

4. REMEDIES UPON DEFAULT — In the event of a Default, as defined above, Surety may at its option and sole discretion:

- A. Take over any Contract and arrange for its completion, utilizing either the Principal's current or any other subcontractors and material suppliers as the Surety may select.
- B. Take possession of the Principal's equipment, materials and supplies at the site of the work or elsewhere, and utilize the same for completion of any Contract.
- C. Take possession of the office equipment, books and records of Principal as are necessary for completion of any Contract.
- D. Loan such funds or guarantee a loan for such funds (prior to or after default), as Surety shall deem necessary for the completion of any Contract and for the discharge of Surety in connection with any Contract. Repayment of such loan shall be the responsibility of the Underinsured. But, in no event shall the Surety be obligated to use either its own funds, or collateral provided by the Principal (or any third party) to fund the Principal (or any designee or assignee of the Principal) to complete any Contract. Such determination shall be at the sole discretion of the Surety.

5. COLLATERAL SECURITY — If a claim is made against Surety, whether disputed or not, or if Surety deems it necessary to establish a reserve for potential claims, and upon demand from Surety, the Underinsured shall deposit with Surety cash or other property acceptable to Surety, as collateral security, in sufficient amount to protect Surety with respect to such claim or potential claims and any expense or attorneys' fees. Such collateral may be held or utilized by Surety until it has received evidence of its complete discharge from such claim or potential claims, and until it has been fully reimbursed for all loss, expense, attorneys' fees and unpaid premiums. If said Collateral, or collateral previously deposited with Surety, is deemed insufficient by Surety, the Underinsured agrees to deposit additional or substitute collateral in an amount and type acceptable to Surety. This may include the Surety's demand for cash collateral in substitution for trust deed collateral.

The Underinsured further agrees to reimburse the Surety for all attorneys' fees, costs, expenses, etc. including any in-house attorneys' fees, in the Surety's defense of any action brought by the Principal or indemnitors to effect the return of their collateral, if the Court subsequently upholds the Surety's position in retaining that collateral.

6. ASSIGNMENT — As security for the performance of all of the provisions of this Agreement, the Underinsured hereby assign, transfer, pledge and convey to the Surety (effective as of the date of each such Bond or Bonds, but only in the event of Default referred to in preceding Section 3):

- A. All rights in connection with any Contract, including but not limited thereto:
 1. All subcontracts let in connection therewith and such subcontractors' Surety Bonds.
 2. All machinery, plant, equipment, or tools which shall be upon the site or sites of the work or elsewhere for the purpose of any Contract, including all material ordered for any Contract.
 3. Any and all sums due or which may thereafter become due under any Contract and all other sum or sums due or to become due on all other contracts, bonded or unbonded, in which any of the Underinsured have an interest.
 4. All rights arising out of insurance policies, notes and accounts receivable, and choses in action.

7. POWER OF ATTORNEY — The Underinsured hereby irrevocably nominate, constitute, appoint and designate the Surety or its designee as their attorney-in-fact with the power, but not the obligation, to exercise all of the rights assigned, transferred and set over to the Surety by the Underinsured in this Agreement, and to make, execute and deliver any and all additional or other assignments, documents or papers, including but not limited to: the execution of instruments referred to in Section 6, the endorsement of checks or other instruments payable to any of the Underinsured deemed necessary and proper by the Surety in order to give full effect to the intent and meaning of the within assignment for the full protection intended to be given to the Surety under all other provisions of this Agreement. The Underinsured hereby ratify and affirm all acts and actions taken and done by the Surety or its designee as attorney-in-fact.

8. GENERAL PROVISIONS

- A. The obligations of the Underinsured hereunder are joint and several. Surety may bring separate suits hereunder against any or all of the Underinsured as causes of action may accrue hereunder. Surety need not proceed first against the Principal.
- B. Underinsured will, on request to Surety, procure the discharge of Surety from any Bond, and all liability by reason thereof.
- C. Underinsured warrant that each of them is specifically and beneficially interested in obtaining each Bond and agree to pay the initial, renewal, and additional premiums thereon, including premiums based on overrun in contract price according to the Companies current rate manual recognizing that the initial premium is fully earned upon execution of said Bond.
- D. Underinsured waive notice of: any Default, the making of a claim against Surety, or Surety's loaning funds to Principal.
- E. Underinsured agree to give to Surety prompt notice of any facts which might give rise to any claims or suits against Surety upon any Bond.
- F. Surety shall have the right, at its option and in its sole discretion, to issue or cancel or decline the execution of any Bond, or renewal thereof, including a final Bond when it has furnished a bid Bond.
- G. Surety may consent to any changes or alterations in a Contract or Bond, without affecting the liability hereunder of the Underinsured, including but not limited to riders extending the time of completion, or increases or decreases in the penal sum of the bond, who hereby agree to pay any additional premium resulting from said changes or alterations, without giving notice thereof to the indemnitors.
- H. Surety shall have every right, defense, or remedy which a personal Surety without compensation would have, including the right of exoneration.
- I. Until Surety shall have been furnished with conclusive evidence of its discharge without loss from any Bonds, and until Surety has been otherwise fully indemnified as hereunder provided, Surety shall have right of free access to the books, records and accounts of the Underinsured for the purpose of examining and copying them. The Underinsured hereby authorize third parties, including but not limited to depositories of funds of the Underinsured, to furnish to Surety any information requested by Surety in connection with any transaction. Surety may furnish any information, which it now has or may hereafter acquire concerning the Underinsured, to other persons, firms or entities for the purpose of procuring co-suretyship or reinsurance or of advising such persons, firms, or entities as it may deem appropriate.