



Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year Two Thousand Sixteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Wheaton Park District
102 E. Wesley
Wheaton, IL 60187

and the Contractor:
(Name, legal status, address and other information)

SofSurfaces Inc.
4393 Discovery Lines
Petrolia, Ontario NON 1RO

for the following Project:
(Name, location and detailed description)

Sunnyside Playground Surfacing
Sunnyside Playground
1120 Coolidge
Wheaton, IL 60187

The Project includes furnishing and installing all materials for the playground safety surfacing system and all other and incidental and collateral work necessary to properly complete the Project as indicated in the Contract Documents.

The Architect
(Name, legal status, address and other information)

:

NA. No Architect is being used for this Project. For purposes of this Project, "Architect" shall mean "Owner."

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work indicated in the Contract Documents, except as specifically stated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 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.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement of the Work shall be fixed by a Notice to Proceed (hereinafter referred to as the "Commencement Date"). Prior to commencing the Work, the Contractor shall have obtained and provided to the Owner acceptable evidence of all licenses, permits, bonds and insurance indicated as being the Contractor's responsibility under the Contract Documents. Delay in the commencement of the Work attributable to the failure of the Contractor to have obtained and provided such evidence to the Owner shall not result in an extension of the date scheduled for Substantial Completion as provided in Section 3.3 below, or in any milestone date previously agreed to by the Parties in any Project Schedule.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

Not applicable to this Contract.

§ 3.2 The Contract Time shall be measured from the Commencement Date.

§ 3.3 The Contractor shall achieve Final Completion of the entire Work not later than June 17, 2016, subject to adjustments of this Contract Time authorized by Change Order as provided in the Contract Documents

(Paragraphs deleted)

(hereinafter referred to as the "Substantial Completion Date"). The Owner and Contractor agree that the amount of time given to the Contractor under the Contract to achieve Substantial Completion is a reasonable amount of time considering the requirements of the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Time is of the essence of the contract. Should the Contractor fail to complete the Work on or before the Final Completion date stipulated in the Contract or within such extended time as may have been allowed, the Contractor shall be liable and shall pay to the Owner the sum of \$50 per calendar day, not as a penalty but as liquidated damages, for each day of overrun in the Contract Time or such extended time as may have been allowed. The liquidated damages for failure to complete the Contract on time are approximate, due to the impracticality of calculating and proving actual delay costs. The costs of delay represented by the liquidated damage amount are understood to be a fair and reasonable estimate of the costs that will be borne by the Owner during extended and delayed performance by the Contractor for the Work. The liquidated damage amount specified will accrue and be assessed until Final Completion of the total physical Work of the Contract even though the Work may be substantially complete. The Owner will deduct these liquidated damages from any monies due or to become due to the Contractor from the Owner.

ARTICLE 4 CONTRACT SUM

§ 4.1 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 Fifty-nine Thousand Six Hundred Twenty Four and 21/100 Dollars (\$ 59, 624.21), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Extend Warranty from 5 years 10 years: No Add or Deduction to base bid.

§ 4.3 Unit prices are pursuant to Contractor's Proposal, as modified by this Agreement, attached to and incorporated into this Agreement by reference. :

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
NA		

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
NA	

§ 4.5 Adjustments to the Contract Sum for changes in the Work (other than for changes in the Work involving items for which unit prices were provided as set forth in Section 4.3, above) shall be made in accordance with Article 7 of the General Conditions of the Contract, provided that in the case of an increase in the Contract Sum attributable to a change in the Work, "reasonable overhead and profit" for purposes of Section 7.3.7 thereof shall mean: 1. Five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving Subcontractors, or 2. Five percent (5%) of the cost of the change in the Work involved performed by

Subcontractors, plus two percent of the cost of the change in the Work for the Contractor's supervision of the work performed by the Subcontractors.

When both additions and credits covering related Work are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. No overhead and profit shall be paid to the Contractor for an increase in the cost of the surety bond or insurance premiums resulting from a change in the Work. In the event of an increase in the Contract Sum resulting from an additive change order, the actual amount of any increase in the cost of Contractor's surety bond shall be added to the amount of the change order. Similarly in the event of a decrease in the Contract Sum resulting from a deductive change order, the amount of any decrease in the cost of Contractor's surety bond shall be added to the amount shown in the deductive change order, by which the Contract Sum is to be reduced.

§ 4.6 Overtime, if and when specifically authorized in writing in advance by the Owner shall be paid by the Owner on the basis of premium payment if any, plus the cost of insurance and taxes based on the premium payment period. No overhead or profit may be charged for overtime. The Contractor shall not be entitled to any payment for overtime necessitated by the failure of the Contractor to perform the Work in accordance with the Contract Documents including without limitation to the Contractor's failure to prosecute the Work diligently and on an uninterrupted basis and with a sufficient workforce so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents, or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associated with such overtime shall be borne by the Contractor.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly completed and accompanied by all supporting documentation and other submittals required by the Contract Documents submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, and agreed to by Owner and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment, which is in proper form and accompanied by required supporting documents and submittals, is received by the Architect not later than the 10th day of a month, certified for payment by the Owner and not subsequently nullified by the Owner in accordance with the Contract Documents, the Owner shall make payment of the certified amount to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment in proper form and accompanied by required supporting documents and submittals and certifies payment to the Owner. Contractor is solely responsible for any delays in payment due in whole or in part to Contractor's failure to submit its payment application timely, in proper form and accompanied by all supporting documents and submittals required under the Contract.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that 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 the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 may be further modified *(Paragraphs deleted)* and the retainage may be reduced if and as provided in Paragraph 9.3 of the General Conditions.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 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 in accordance with the Contract Documents; provided that Owner shall have no obligation to make final payment if the Contractor is required to correct Work as provided in Section 12.2.2 of AIA Document A201–2007 or as otherwise specified by the Contract Documents, or to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect and the Owner has approved payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 45 days after the conditions set forth in Section 5.2.1, above, have been met.

§ 5.3 WAIVER PROCEDURE/FORMAT

Contractor's progress payment applications shall be accompanied by the Contractor's Partial Waiver of Lien to date for the full amount of the payment. Subcontractor's Partial Waiver of Lien shall be submitted on a trailing basis and prior to the next payment. The Final Waiver of the Contractor shall be for the full amount of the Contract and the Final Waiver of a Subcontractor shall be for the full amount of its Subcontract. All applications for payment shall be accompanied by affidavits from the Contractor, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/001 et seq.) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and materials suppliers; amounts paid and remaining to be paid to each; together with all other documents as shall be

necessary, in the sole judgment of the Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

- (i) All waivers (partial and final) shall include language as applicable indicating either that:
1. All materials were taken from fully paid stock and delivered to job site in our own vehicles and all labor has been fully paid in accordance with prevailing wage laws; or
 2. Materials were provided by the following suppliers from whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1

(Paragraphs deleted)

The Parties shall make claims and resolve disputes as provided in Article 15 of the General Conditions and elsewhere in the Contract Documents.

(Paragraphs deleted)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended, superseded or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due

(Paragraphs deleted)

and at the rate provided under the Illinois Local Government Prompt Payment Act.

§ 8.3 The Owner's representative:

(Name, address and other information)

Steve Hinchee
Wheaton Park District
102 E. Wesley
Wheaton, IL 60187
T: 630-510-4976
Email: shinchee@wheatonparks.org

§ 8.4 The Contractor's representative:

(Name, address and other information)

Chris Snooks
SofSurfaces Inc.
4393 Discovery Lines
Petrolia, Ontario NON IRO

T: 519-882-8799
Email: l.stevens@sofsurfaces.com

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing the Work. Contractor's bonds shall include a provision as will guarantee the faithful performance of this prevailing wage clause as herein provided and as provided in the General Conditions. Contractor shall comply with all other requirements of the Prevailing Wage Act.

§ 8.6.2 The Contractor shall be responsible for the supply and maintenance of any and all temporary equipment, utilities and facilities necessary to properly and safely complete and protect the Work, including without limitation those required by winter conditions. The Contractor shall provide and erect barricades and other safeguards adequate to warn of danger at the site and to protect persons and property from injury resulting from the Work.

§ 8.6.3 The Contractor shall limit materials and equipment storage to the immediate area of Work and such other areas as the Owner may designate. The Contractor shall promptly remove and properly dispose all construction material, trash, garbage and other debris off site.

§ 8.6.4 Except as otherwise specifically provided in the Contract Documents, if and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Contract Document, and otherwise in interpreting the Contract Documents, the Parties shall give precedence to the Contract Documents in the following order of priority:

- (i) Modifications.
- (ii) This Agreement=
- (iii) Supplementary and Special Conditions.
- (iv) General Conditions
- (v) Construction Drawings

§8.6.5 The rights and remedies of the Owner stated in the Contract Documents shall be in addition to and not in limitation of any other rights of the Owner granted at law or in equity.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor, as modified by Owner.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction, as modified by Owner.

§ 9.1.3 The Supplementary, Special and other Conditions of the Contract are those included in the Project Manual dated March 28, 2016.:

(Table deleted)

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

The Specifications are those included in the Project Manual dated March 28, 2016.

Init.

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User Notes:

(1951230068)

(Table deleted)

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

The Drawings are those included in the Project Manual dated March 28, 2016.

Number	Title	Date
(Row deleted)		

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
No. 1	4/6/16	2
No. 2	4/8/16	1
No. 3	4/8/16	1

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

1. All other documents contained in the Project Manual dated March 28, 2016.
2. Certificate of Insurance and endorsements attached to and incorporated in this Agreement by this reference.
3. Performance Bond, Labor and Material Payment Bond, attached to and incorporated in this Agreement by this reference.
4. Prevailing Wage Determination and supersedes notice attached to and incorporated in this Agreement by this reference.
5. Contractor's Proposal, as modified by the Contract Documents, attached to and incorporated in this Agreement by this reference. To the extent that Contractor's Proposal conflicts with this Agreement or the General Conditions, the terms of this Agreement and the General Conditions shall take precedence.
6. Contractor's Compliance and Certifications Attachment and Substance Abuse Prevention Program Certification, attached to and incorporated in this Agreement by this reference.

ARTICLE 10 INSURANCE AND BONDS

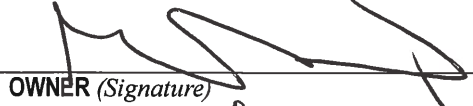
The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(Table deleted)(Paragraph deleted)

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

WHEATON PARK DISTRICT

SOFSURFACES INC.


OWNER (Signature)


CONTRACTOR (Signature)

Michael J. Bernard, Executive Director
(Printed name and title)

Chris Snooks, Controller
(Printed name and title)

Init.

Additions and Deletions Report for **AIA® Document A101™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:31:16 on 04/26/2016.

PAGE 1

AGREEMENT made as of the day of in the year Two Thousand Sixteen

...

(Name, legal status, address and other information)

Wheaton Park District
102 E. Wesley
Wheaton, IL 60187

...

SofSurfaces Inc.
4393 Discovery Lines
Petrolia, Ontario NON 1RO

...

(Name, location and detailed description)

Sunnyside Playground Surfacing
Sunnyside Playground
1120 Coolidge
Wheaton, IL 60187

The Project includes furnishing and installing all materials for the playground safety surfacing system and all other and incidental and collateral work necessary to properly complete the Project as indicated in the Contract Documents.

...

The ~~Architect~~: Architect

...

:

NA. No Architect is being used for this Project. For purposes of this Project, "Architect" shall mean "Owner."

PAGE 2

The Contractor shall fully execute the Work ~~described~~ indicated in the Contract Documents, except as specifically indicated stated in the Contract Documents to be the responsibility of others.

...

The date of commencement of the Work shall be fixed by a Notice to Proceed (hereinafter referred to as the "Commencement Date"). Prior to commencing the Work, the Contractor shall have obtained and provided to the Owner acceptable evidence of all licenses, permits, bonds and insurance indicated as being the Contractor's responsibility under the Contract Documents. Delay in the commencement of the Work attributable to the failure of the Contractor to have obtained and provided such evidence to the Owner shall not result in an extension of the date scheduled for Substantial Completion as provided in Section 3.3 below, or in any milestone date previously agreed to by the Parties in any Project Schedule.

...

Not applicable to this Contract.

§ 3.2 The Contract Time shall be measured from the ~~date of commencement~~ Commencement Date.

§ 3.3 The Contractor shall achieve ~~Substantial-Final~~ Completion of the entire Work not later than ~~() days from the date of commencement, or as follows: June 17, 2016,~~ subject to adjustments of this Contract Time authorized by Change Order as provided in the Contract Documents ~~(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)~~

Portion of Work

Substantial Completion Date

~~, subject to adjustments of this Contract Time as provided in (hereinafter referred to as the "Substantial Completion Date").~~ The Owner and Contractor agree that the amount of time given to the Contractor under the Contract to achieve Substantial Completion is a reasonable amount of time considering the requirements of the Contract Documents.

PAGE 3

Time is of the essence of the contract. Should the Contractor fail to complete the Work on or before the Final Completion date stipulated in the Contract or within such extended time as may have been allowed, the Contractor shall be liable and shall pay to the Owner the sum of \$50 per calendar day, not as a penalty but as liquidated damages, for each day of overrun in the Contract Time or such extended time as may have been allowed. The liquidated damages for failure to complete the Contract on time are approximate, due to the impracticality of calculating and proving actual delay costs. The costs of delay represented by the liquidated damage amount are understood to be a fair and reasonable estimate of the costs that will be borne by the Owner during extended and delayed performance by the Contractor for the Work. The liquidated damage amount specified will accrue and be assessed until Final Completion of the total physical Work of the Contract even though the Work may be substantially complete. The Owner will deduct these liquidated damages from any monies due or to become due to the Contractor from the Owner.

...

§ 4.1 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 Fifty-nine Thousand Six Hundred Twenty Four and 21/100 Dollars (\$ 59,624.21), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

...

Extend Warranty from 5 years 10 years: No Add or Deduction to base bid.

§ 4.3 Unit prices, if any: prices are pursuant to Contractor's Proposal, as modified by this Agreement, attached to and incorporated into this Agreement by reference. :

...

NA

...

NA

§ 4.5 Adjustments to the Contract Sum for changes in the Work (other than for changes in the Work involving items for which unit prices were provided as set forth in Section 4.3, above) shall be made in accordance with Article 7 of the General Conditions of the Contract, provided that in the case of an increase in the Contract Sum attributable to a change in the Work, "reasonable overhead and profit" for purposes of Section 7.3.7 thereof shall mean: 1. Five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving Subcontractors, or 2. Five percent (5%) of the cost of the change in the Work involved performed by Subcontractors, plus two percent of the cost of the change in the Work for the Contractor's supervision of the work performed by the Subcontractors.

When both additions and credits covering related Work are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. No overhead and profit shall be paid to the Contractor for an increase in the cost of the surety bond or insurance premiums resulting from a change in the Work. In the event of an increase in the Contract Sum resulting from an additive change order, the actual amount of any increase in the cost of Contractor's surety bond shall be added to the amount of the change order. Similarly in the event of a decrease in the Contract Sum resulting from a deductive change order, the amount of any decrease in the cost of Contractor's surety bond shall be added to the amount shown in the deductive change order, by which the Contract Sum is to be reduced.

§ 4.6 Overtime, if and when specifically authorized in writing in advance by the Owner shall be paid by the Owner on the basis of premium payment if any, plus the cost of insurance and taxes based on the premium payment period. No overhead or profit may be charged for overtime. The Contractor shall not be entitled to any payment for overtime necessitated by the failure of the Contractor to perform the Work in accordance with the Contract Documents including without limitation to the Contractor's failure to prosecute the Work diligently and on an uninterrupted basis and with a sufficient workforce so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents, or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associated with such overtime shall be borne by the Contractor.

PAGE 4

§ 5.1.1 Based upon Applications for Payment properly completed and accompanied by all supporting documentation and other submittals required by the Contract Documents submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, and agreed to by Owner and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

...

§ 5.1.3 Provided that an Application for ~~Payment~~ Payment, which is in proper form and accompanied by required supporting documents and submittals, is received by the Architect not later than the 10th day of a month, certified for payment by the Owner and not subsequently nullified by the Owner in accordance with the Contract Documents, the Owner shall make payment of the certified amount to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for ~~Payment~~.
(Federal, state or local laws may require payment within a certain period of time.)for Payment in proper form and accompanied by required supporting documents and submittals and certifies payment to the Owner. Contractor is solely responsible for any delays in payment due in whole or in part to Contractor's failure to submit its payment application timely, in proper form and accompanied by all supporting documents and submittals required under the Contract.

PAGE 5

- .1 Take that 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 the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);

...

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 ~~shall~~ may be further modified ~~under the following circumstances:~~

- ~~.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)~~
- ~~.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007 and the retainage may be reduced if and as provided in Paragraph 9.3 of the General Conditions.~~

...

- .1 the Contractor has fully performed the Contract ~~except for the Contractor's responsibility in~~ accordance with the Contract Documents; provided that Owner shall have no obligation to make final payment if the Contractor is required to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and A201–2007 or as otherwise specified by the Contract Documents, or to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by ~~the Architect~~ the Architect and the Owner has approved payment.

.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~ 45 days after the conditions set forth in Section 5.2.1, above, have been met.

...

§ 5.3 WAIVER PROCEDURE/FORMAT

Contractor's progress payment applications shall be accompanied by the Contractor's Partial Waiver of Lien to date for the full amount of the payment. Subcontractor's Partial Waiver of Lien shall be submitted on a trailing basis and prior to the next payment. The Final Waiver of the Contractor shall be for the full amount of the Contract and the Final Waiver of a Subcontractor shall be for the full amount of its Subcontract. All applications for payment shall be accompanied by affidavits from the Contractor, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/001 et seq.) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and materials suppliers; amounts paid and remaining to be paid to each; together with all other documents as shall be necessary, in the sole judgment of the Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

(i) All waivers (partial and final) shall include language as applicable indicating either that:

1. All materials were taken from fully paid stock and delivered to job site in our own vehicles and all labor has been fully paid in accordance with prevailing wage laws; or
2. Materials were provided by the following suppliers from whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

The Parties shall make claims and resolve disputes as provided in Article 15 of the General Conditions and elsewhere in the Contract Documents.

~~§ 6.2 BINDING DISPUTE RESOLUTION~~

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ ~~Arbitration pursuant to Section 15.4 of AIA Document A201-2007~~

☐ ~~Litigation in a court of competent jurisdiction~~

☐ ~~Other (Specify)~~

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§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as ~~amended~~ amended, superseded or supplemented by other provisions of the Contract Documents.

§ 8.2 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.

(Insert rate of interest agreed upon, if any.)

~~—%—~~ and at the rate provided under the Illinois Local Government Prompt Payment Act.

...

Steve Hinchee
Wheaton Park District
102 E. Wesley
Wheaton, IL 60187
T: 630-510-4976
Email: shinchee@wheatonparks.org

...

Chris Snooks
SofSurfaces Inc.
4393 Discovery Lines
Petrolia, Ontario N0N 1R0
T: 519-882-8799
Email: l.stevens@sofsurfaces.com

PAGE 7

§ 8.6.1 Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing the Work. Contractor's bonds shall include a provision as will guarantee the faithful performance of this prevailing wage clause as herein provided and as provided in the General Conditions. Contractor shall comply with all other requirements of the Prevailing Wage Act.

§ 8.6.2 The Contractor shall be responsible for the supply and maintenance of any and all temporary equipment, utilities and facilities necessary to properly and safely complete and protect the Work, including without limitation those required by winter conditions. The Contractor shall provide and erect barricades and other safeguards adequate to warn of danger at the site and to protect persons and property from injury resulting from the Work.

§ 8.6.3 The Contractor shall limit materials and equipment storage to the immediate area of Work and such other areas as the Owner may designate. The Contractor shall promptly remove and properly dispose all construction material, trash, garbage and other debris off site.

§ 8.6.4 Except as otherwise specifically provided in the Contract Documents, if and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Contract Document, and otherwise in interpreting the Contract Documents, the Parties shall give precedence to the Contract Documents in the following order of priority:

- (i) Modifications.
- (ii) This Agreement=
- (iii) Supplementary and Special Conditions.
- (iv) General Conditions
- (v) Construction Drawings

§8.6.5 The rights and remedies of the Owner stated in the Contract Documents shall be in addition to and not in limitation of any other rights of the Owner granted at law or in equity.

...

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and ~~Contractor~~Contractor, as modified by Owner.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for ~~Construction~~Construction, as modified by Owner.

§ 9.1.3 ~~The Supplementary and other Conditions of the Contract:~~
Supplementary, Special and other Conditions of the Contract are those included in the Project Manual dated March 28, 2016.:

Document	Title	Date	Pages
----------	-------	------	-------

...

The Specifications are those included in the Project Manual dated March 28, 2016.

Section	Title	Date	Pages
---------	-------	------	-------

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The Drawings are those included in the Project Manual dated March 28, 2016.

...

...

<u>No. 1</u>	<u>4/6/16</u>	<u>2</u>
<u>No. 2</u>	<u>4/8/16</u>	<u>1</u>
<u>No. 3</u>	<u>4/8/16</u>	<u>1</u>

...

~~1. AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:~~ 1. All other documents contained in the Project Manual dated March 28, 2016.

2. Certificate of Insurance and endorsements attached to and incorporated in this Agreement by this reference.

~~2. Other documents, if any, listed below:~~ 3. Performance Bond, Labor and Material Payment Bond, attached to and incorporated in this Agreement by this reference.

~~(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)~~ 4. Prevailing Wage Determination and supersedes notice attached to and incorporated in this

Agreement by this reference.

5. Contractor's Proposal, as modified by the Contract Documents, attached to and incorporated in this Agreement by this reference. To the extent that Contractor's Proposal conflicts with this Agreement or the General Conditions, the terms of this Agreement and the General Conditions shall take precedence.

6. Contractor's Compliance and Certifications Attachment and Substance Abuse Prevention
Program Certification, attached to and incorporated in this Agreement by this reference.

...

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond

Limit of liability or bond amount (\$0.00)

...

WHEATON PARK DISTRICT

SOFSURFACES INC.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Nicole L. Karas, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:31:16 on 04/26/2016 under Order No. 0148839369_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney

(Title)

4/26/16

(Dated)

CERTIFICATE OF INSURANCE

THIS IS TO CERTIFY that the policy(ies) of insurance described herein have been issued to the Insured named herein for the policy period indicated. Notwithstanding any requirement, term or condition of any contract of other document with respect to which the Certificate may be issued or may pertain, the insurance afforded by the policy(ies) described herein is subject to all the terms, conditions and exclusions of such policy(ies).

HOLDER: Wheaton Park District
102 E. Wesley Street
Wheaton, IL 60187

NAMED INSURED: **SofSurfaces Inc. and SofSurfaces (USA) Inc. and John Edward Prins Holding Inc.**
4393 Discovery Line
Petrolia, ON N0N 1R0

REFERENCE: Project: Sunnyside Playground Surfacing at Sunnyside Park for the Wheaton Park District.

Certificate Number: SOFSU-1-2015-51

TYPE OF POLICY	POLICY NUMBER	POLICY TERM		LIMITS OF LIABILITY
		From	To	
Commercial General Liability Insurer: Strategic Underwriting Managers Inc. (SUM)	SUM-CGL-01540-004	31-Dec-2015	31-Dec-2016	Per Occurrence Bodily Injury and/or Property Damage to a Third Party (Combined Single Limit): \$ 2,000,000 Products / Completed Operations Aggregate Limit: \$ 2,000,000 Personal Injury and Advertising Injury Limit: \$ 2,000,000 Non-Owned Automobile Liability: \$ 2,000,000 Contingent Employers' Liability: \$ 2,000,000 Tenant's Legal Liability: \$ 2,000,000 Including Cross Liability, Contractual Liability, Personal Injury, and Broad Form Property Damage.
Commercial Automobile Insurer: Intact Insurance Company	730514129	31-Dec-2015	31-Dec-2016	Third Party Liability Limit: \$ 2,000,000
Excess Liability Insurer: Strategic Underwriting Managers Inc. (SUM)	SUM-EXC-01541-004	31-Dec-2015	31-Dec-2016	Per Occurrence Excess of Scheduled Underlying Limits: \$ 3,000,000 Annual Aggregate Limit: \$ 3,000,000 <u>Underlying Coverages:</u> Commercial General Liability, Products and Completed Operations, Non-Owned Auto, & Owned Auto.

Special Conditions of this Certificate issued to the Certificate Holder:

Wheaton Park District is hereby added to the above Commercial General Liability policy as Additional Insured, but only with respect to the operations of the Named Insured and the contractual obligations between the Named Insured and Wheaton Park District.

Insurers will endeavor to provide Certificate Holder Thirty (30) days advanced notice of policy cancellation sent to the address listed on this Certificate of Insurance.

Each insurance policy carried hereunder shall be primary insurance and shall not seek contribution from or be in excess of any other insurance maintained by the Certificate Holder.

For and on behalf of:
Jones Brown Inc.

PER:

Abby Findlay, Senior Client Manager - Commercial Division

DATE: March 30, 2016

The insurance afforded is subject to the terms, conditions and exclusions of the applicable policy. This Certificate is issued as a matter of information only and confers no rights on the holder and imposes no liability on the Insurer.

Warranty Registration & Validation

PLEASE FILL OUT AND MAIL WITHIN 10 DAYS
OF PURCHASE TO REGISTER YOUR WARRANTY.

JAN 2013



4393 Discovery Line,
P.O. Box 239,
Petrolia, ON N0N 1R0

Sales & Information:
800-263-2363
International Inquiries:
519-882-8799

Fax: 519-882-2697
E: info@sofsurfaces.com
W: www.sofsurfaces.com

Project Name _____
Contact _____
City _____
State/Province _____ Zip/Postal Code _____
Phone (____) _____ Email _____
Distributor's Name _____ Installation Date _____

How did you hear about us? _____
Are you satisfied with your product? Yes ☐ No ☐
Were you satisfied with the level of service
provided by your local representative? Yes ☐ No ☐

**Leaders In Locking
Safety Tiles.**

10 Year Limited Warranty

SofSURFACES Inc. (the "Seller") warrants that the SoftILE safety surfacing system will be free from defects in materials and workmanship. The Seller further warrants that the SoftILE safety surfacing system complies with the requirements of the ASTM F1292-09 Standard specification for impact attenuation of surface systems under and around playground equipment.

What does the warranty cover?

- Surface wear due to ordinary abrasion from pedestrian traffic will not penetrate the wear course of the surface.
- The locking system, when installed according to the manufacturers' specifications, will ensure the surface remains fixed and functional.
- The product will comply with the requirements of ASTM F1292-09 at the height for which the SoftILE system was rated by the manufacturer at time of purchase.

How long does the warranty coverage last?

This is a 10 year limited warranty, prorated as outlined in the warranty coverage schedule shown below. This warranty may be transferred with the property.

What will we do?

Any segment of a SoftILE surface that meets the warranty criteria will be repaired or replaced, at the Seller's option and in conjunction with the warranty coverage schedule below.

How do you submit a warranty claim?

A warranty claim should be made directly to the Seller. Claims made via telephone should be directed to 800-263-2363. Written claims should be sent to: SofSURFACES Inc., 4393 Discovery Line, Petrolia, ON N0N 1R0. If you would like to submit a claim request in writing, please provide the following information: a description of the claimed defect and the date the defect was discovered, photographic images (if applicable) of the claimed defect, the date of the original installation, the project name and your name, address and phone number. The Seller will provide notification of any additional information and physical evidence that may be required to process your claim.


Warranty Exclusions

This warranty does not cover:

- Product failure caused by accidents, misuse, natural disaster, vandalism or maintenance and the like (see installation, care and maintenance instructions)
- SofSURFACES shall inspect subsurface prior to installation and confirm in writing that base conforms to manufacturer's recommendations.
- Color change caused by exposure to UV and/or normal abrasion from pedestrian traffic
- Failure due to improper sub-surface preparation
- Resilient flooring may suffer visible damage as a result of extreme high forces (up to 2000 pounds per square inch). Common contributors of this type of force include but are not limited to stiletto or high heels, as well as narrow tipped chair supports. SoftILE resilient surfacing is not designed to perform under such concentrated high pressure. SofSURFACES will not accept claims for damage caused by extreme high forces.


Additional Considerations:

- The Seller's liability is limited to the material and transportation costs of repair or replacement of the product. Except as provided herein, the Seller shall be responsible for installation costs and the costs of other work in connection with such repair and replacement only if such work was performed by Seller in the original installation. Where SoftILE is installed only in high traffic areas or installed in combination with other surfacing products not sold by the Seller, such SoftILES are excluded from this warranty.
- The Seller reserves the right to discontinue or change any design or color of any products at any time and without notice or liability. If, for any reason, products of the type originally purchased are no longer available at the time a warranty claim is made, Seller may substitute another product determined by Seller to be of comparable quality and price.
- This warranty gives you specific legal rights. You may have other rights which vary from state to state and province to province.


		Standard Operating Procedure for <i>Duties of Employees/Temporary Labour</i>		
Issue Date: May 19, 2004	Written by: John Sharpe	Approved by: Matt Wemple	Procedure: SOP# B-1-3	Rev: NA
Distribution:	Managers, Supervisors, Employees, & Employee Bulletin Boards		Safety Systems Manual	Previous Rev: NA

SofSURFACES Inc. is committed to providing a healthy and safe working environment for our **employees including temporary employed personnel**. The following rules are established to assist in creating and maintaining a safe work environment.


1. All protective devices on machinery, lifting equipment and equipment in general must be used as provided and maintained in good working condition. Any absence of, or defect in, protective device shall be reported immediately to **SofSURFACES Inc.** supervision or the person in charge of the shift. No employee shall remove or make ineffective a protective device unless a temporary protective device affording equal or greater protection has been put temporarily into place and that when the need for the temporary protective device has ceased then the protective device shall be replaced immediately. Examples of protective devices include guards, safety switches, and lock-out (LOTO) equipment.
2. Personal Protective Equipment (P.P.E.) shall be used and worn as required and maintained in good condition. Defective, worn, missing, damaged or lost P.P.E. must be reported to your shift supervisor immediately, in the supervisor absence then the team leader. P.P.E. is defined as equipment that meets the Canadian Standard Association criteria and pertains to safety equipment or clothing, examples include fall arrest/lanyard/attachment points, hand wear, eye wear and face shields, hearing protectors, respiratory equipment, welding goggles, welding helmets, welding screens, footwear protection or P.P.E. that is assigned to you and is used to protect you or a co-worker from injury.
3. Employees shall follow **SofSURFACES Inc.** safe work practices that protect the health and safety of themselves and that of their co-workers. No employee will knowingly endanger themselves or co-workers by working in an unsafe manner or by operating unsafe equipment, machinery, devices or things.
4. For the purposes of identifying hazards or potential hazards workers at the start of each shift must complete daily work area and equipment inspections. Check sheets will be made available and must be completed and initialed. All defects in equipment must be reported to your supervisor a.s.a.p.
5. Employees shall attend and participate in training sessions. The information and instruction given must be followed.
6. Follow the guidelines for working safely with hazardous chemical, physical, and biological agents, when in doubt ask your supervisor for further information.

		Standard Operating Procedure for <i>Duties of Employees/Temporary Labour</i>		
Issue Date: May 19, 2004	Written by: John Sharpe	Approved by: Matt Wemple	Procedure: SOP# B-1-3	Rev: NA
Distribution:	Managers, Supervisors, Employees, & Employee Bulletin Boards		Safety Systems Manual	Previous Rev: NA

7. Employees who are under a physician's care and are required to consume medication are required to ask the physician about the medication's effects and if necessary provide a medical note if their regular job duties are restricted or curtailed.
8. Smoking is not permitted inside the building. The only designated area is located outdoors, at the picnic bench area located by the employee entrance.
9. Fire extinguishers must be in assigned locations, kept clear of materials and reported if used or missing or reported if the extinguisher is not accessible. Exits must be kept clear of materials. Electrical panel must be kept clear and accessible.
10. Only authorized visitors are permitted on **SofSURFACES Inc.** property. Visitor permission must be obtained from the manager or supervisor in charge. Employees must receive permission from their supervisor before returning to **SofSURFACES Inc.** property after regular working hours.
11. Dangling jewelry, bracelets, and loose clothing (draw strings, etc.) must **NOT** be worn in such a manner that may cause entanglement in a piece of equipment, machinery, or powered hand tools. Jewelry or clothing that is worn must be confined and not visible. Long hair must be suitably confined.
12. Work areas must be kept clear, clean and free of hazards so that no one trips, slips or falls during normal operations or in the event of a plant evacuation.
13. Horseplay is not permitted and is defined as but not limited to the following:
 - a. **Unnecessary running;**
 - b. **Practical joking;**
 - c. **Feats of strength;**
 - d. **Throwing objects even water at another employee;**
 - e. **Pushing, shoving or rough conduct.**
14. Never blow compressed air or gas at another employee and/or use compressed air to aid in the removal of dust from work clothing. This is strictly forbidden.
15. When working with energy sources such as chemical, thermal, mechanical, pneumatic, hydraulic, and electrical "LOTO procedures" must be followed. Refer to the procedures posted on or near the equipment at which you're working. If you are uncertain about what to do contact you supervisor or team leader.

		Standard Operating Procedure for <i>Duties of Employees/Temporary Labour</i>		
Issue Date: May 19, 2004	Written by: John Sharpe	Approved by: Matt Wemple	Procedure: SOP# B-1-3	Rev: NA
Distribution:	Managers, Supervisors, Employees, & Employee Bulletin Boards		Safety Systems Manual	Previous Rev: NA

16. No employee shall use or operate any equipment, machinery, device or thing without being first trained by a management-authorized person. Employees are not permitted to perform maintenance on machinery, equipment, powered and non-powered hand tools, unless permission is granted by management.
17. Physical violence is prohibited on company premises. Any violation of this rule will result in disciplinary actions to be taken up to and including dismissal. An employee who instigates a fight by way of verbal abuse is subject to disciplinary actions up to and including dismissal.
18. Sexual harassment is not condoned, and will result in disciplinary actions up to and including dismissal. Sexual harassment is defined as leering, verbal and non-verbal remarks, jokes, and touching.
19. Illicit drugs and alcohol use on company premises are prohibited. Employees reporting to work under the influence or found to be a work under the influence are subject to disciplinary actions up to and including dismissal. Employees will be sent home, and not permitted to return to work until a disciplinary hearing has taken place. Intoxicated employees will be offered a cab ride. An employee who insists on driving a vehicle while intoxicated will leave the supervisor with no choice but to report the matter to the police.
20. Yellow safety lines must be kept clear of materials at all times.
21. Follow lift-truck and scissors lift safety rules, only trained and management authorized employees are permitted to operate these types of equipment.
22. Employees working 10 feet above the floor where there is a risk of falling must wear a safety harness securely attached to fix point that will withstand the arresting force applied to it. Employees who work on raised floor, platforms, mezzanine, landing, walkway, stile, or ramps must take precautions to prevent falling. Precautionary measures include use of guardrails, bump lines, floor covers, fall restraint, and other approved safe measures.
23. Employees must report all accident and incidents to their immediate supervisor. Injured workers must report and receive care for injuries regardless of how minor the injury might seem.

		Standard Operating Procedure for <i>Duties of Employees/Temporary Labour</i>		
Issue Date: May 19, 2004	Written by: John Sharpe	Approved by: Matt Wemple	Procedure: SOP# B-1-3	Rev: NA
Distribution:	Managers, Supervisors, Employees, & Employee Bulletin Boards		Safety Systems Manual	Previous Rev: NA

The following are extracts from the Ontario Occupational Health and Safety Act. This information is provided to you so that you are aware of your legal responsibilities.

Definition of a Worker:


A worker is defined as someone who performs or supplies services for monetary compensation. Ref. Section 1 of the Ontario Occupational Health and Safety Act. All employees of SofSURFACES Inc. are therefore workers regardless of positions held either temporarily or permanently within the company and are subject to the following laws:

Section 28 (1)

- (a) work in compliance with the provisions of this Act and the Regulations;
- (b) use or wear the equipment, protective devices or clothing that the worker's employer requires to be used or worn;
- (c) report to his or her employer or supervisor the absence of or defect in any equipment or protective device of which the worker is aware and which may endanger himself, herself or another co-worker; and
- (d) report to his or her employer or supervisor any contravention of this Act or the Regulations or the existence of any hazard of which he or she knows.

Section 28 (2) No worker shall,

- (a) no employee shall remove or make ineffective any protective device required by the regulations or by his or her employer, without providing an adequate temporary protective device and when the need for removing or making ineffective the protective device has ceased, the protective device shall be replaced immediately;
- (b) use or operate any machine, device or thing or work in a manner that may endanger himself, herself or any other worker ; or
- (c) engage in a prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.

		Standard Operating Procedure for <i>Duties of Employees/Temporary Labour</i>		
Issue Date: <i>May 19, 2004</i>	Written by: <i>John Sharpe</i>	Approved by: <i>Matt Wemple</i>	Procedure: <i>SOP# B-1-3</i>	Rev: <i>NA</i>
Distribution:	<i>Managers, Supervisors, Employees, & Employee Bulletin Boards</i>		<i>Safety Systems Manual</i>	Previous Rev: <i>NA</i>

Revision and Approval Status:

Rev.	Description of Change	Change by	Approved by	Issue Date
A	Original Issue			



Bond No. 76097352

AIA Document A312™ – 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

SOFSURFACES INC.
4393 Discovery Lines
Petrolia, ON, NON 1R0

SURETY:

(Name, legal status and principal place of business)

THE GUARANTEE COMPANY OF NORTH AMERICA USA
One Towne Square, Suite 1470
Southfield, MI 48076

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

WHEATON PARK DISTRICT
102 E. Wesley
Wheaton, IL 60187

CONSTRUCTION CONTRACT

Date: May 19, 2016

Amount: Fifty-Nine Thousand Six Hundred Twenty-Four and 21/100
Dollars (\$ 59,624.21)

Description:

(Name and location)

Sunnyside Playground Surfacing, Sunnyside Playground 1120 Coolidge Wheaton, IL 60187

BOND

Date: June 1, 2016

(Not earlier than Construction Contract Date)

Amount: Sixty-Five Thousand Five Hundred Eighty-Seven and 00/100
Dollars (\$ 65,587.00)

Modifications to this Bond: ☐ None ☒ See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

SOFSURFACES INC.

Signature:

Name

and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

THE GUARANTEE COMPANY OF NORTH AMERICA USA

Signature:

Name Elizabeth P. Carvini

and Title: Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Rosenberg & Parker, Inc.
455 South Gulph Road
Suite 400
King of Prussia, PA 19406
610.668.9100

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

Regardless of anything contained in the Contract to the contrary, this bond covers the first two (2) years of the warranty only. Coverage under this bond for additional warranty may be provided by endorsement on an annual basis at the Obligee's request and at the sole discretion of the Surety.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal) Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address _____

Signature: _____

Name and Title: _____

Address _____

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



The Guarantee Company of North America USA
Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS: That **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

Elizabeth P. Cervini, Sherri L. Feeney, Joyce M. Houghton, Julia R. Burnet, Denise M. Bruno, Michelle Higgins,
Harry C. Rosenberg, David C. Rosenberg, Matthew J. Rosenberg, David A. Johnson, Jonathan F. Black
Rosenberg & Parker, Inc.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon **THE GUARANTEE COMPANY OF NORTH AMERICA USA** as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of **THE GUARANTEE COMPANY OF NORTH AMERICA USA** at a meeting held on the 31st day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner – Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.



IN WITNESS WHEREOF, **THE GUARANTEE COMPANY OF NORTH AMERICA USA** has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 23rd day of February, 2012.

THE GUARANTEE COMPANY OF NORTH AMERICA USA

Stephen C. Ruschak, President & Chief Operating Officer

Randall Musselman, Secretary

STATE OF MICHIGAN
County of Oakland

On this 23rd day of February, 2012 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of



Cynthia A. Takai
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2018
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

I, Randall Musselman, Secretary of **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, which is still in full force and effect.



IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 1st day of June, 2016.

Randall Musselman, Secretary

THE GUARANTEE COMPANY OF NORTH AMERICA USA
Home Office, Southfield, Michigan
STATUTORY BALANCE SHEET
December 31, 2015

ASSETS

Cash and Short-Term Investments	\$ 52,709,033
Marketable Securities	145,082,101
Premium and Agents Balances (under 90 days)	3,727,495
Reinsurance Receivable on paid losses	2,517,537
Accrued Interest and Dividends	1,082,243
Other Assets	<u>1,683,650</u>
Total Admitted Assets	<u><u>\$206,802,059</u></u>

LIABILITIES

Reserve for Losses and Loss Adjustment Expenses	\$ 8,741,072
Unearned Premium Reserve	15,481,043
Accrued Expenses	2,040,120
Ceded Reinsurance Premiums Payable	2,739,108
Taxes, Licenses and Fees Payable	213,292
Net Deferred Tax Liability	1,524,277
Funds Held	6,068,366
Other Liabilities	<u>441,403</u>
Total Liabilities	<u>\$ 37,248,681</u>

CAPITAL AND SUPPLUS

Common Stock and Paid-In Capital	\$144,020,970
Surplus	<u>25,532,408</u>
Total Policyholders' Surplus	<u>\$169,553,378</u>
 Total Liabilities, Capital and Surplus	 <u><u>\$206,802,059</u></u>

State of Michigan
County of Oakland

Stephen C. Ruschak being duly sworn, says: That he is the President & COO of The Guarantee Company of North America USA; that said company is a corporation duly organized, existing, and engaged in business as a surety by virtue of the laws of the State of Michigan, and has duly complied with all the requirements of the laws of said state applicable to said company and is duly qualified to act as surety under such laws; that said company has also complied with and is duly qualified to act as surety under the Act of Congress of July 30, 1947, as amended (6 U.S.C. 6-13); that the foregoing is a full, true and correct statement of the financial condition of said company on the 31st day of December 2015.

Sworn to before me this 3rd day of March 2016.

Cynthia A. Takal
Notary

Cynthia A. Takal
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2018
Acting in Oakland County


Stephen C. Ruschak, President & COO



AIA Document A312™ – 2010

Bond No. 76097352

Payment Bond

CONTRACTOR:

(Name, legal status and address)

SOFSURFACES INC.
4393 Discovery Lines
Petrolia, ON. NON 1R0

SURETY:

(Name, legal status and principal place of business)

THE GUARANTEE COMPANY OF NORTH AMERICA USA
One Towne Square, Suite 1470
Southfield, MI 48076

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

WHEATON PARK DISTRICT
102 E. Wesley
Wheaton, IL 60187

CONSTRUCTION CONTRACT

Date: May 19, 2016

Amount: Fifty-Nine Thousand Six Hundred Twenty-Four and 21/100
Dollars (\$ 59,624.21)

Description:

(Name and location)

Sunnyside Playground Surfacing, Sunnyside Playground 1120 Coolidge Wheaton, IL 60187

BOND

Date: June 1, 2016

(Not earlier than Construction Contract Date)

Amount: Sixty-Five Thousand Five Hundred Eighty-Seven and 00/100
Dollars (\$ 65,587.00)

Modifications to this Bond: ☐ None ☒ See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SOFSURFACES INC.

Signature: David

Name Annette Park

and Title: Controller

(Any additional signatures appear on the last page of this Payment Bond.)

SURETY

Company: (Corporate Seal)

THE GUARANTEE COMPANY OF NORTH AMERICA USA

Signature: Elizabeth P. Cervini

Name Elizabeth P. Cervini

and Title: Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Rosenberg & Parker, Inc.
455 South Gulph Road
Suite 400
King of Prussia, PA 19406
610.668.9100

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

Regardless of anything contained in the Contract to the contrary, this bond covers the first two (2) years of the warranty only. Coverage under this bond for additional warranty may be provided by endorsement on an annual basis at the Obligor's request and at the sole discretion of the Surety.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address _____

Signature: _____

Name and Title: _____

Address _____

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



The Guarantee Company of North America USA
Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS: That **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

Elizabeth P. Cervini, Sherri L. Feeney, Joyce M. Houghton, Julia R. Burnet, Denise M. Bruno, Michelle Higgins,
Harry C. Rosenberg, David C. Rosenberg, Matthew J. Rosenberg, David A. Johnson, Jonathan F. Black
Rosenberg & Parker, Inc.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon **THE GUARANTEE COMPANY OF NORTH AMERICA USA** as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of **THE GUARANTEE COMPANY OF NORTH AMERICA USA** at a meeting held on the 31st day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner – Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.



IN WITNESS WHEREOF, **THE GUARANTEE COMPANY OF NORTH AMERICA USA** has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 23rd day of February, 2012.

THE GUARANTEE COMPANY OF NORTH AMERICA USA

STATE OF MICHIGAN
County of Oakland

Stephen C. Ruschak, President & Chief Operating Officer

Randall Musselman, Secretary

On this 23rd day of February, 2012 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of



Cynthia A. Takai
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2018
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

I, Randall Musselman, Secretary of **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, which is still in full force and effect.



IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 1st day of June, 2016.

Randall Musselman, Secretary

THE GUARANTEE COMPANY OF NORTH AMERICA USA
Home Office, Southfield, Michigan
STATUTORY BALANCE SHEET
December 31, 2015

ASSETS

Cash and Short-Term Investments	\$ 52,709,033
Marketable Securities	145,082,101
Premium and Agents Balances (under 90 days)	3,727,495
Reinsurance Receivable on paid losses	2,517,537
Accrued Interest and Dividends	1,082,243
Other Assets	<u>1,683,650</u>
Total Admitted Assets	<u><u>\$206,802,059</u></u>

LIABILITIES

Reserve for Losses and Loss Adjustment Expenses	\$ 8,741,072
Unearned Premium Reserve	15,481,043
Accrued Expenses	2,040,120
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Taxes, Licenses and Fees Payable	213,292
Net Deferred Tax Liability	1,524,277
Funds Held	6,068,366
Other Liabilities	<u>441,403</u>
Total Liabilities	<u><u>\$ 37,248,681</u></u>

CAPITAL AND SUPPLUS

Common Stock and Paid-In Capital	\$144,020,970
Surplus	<u>25,532,408</u>
Total Policyholders' Surplus	<u><u>\$169,553,378</u></u>
 Total Liabilities, Capital and Surplus	 <u><u>\$206,802,059</u></u>

State of Michigan
County of Oakland

Stephen C. Ruschak being duly sworn, says: That he is the President & COO of The Guarantee Company of North America USA; that said company is a corporation duly organized, existing, and engaged in business as a surety by virtue of the laws of the State of Michigan, and has duly complied with all the requirements of the laws of said state applicable to said company and is duly qualified to act as surety under such laws; that said company has also complied with and is duly qualified to act as surety under the Act of Congress of July 30, 1947, as amended (6 U.S.C. 6-13); that the foregoing is a full, true and correct statement of the financial condition of said company on the 31st day of December 2015.

Sworn to before me this 3rd day of March 2016.

Cynthia A. Takal
Notary

Cynthia A. Takal
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2018
Acting in Oakland County

Stephen C. Ruschak
Stephen C. Ruschak, President & COO