurance as will protect him against claims which may arise from operations under the Contract.

**ARTICLE 20
PROPERTY INSURANCE**

20.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of Fire, Extended Coverage, Vandalism and Malicious Mischief.

20.2 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any mortgagee clause.

20.3 The Owner shall file a copy of all policies with the Contractor prior to the commencement of the Work.

20.4 The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this paragraph. The Contractor shall require similar waivers by Subcontractors and Sub-subcontractors.

**ARTICLE 21
CHANGES IN THE WORK**

21.1 The Owner without invalidating the Contract may order Changes in the Work consisting of additions, deletions, or modifications, the Contract Sum and the Contract Time being adjusted accordingly. All such Changes in the Work shall be authorized by written Change Order signed by the Owner or the Architect as his duly authorized agent.

21.2 The Contract Sum and the Contract Time may be changed only by Change Order.

21.3 The cost or credit to the Owner from a Change in the Work shall be determined by mutual agreement.

[Handwritten signature]

**ARTICLE 22
CORRECTION OF WORK**

The Contractor shall correct any Work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the Date of Substantial Completion of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article 22 apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor.

**ARTICLE 23
TERMINATION BY THE CONTRACTOR**

If the Architect fails to issue a Certificate of Payment for a period of thirty days through no fault of the Contractor, or if the Owner fails to make payment thereon for a period of thirty days, the Contractor may, upon seven days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner

payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, and construction equipment and machinery, including reasonable profit and damages.

**ARTICLE 24
TERMINATION BY THE OWNER**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after seven days' written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at his option, may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient, and if the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner.

**ARTICLE 25
MISCELLANEOUS PROVISIONS**

1. ALL WORK SHALL BE DONE ACCORDING TO THE PROPOSED GRADING PLAN PREPARED BY SMITH ENGINEERING CO., INC., DATED 11/3/89, AND MUST MEET CITY, COUNTY, AND OTHER GOVERNMENT REQUIREMENTS AND SHALL BE PLACED ACCORDING TO THE INSTRUCTIONS OF ANY SUPERVISING ENGINEERS WHO MAY MONITOR THE PLACEMENT OF THE FILL AND PERFORM THE COMPACTION TESTING.

2. THE CONTRACTOR SHALL MAINTAIN THROUGHOUT THE LIFE OF THIS CONTRACT LIABILITY INSURANCE WRITTEN IN A COMPREHENSIVE FORM, SATISFACTORY TO THE OWNER IN THE FOLLOWING MINIMUM REQUIREMENTS; BUT NOT LESS THAN IS REQUIRED BY LAW:

| | |
|---|----------------|
| WORKER'S COMPENSATION | |
| STATE | STATUTORY |
| EMPLOYER'S LIABILITY | \$100,000.00 |
| (WITHOUT RESTRICTION AS TO WHETHER COVERED BY WORKMAN'S COMPENSATION LAW) | |
| COMPREHENSIVE GENERAL LIABILITY | |
| COMBINED SINGLE LIMIT | \$1,000,000.00 |

3. THE CONTRACTOR IS TO PROVIDE ALL ENGINEERING EXCEPT ESTABLISHING THE BOUNDARY LINES. THE BOUNDARY LINES WILL BE ESTABLISHED BY THE OWNER.

4. ALL TESTING AND MONITORING SHALL BE CONDUCTED AND PAID FOR BY THE OWNER, AND CONTRACTOR SHALL COOPERATE WITH THE SPECIFICATIONS ADVISED BY SAID TESTING ENGINEERING COMPANY.

5. ALL PLACED BORROW MATERIALS (THE COMPACTED DIRT FILL) SHALL MEET COMPACTION REQUIREMENTS OF 95% STANDARD PROCTOR, PROCESSED AS CONTROLLED FILL MONITORED BY TESTING ENGINEERS.

6. IN TRANSPORTING THE BORROW MATERIALS (THE DIRT FILL), THE CONTRACTOR SHALL CONTROL THE TRAFFIC, CLEAN THE STREETS, AND PROVIDE A FLAGMAN, IF REQUIRED BY LOCAL LAW.

[Handwritten signature]

NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT, ALL PAYMENTS UNDER THIS CONTRACT SHALL BE DETERMINED AS FOLLOWS:

THE OWNER'S AGENT ON THE JOB SITE SHALL HAVE SOLE AUTHORITY DAILY TO DETERMINE AND VERIFY THE CUBIC YARDAGE OF DIRT HAULED IN EACH OF CONTRACTOR'S TRUCKS ONTO THE JOB SITE. THE AMOUNT OF CUBIC YARDAGE SO DETERMINED SHALL BE ADJUSTED BY 18% TO ACCOUNT FOR THE SHRINKAGE FACTOR MUTUALLY AGREED BY THE PARTIES. THE RESULTANT CUBIC YARDAGE SHALL BE PAID AT THE RATE OF \$2.00 PER CUBIC YARD, WITH 30% OF SAID AMOUNT RETAINED BY OWNER & PAID UPON COMPLETION OF THIRDS OF THE CONTRACT. UPON TERMINATION OF THE CONTRACT BY EXERCISING HIS RIGHT OF CANCELLATION.

FOR EXAMPLE, IF SEVEN TRUCKS DAILY TRANSPORTED 10 CUBIC YARDS PER DAY, OR 70 CUBIC YARDS TOTAL PER DAY, FOR TEN DAYS WITHIN A TWO WEEK PAY PERIOD, THEN THE FORMULA FOR PAYMENT WOULD BE:

10 days x 70 c.y. per day x .82% shrinkage factor x \$2 per c.y. x 70% payment due each two week pay period = \$803.60

OWNER AGREES TO PRE-PAY THE TOTAL LUMP SUM OF THIS CONTRACT, WHICH IS \$273,012.00, WITH THE PRE-PAYMENT OF \$8,336.36, IN ORDER FOR CONTRACTOR TO MEET HIS PAYMENT TO HIS TRUCK COMPANY. SAID PAYMENT OF \$8,336.36 SHALL BE A PRE-PAYMENT OF THE TOTAL LUMP SUM DUE UNDER THIS CONTRACT.

This Agreement executed the day and year first written above.

OWNER

STEPHEN STANSELL PROPERTIES, INC.
A TEXAS CORPORATION BY ITS
PRESIDENT

CONTRACTOR

Robert C. Cates
ROBERT CATES PERSONALLY
Robert C. Cates
ROBERT CATES CONTRACTORS
Robert C. Cates
C & C CONTRACTING COMPANY

116

1397

STEPHEN STANSELL 10-86
 ATTORNEY AT LAW
 PH. 901-458-5014
 131 W. CHICKASAW PARKWAY
 MEMPHIS, TN 38111

21st August 19 90 87-278/840

PAY TO THE ORDER OF Robert Cates, Cates & Weeks Contractors, Inc.
 C & C Contracting Company \$ 6,853.64

Six thousand eight hundred fifty-three and 64/100ths
 Consideration of amendment of 3-28-90 with the above
 Community Bank of Germantown & Dr. William O. Coley & payment
 2177 Germantown Road South in full for any claims by Cates &
 Germantown, Tennessee 38138 Weeks Contractors, Inc. for any &
 901/754-2400 all work performed to date.

MEMO *Grading - Bullfrogs*
Form

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STATE MS.-DESOTO CO.
FILED

OCT 4 3 48 PM '90

RECORDED 10-5-90
DEED BOOK 6
PAGE 104
W.E. DAVIS CH.CLK.