**MASTER INSTALLATION AGREEMENT**

This MASTER INSTALLATION AGREEMENT is made this \_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with its principal place of business located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the “Owner”); and CLEARSPAN FABRIC STRUCTURES INTERNATIONAL, INC., a Connecticut corporation with its principal place of business located at 703 Hebron Avenue, Glastonbury, Connecticut 06033 (“Clearspan”).

**ARTICLE 1**

**DEFINITIONS**

**1.1 Definitions.**

1.1.1 Governmental Authority means any and all laws, statutes, codes, ordinances, regulations and the like.

1.1.2 The Contract Documents for a Project shall consist of this Agreement; the Work Order for that Project; the documents for that Project approved by the Owner and attached as Exhibit B-1 to the Work Order for that Project (the “Installation Documents”); and the information provided by the Owner for that Project pursuant to Section 4.1.1 and attached as Exhibit B-2 to the Work Order for that Project. In case of any inconsistency, conflict or ambiguity among the Contract Documents for a Project, the documents shall, beginning with this Agreement, govern in the order in which they are listed for that Project.

1.1.3 The Project means the installation at the Worksite specified on a Work Order of the products listed on Exhibit A to that Work Order (the “Equipment”) in a manner consistent with the Installation Documents for that Project.

1.1.4 Substantial Completion of the Work on a Project, or a designated portion thereof, occurs on the date when Clearspan’s obligations are sufficiently complete in accordance with the Installation Documents for that Project so that the Owner can or does occupy or utilize that Project, or a designated portion, for the use for which it is intended.

1.1.5 The Work for a Project are the Installation Documents procured or furnished in accordance with Section 3.1.1 for that Project and the Installation Services provided in accordance with Section 3.2.2 for that Project. Unless otherwise specifically provided in the Work Order for a Project, the Work for that Project shall not include the performance by Clearspan of any site work for that Project, the design, engineering or installation of any foundations for that Project or any other services relating to the preparation of the Worksite for the proper completion of that Project.

1.1.6 Work Order means any written order submitted by Owner to Clearspan for the performance of Work for a Project and the installation of Equipment at a Worksite in connection with a Project in the form attached hereto as Schedule I. Each Work Order shall have assigned to it a unique identifying number.

1.1.7 Worksite means the geographical area at the location of a Project where the Work thereto is to be performed.

**ARTICLE 2**

**WORK ORDER**

**2.1 Work Order.** Owner shall engage Clearspan to perform Work in connection with a Project by submitting to Clearspan a Work Order for that Project. A Work Order is deemed to have been accepted and is binding on both parties if Clearspan signs that Work Order and returns it to Owner by mail, e-mail or facsimile. Clearspan shall be free to reject any Work Order for a Project submitted by Owner.

**ARTICLE 3**

# CLEARSPAN’S RESPONSIBILITIES

**3.1 Installation Documents.**

3.1.1 The Installation Documents shall define the Project to which they relate including drawings and outline specifications fixing and describing that Project size and character as to site utilization, the requirements for the Worksite in order for the proper installation of the Equipment for that Project and the other requirements for the performance of the Work for that Project. The installation of the Equipment in connection with a Project shall be in accordance with the Installation Documents for that Project.

3.1.2 The Owner’s use of the Installation Documents without Clearspan’s involvement on the applicable Project, or on other projects, is at the Owner’s sole risk and the Owner shall defend, indemnify and hold harmless Clearspan, and its consultants and agents, from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorney’s fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or resulting from any use of the Installation Documents without Clearspan’s involvement on the applicable Project, or on any other project.

**3.2 Installation Services.**

3.2.1 The Installation Services for Work on a Project will, subject to Section 4.1.3, commence on the date agreed to by the Owner and Clearspan or, if later, fifteen (15) days after the Worksite meets the requirements set forth in the Installation Documents for that Project and Owner shall have given Clearspan written notice thereof.

3.2.2 Clearspan shall provide all installation supervision, installation equipment, labor and tools necessary to complete a Project in accordance with the Installation Documents therefor (the “Installation Services”). Notwithstanding the foregoing to the contrary, the Installation Services for any Project shall not, unless the Work Order for that Project otherwise expressly provides, include the performance by Clearspan of, and Clearspan shall have no liability for, any site work for that Project, the installation of any foundations for that Project, the performance of any other services relating to the preparation of the Worksite for the proper completion of that Project, the security for that Project, the delivery to the Worksite for that Project of such utilities, inclusive of electrical service and water supply, as may be reasonably necessary for the performance of the Work, or the making of the means for the delivery of the same, the installation or maintenance of any arrangements as may be appropriate for the protection and safeguarding of the surface and subsurface of that Project’s Worksite, the performance of any and all services for the installation of that Project, inclusive of general contracting, electrical, mechanical, plumbing and interior and exterior lighting, not specified in the Installation Documents as to be performed or provided by Clearspan, the grading of the areas impacting that Project to prevent ground and subsurface waters from leaking into the Equipment of that Project, the establishment of a weathertight seal between the Equipment of that Project and any adjoining structures or the restoration of the Worksite following the completion of the Work for that Project.

**3.3 Confidentiality.** The Owner shall treat as confidential information all of Clearspan’s estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement.

**ARTICLE 4**

**OWNER’S RESPONSIBILITIES**

**4.1 Information and Services Provided by Owner.**

4.1.1 The Owner shall provide full information in a timely manner regarding the Worksite and the requirements for each Project, including without limitation information describing the physical characteristics of the site, site evaluations, legal descriptions, surveys, existing conditions, subsurface and environmental studies, reports and investigations, and all other relevant information. THE OWNER SHALL BE SOLELY AND EXCLUSIVELY RESPONSIBLE FOR INSURING THAT EACH PROJECT IS FIT FOR THE USE FOR WHICH IT IS INTENDED, THAT ALL NECESSARY PERMITS AND APPROVALS HAVE BEEN OBTAINED FOR THE INSTALLATION AND OPERATION OF EACH PROJECT AT ITS INTENDED LOCATION, THAT THE INSTALLATION AND USE OF EACH PROJECT COMPLIES WITH ANY AND ALL GOVERNMENTAL AUTHORITY AND TO MAINTAIN THE EQUIPMENT FOR EACH PROJECT IN THE MANNER SPECIFIED IN THE INSTALLATION DOCUMENTS DURING THE PERIOD THE WORK ON SUCH PROJECT IS BEING PERFORMED. OWNER EXPRESSLY CONFIRMS ITS UNDERSTANDING AND AGREEMENT THAT CLEARSPAN HAS MADE NO REPRESENTATION OR WARRANTY THAT ANY PROJECT WILL COMPLY WITH OR OTHERWISE MEET THE REQUIREMENTS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY. OWNER SHALL INDEMNIFY AND HOLD CLEARSPAN HARMLESS WITH RESPECT TO ANY AND ALL LIABILITIES OF ANY KIND OR NATURE RELATED TO OR ARISING FROM ANY FAILURE ON ITS PART TO COMPLY WITH THE PROVISIONS OF THIS SECTION 4.1.1 OR THE FAILURE OF THE PROJECT TO COMPLY WITH OR OTHERWISE MEET THE REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY.

4.1.2 The Owner shall provide at its sole cost and expense:

4.1.2.1 a Worksite meeting the requirements set forth in the Installation Documents for the Project to which they relate for the performance by Clearspan’s employees and subcontractors of the Work for that Project and unrestricted access to such Worksite during daylight hours, together with all clearances and training reasonably required for such employees and subcontractors to have such unrestricted access, which Worksite shall be cleared of snow and ice by Owner when reasonably requested by Clearspan for its performance of the Work for that Project or as otherwise appropriate;

4.1.2.2 all building and other permits and approvals required for the installation and use of each Project, together with all appropriate site plan and other zoning reviews; and

4.1.2.3 inspection and testing services during the performance of the Work as required by Governmental Authority applicable to any Project.

4.1.3 The Owner shall provide reasonable evidence satisfactory to Clearspan, prior to commencing the Work on each Project, and during the progress of that Work, that sufficient funds are available and committed for the entire cost of that Project, including a reasonable allowance for changes in the Work as may be approved in the course of the that Work. Unless such reasonable evidence is provided in connection with a Project, Clearspan shall not be required to commence or continue Work on that Project. The failure of Clearspan to insist upon the providing of this evidence at any one time shall not be a waiver of the Owner’s obligation to make payments pursuant to this Agreement, nor shall it be a waiver of Clearspan’s right to require that such evidence be provided at a later date.

4.1.4 Clearspan shall be entitled to rely on the completeness and accuracy of the information and other items to be provided by Owner pursuant to this Section 4.1.

**4.2 Additional Owner Responsibilities.** The Owner shall, unless the Contract Documents expressly provide otherwise, be responsible at its sole cost and expense for:

4.2.1 the payment of any and all federal, state and local taxes imposed on or otherwise associated with each Project, the installation of the Equipment associated with each Project, the Work or the performance of the Work;

4.2.2 obtaining such energy usage analyses or studies concerning each Project as it deems appropriate;

4.2.3 obtaining such as-built, electrical system and mechanical system drawings as it deems appropriate or which may otherwise be required by any Governmental Authority;

4.2.4 any site preparation work reasonably required for the performance of the Work for each Project at its Worksite, securing the Worksite for each Project in such manner as it deems appropriate, delivering to the Worksite for each Project such utilities, inclusive of electrical service and water supply, as may be reasonably necessary for the performance of the Work and clearly marking the means for the delivery of the same, installing and maintaining such arrangements as it deems appropriate for the protection and safeguarding of the surface and subsurface of each Project’s Worksite, the performance of any and all services for the installation of each Project, inclusive of general contracting, electrical, mechanical, plumbing and interior and exterior lighting, not specified in the Installation Documents as being performed or provided by Clearspan, the grading of the areas impacting each Project to prevent ground and subsurface waters from leaking into the Equipment of a Project, the establishment of a weathertight seal between the Equipment of each Project and any adjoining structures and the restoration of the Worksite following the completion of the Work for each Project;

4.2.5 any damage to a Project or its associated Equipment caused by any party other than Clearspan and its subcontractors; and

4.2.6 coordinating the Work to be performed by Clearspan for each Project with all other parties performing services on behalf of the Owner and the resolution of any disputes involving the same, including, if applicable, any negotiations, contracting and other matters involving unionized labor.

**4.3 Owner’s Representative.** The Owner’s Representative designated on each Work Order shall have authority to bind the Owner in all matters requiring the Owner’s approval, authorization or written notice in connection with the Project to which that Work Order pertains and shall be reasonably available to Clearspan to address matters arising in connection with the performance and acceptance of the Work in connection with that Work Order.

# ARTICLE 5

**SUBSTANTIAL COMPLETION OF THE WORK**

**5.1 Substantial Completion of the Work.** Unless the parties agree otherwise or as the same may be adjusted in accordance with this Agreement, the date for the Substantial Completion of the Work on any Project shall, subject to Section 4.1.3, be as set forth on the Work Order for that Project. The parties shall by mutual agreement determine the commencement date for the Installation Services for each Project.

**5.2 Delays in the Work.** If causes beyond Clearspan’s control delay the progress of the Work on a Project or Clearspan’s preparation for the performance of that Work in advance of the execution or acceptance of a Work Order addressing the same, if Clearspan shall stop the Work on a Project pursuant to this Agreement or its preparation for the performance of that Work in advance of the execution or acceptance of a Work Order addressing the same or if the Owner shall elect to not proceed with the performance of any Work in advance of the execution or acceptance of a Work Order addressing the same, then the date of Substantial Completion of the Work on that Project shall, if applicable, be modified as appropriate and Owner shall reimburse Clearspan for one hundred twenty percent (120%) of any and all costs and expenses, including without limitation those attributable to Clearspan’s internal resources and personnel costs and for transportation, storage, equipment rental and labor mobilization and remobilization incurred by Clearspan and its affiliates and subcontractors as a result of such delay, termination of Work or election to not proceed. Such causes beyond Clearspan’s control shall include but not be limited to: changes ordered in the Work on that Project, acts or omissions of any party other than Clearspan, inclusive of other parties performing services for Owner or organized labor, failure of any other party to comply with any applicable Governmental Authority, damage or loss to any of the Equipment following its delivery to Owner, the Owner preventing Clearspan from performing the Work on that Project or being in breach of the Contract Documents, the presence at the Worksite for that Project of any substance identified now or in the future as hazardous under any Governmental Authority, any surface, subsurface, aerial or other conditions at the Worksite for that Project which differ from those set forth in any information provided by Owner to Clearspan or which interfere with the performance of the Work on that Project or any Force Majeure Event, as defined in Section 7.4. Owner expressly understands and agrees that Projects, and the Work related thereto, are complex, require the coordination of the performance of the services of other parties, the allocation of Clearspan’s internal resources and significant advance planning for their timely execution and, accordingly, it is reasonable for Clearspan and its affiliates and subcontractors to incur costs and expenses in anticipation of the execution or acceptance of a Work Order addressing a Project and the Work related thereto for which the Owner shall be liable to Clearspan pursuant to this Section 5.2 should it elect to not proceed with the same.

**5.3 Delay in Scheduled Installation Services’ Commencement Date**. Once Owner and Clearspan schedule a commencement date for the Installation Services for a Project, that date may not be changed without Clearspan’s prior written consent. If during the two (2) weeks that precede the commencement date for a Project there shall be a delay in the commencement date for those Installation Services (i) pursuant to the last sentence of this Section 5.3 or (ii) resulting from causes beyond the control of Clearspan, then Owner shall reimburse Clearspan for one hundred and twenty percent (120%) of any and all costs and expenses, including without limitation those attributable to Clearspan’s internal resources and personnel costs and for transportation, storage, equipment rental and labor mobilization and remobilization incurred by Clearspan and its affiliates and subcontractors as a result of such delay. Such causes beyond Clearspan’s control shall include but not be limited to: changes ordered in the Work on that Project, acts or omissions of any party other than Clearspan, inclusive of other parties performing services for Owner or organized labor, failure of any other party to comply with any applicable Governmental Authority, damage or loss to any of the Equipment following its delivery to Owner, the Owner preventing Clearspan from performing the Work on that Project or being in breach of the Contract Documents, the presence at the Worksite for that Project of any substance identified now or in the future as hazardous under any Governmental Authority, any surface, subsurface, aerial or other conditions at the Worksite for that Project which differ from those set forth in any information provided by Owner to Clearspan or which interfere with the performance of the Work on that Project or any Force Majeure Event. In addition, Clearspan shall be entitled to delay the commencement of the Installation Services on that Project without liability to Owner if Owner shall have failed to execute and deliver all agreements with Clearspan related to that Project not later than two (2) weeks prior to the scheduled commencement date of the Installation Services for that Work Order or otherwise be in breach of the Contract Documents.

# ARTICLE 6

**CHANGES IN THE WORK**

**6.1 Minor Changes.** Clearspan may, without providing the Owner with written notice thereof, make minor changes in the design and installation of any Project consistent with the intent of the Installation Documents which do not involve an adjustment in the compensation payable to Clearspan for, or the date of Substantial Completion of the Work on, that Project and which do not materially and adversely affect the design or installation of that Project, the quality of any Equipment specified in the Installation Documents, the performance of any Equipment specified in the Installation Documents or the quality of workmanship required by the Installation Documents.

**6.2 Subsurface Conditions**. Owner acknowledges that the Installation Documents for a Project, the date for the Substantial Completion of the Work on that Project and the compensation payable to Clearspan for the Work for that Project have all been based in part on the information provided to Clearspan by Owner concerning the subsurface conditions present at the Worksite for that Project. If the subsurface conditions present at the Worksite for a Project deviate from those reflected in the information provided to Clearspan by Owner for that Project in such a manner that make, or if such information was not provided by Owner to Clearspan the subsurface conditions present at that Worksite make, the completion of that Project in accordance with the Installation Documents applicable to that Project in the reasonable judgment of Clearspan either: (i) inappropriate, then the Installation Documents for that Project, compensation payable to Clearspan for the Work on that Project and/or the date of Substantial Completion of the Work for that Project shall be modified as appropriate or (ii) unfeasible, then Clearspan may cancel that Work Order without liability to Owner and Owner shall reimburse Clearspan for one hundred twenty percent (120%) of any and all costs and expenses, including without limitation those for transportation, storage, equipment rental and labor mobilization and remobilization, incurred by it or its subcontractors in the performance of that Work Order as a result of any modification pursuant to clause (i) or in the performance of that Work Order prior to its cancellation pursuant to clause (ii).

**6.3 Change Orders**. Any modifications to the Installation Documents for a Project previously approved by Owner that are made at the request of Owner will be subject to additional charges and may result in delay in the Substantial Completion of the Work for that Project. A change order will be issued to Owner by Clearspan which shall include any additional costs associated with said changes and delay in the date for the Substantial Completion of the Work for that Project (a “Change Order”). No changes to the Installation Documents for a Project requested by Owner will be accepted by Clearspan unless a Change Order addressing the same has been executed by an authorized representative of Owner.

**ARTICLE 7**

**ADDITIONAL COSTS AND EXPENSES**

**7.1** **Additional Costs and Expenses.** The Owner and Clearspan agree that it will be difficult to determine the damages to be suffered by Clearspan as a result of any delay, modification, cancellation or election not to proceed contemplated by Sections 5.2, 5.3 or 6.2. Accordingly, Clearspan and Owner desire to liquidate in advance the amount of such damages and have agreed that the amounts specified in Sections 5.2, 5.3 or 6.2 are a reasonable estimate of those damages and are not a penalty. The Installation Fee set forth on any Work Order accepted by Clearspan has been determined based on the then current prices for the Work contemplated thereby. The parties acknowledge that Clearspan’s costs for the performance of such Work may be volatile and subject to sudden increases in expense. Clearspan endeavors to use commercially reasonable efforts to obtain advantageous pricing for the performance of the Work contemplated by Work Orders. Owner agrees that Clearspan shall have the right to equitably increase the Installation Fee set forth on a Work Order in the event the price to it for supplies, materials, equipment, the services of personnel, whether of its own employees, of subcontracted labor or other providers, transportation, energy or other items required to perform the Work contemplated thereby are materially increased by the provider of such goods, commodities or services. Clearspan shall provide Owner written notice of any such increase whereupon the Owner shall, within fifteen (15) days, notify Clearspan in writing of its election to either: (i) agree to pay the new Installation Fee specified by Clearspan or (ii) cancel that Work Order in its entirety. A failure by Owner to timely notify Clearspan of its election pursuant to the immediately preceding sentence shall be deemed Owner’s election to agree to pay the new Installation Fee specified by Clearspan. A cancellation of a Work Order in its entirety by an Owner pursuant to this Section 7.1 shall relieve Clearspan and Owner from all further liability under that Work Order. The additional sums for which Owner is liable pursuant to any of Sections 5.2, 5.3 or 6.2 shall be due and payable by Owner upon demand.

**7.2 Stoppage of Work.** If the Owner fails to pay Clearspan any amount due in connection with a Project when due, then Clearspan may, at any time thereafter, stop the Work on that Project until payment of the amount owing has been received.

**7.3** **Unpaid Payments.** Payments due but unpaid pursuant to any Work Order shall bear interest from the date payment is due at the prime rate of interest published in *The Wall Street Journal* from time to time, plus three percent (3%).

**7.4 Force Majeure.** The performance by Clearspan of each Work Order and the Work for each Project is contingent upon Clearspan’s ability to obtain supplies, materials and the services of personnel, either of its own employees, of subcontracted labor or of other providers, through its regular and usual sources of supply. If by reason of any contingency beyond Clearspan’s control, including without limitation war, fire, flood, weather conditions, casualty, accident, or other acts of God, strikes or other difficulties with employees, subcontractors or other service providers, delay or inability to obtain supplies, labor, equipment, materials and services through Clearspan’s usual sources, failure or refusal of any carrier to transport materials or delay in the transport thereof or epidemic, pandemic or outbreak of disease, and their respective side effects (each a “Force Majeure Event”), Clearspan is not able to perform a Work Order or the Work for a Project or to otherwise meet a date for the Substantial Completion of a Project, then Clearspan shall not be liable therefor and may, in its discretion by notice to Owner, postpone such performance and date of Substantial Completion to a time which is reasonable under all of the circumstances. If any Force Majeure Event only effects part of Clearspan’s operations, then it may allocate its available resources among all of its customers and its own requirements as it may determine in its sole discretion. If the occurrence of a Force Majeure Event results in an increased cost for Clearspan’s performance of a Work Order or the Work for a Project, then the sums payable by Owner to Clearspan pursuant thereto shall, without duplication for amounts payable pursuant to Sections 5.2 or 5.3, be equitably adjusted to reflect such increased cost of performance.

**ARTICLE 8**

**INSURANCE TO PROTECT THE PROJECT AND WAIVER OF SUBROGATION**

**8.1 Insurance to Protect Project.**

8.1.1 The Owner shall obtain and maintain All Risk Builders Risk insurance upon the entirety of each Project for the full cost of replacement of that Project and the Equipment at the time of any loss naming as insureds the Owner and Clearspan (the “Builder’s Risk Policy”). The Builder’s Risk Policy shall include all risk insurance for physical loss or damage including without duplication of coverage for at least theft, vandalism, malicious mischief, transit, materials stored off site, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or material. The Owner shall increase the limits of coverage of the Builder’s Risk Policy when requested by Clearspan to reflect any changes in the Work for a Project or the estimated replacement cost of the Equipment being installed at that Project. The Builder’s Risk Policy shall be written without a co-insurance clause. The Owner shall be solely responsible for any deductible amounts associated with the Builder’s Risk Policy.

8.1.2 The Owner shall not occupy or use any portion of a Project prior to the Substantial Completion of the Work for that Project without the prior agreement of Clearspan and, if the same shall be required to prevent the cancellation or lapsing of any Builder’s Risk Policy, the insurance company that has issued the same.

8.1.3 The Owner shall provide Clearspan with a copy of the Builder’s Risk Policy before an exposure to loss may occur. The Builder’s Risk Policy shall provide that Clearspan be given thirty (30) days prior written notice by the issuer of any cancellation, non-renewal, or any endorsements restricting or reducing coverage.

**8.2 Property Insurance Loss Adjustment.**

8.2.1 Any insured loss shall be adjusted with the Owner and Clearspan and made payable to the Owner and Clearspan as trustees for the insureds, as their interest may appear, subject to any applicable mortgagee clause.

8.2.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with a dispute resolution award pursuant to Article 10. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to Article 10.

**8.3 Waiver of Subrogation.**

8.3.1 The Owner and Clearspan waive all rights against the other and any of its employees, agents, consultants, subcontractors, material suppliers and subcontractors for damages covered by the Builder’s Risk Policy to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Clearspan as trustees.

8.3.2 The Owner waives subrogation against Clearspan on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for a Project after its completion, with each such policy also being endorsed to state that the issuer waives any right of subrogation against Clearspan.

**8.4 Mutual Waiver of Special, Consequential and Incidental Damages.** The Owner agrees to waive all claims against Clearspan for all punitive, special, consequential or incidental damages that may arise out of or relate to this Agreement including but not limited to the Owner’s loss of use of the property at which a Project is to be situated, all rental expenses incurred, loss of services of employees, loss of profits, loss of use of any element of any Project, injury to person or property, loss of reputation or claims of third parties. Clearspan agrees to waive all claims against the Owner for all punitive, special, consequential or incidental damages, other than loss of profits related to a Project, that may arise out of or relate to this Agreement including but not limited to the loss of business, loss of financing, principal office overhead or loss of reputation. The provisions of this Section shall survive any termination of this Agreement and any Work Order. This disclaimer of damages shall apply even if Owner’s or Clearspan’s sole and exclusive remedy shall fail of its essential purpose.

**ARTICLE 9**

**TERMINATION OF A WORK ORDER**

**9.1 Termination Upon Stoppage of Work.** Clearspan or the Owner may terminate a Work Order on seven (7) days prior written notice to the other if the Work thereon has been stopped for a sixty (60) day period pursuant to the order of any court or other governmental authority having jurisdiction or as a result of the declaration of a national emergency or other governmental act.

**9.2** **Termination on Breach.** Clearspan may terminate a Work Order on seven (7) days prior written notice to the Owner if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project for that Work Order in accordance with Section 4.1.3 of this Agreement or fails to pay Clearspan in accordance with the terms of that Work Order unless said evidence or payment is either provided or made within said seven (7) day period.

**9.3 Recoverable Amounts.** Clearspan shall be entitled to recover from the Owner upon termination of a Work Order in accordance with this Article the sums due and payable by Owner pursuant to Sections 5.2, 5.3 and 6.2 together, to the extent not in duplication thereof, with payment for all Work performed prior to said termination, including without limitation lost profits, transportation, storage, equipment rental and labor mobilization and demobilization, and reasonable damages.

**ARTICLE 10**

**MEDIATION**

**10.1 Mediation.** If a dispute arises out of or relates to this Agreement, any Work Order or the breach of the same, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussion, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before institution of a legal action. The location of the mediation shall be the principal place of business of Clearspan. Once one party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request. Either party may terminate the mediation at any time after the first session by written notice to the other party and the mediator.

**10.2** **Venue.** The Owner agrees that any lawsuit or other legal proceeding relating to this Agreement or any Work Order may be brought in the Superior Court for the Judicial District of Hartford or the United States District Court for the District of Connecticut and consents to the non-exclusive jurisdiction of such courts, to the removal to such courts of any lawsuit or other legal proceeding relating to this Agreement or any Work Order brought by the Owner in any other court and to service of process in any lawsuit or other legal proceeding being made upon the Owner by certified mail, return receipt requested, sent to the address to which any notice to the Owner under this Agreement may be sent. The Owner hereby waives any objection the Owner may now or hereafter have to the venue of any such lawsuit or legal proceeding being initiated in such court or that such lawsuit or legal proceeding has been brought in an inconvenient court.

**10.3 Multiparty Proceeding.** The parties agree that all parties necessary to resolve a claim shall be parties to the same proceeding. Appropriate provisions shall be included in all other contracts relating to the Work on a Work Order to provide for the consolidation of such dispute resolution proceedings.

**10.4 Attorneys’ Fees.** The party losing any litigation proceeding in connection with this Agreement or any Work Order shall pay the costs, expenses and fees, including reasonable attorneys’ fees, incurred by the party prevailing in such proceeding. The parties shall request that the court in any such proceeding make an award of said costs, expenses and fees, including reasonable attorneys’ fees, with its decision.

**10.5 Lien Rights.** Nothing in this Article shall limit any rights or remedies not expressly waived by Clearspan which Clearspan may have under lien laws.

**ARTICLE 11**

**MISCELLANEOUS PROVISIONS**

**11.1 Miscellaneous Provisions.**

11.1.1 This Agreement, and each Work Order, are solely for the benefit of the parties and not for the benefit of any third party nor any third party beneficiary, except to the extent expressly provided in this Agreement or that Work Order. This Agreement and each Work Order represents the entire and integrated agreement between the parties with respect to the Work and the Project set forth on that Work Order, and supersedes all prior negotiations, representations or agreements, either written or oral. The Owner and Clearspan agree to look solely to each other with respect to the performance of this Agreement and any Work Order.

11.1.2 The Owner shall not assign its interest in this Agreement or any Work Order without the written consent of Clearspan. If Owner attempts to make such an assignment, Owner shall nevertheless remain legally responsible for all obligations under this Agreement and any assigned Work Order, unless otherwise agreed by Clearspan. The terms and conditions of this Agreement and each Work Order shall be binding upon both parties and their permitted successors and assigns.

11.1.3Any notice or communication required or which may be given under this Agreement or any Work Order shall be in writing and either delivered personally, sent by overnight courier or mailed by certified mail, return receipt requested, to the addressee. Such notice or written communication shall be deemed given when so delivered personally, or if sent by overnight courier, one (1) business day after the date so sent, or if mailed by certified mail, three (3) business days after the date of mailing. Notices and written communications shall be sent to the address of the addressee stated in this Agreement or to such other address, as any addressee shall request by written notice.

11.1.4 This Agreement and each Work Order shall be governed by the law of the state in which the Project is located.

11.1.5 The partial or complete invalidity of any one or more provision of this Agreement or any Work Order shall not affect the validity or continuing force and effect of any other provision.

11.1.6 The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement or any Work Order, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

11.1.7 The parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

11.1.8 The parties’ rights, liabilities, responsibilities and remedies with respect to this Agreement and each Work Order, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

This AGREEMENT is entered into as of the date first set forth above.

Owner:

By:

Clearspan:

CLEARSPAN FABRIC STRUCTURES

INTERNATIONAL, INC.

By:

**SCHEDULE I**

**WORK ORDER**

This Work Order is entered into and made a part of the Master Installation Agreement between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Clearspan Fabric Structures International, Inc., dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_ (the “Agreement”) and, except as set forth herein, is subject to and controlled by the terms thereof. All capitalized terms not defined in this Work Order have the respective meanings set forth in the Agreement. To the extent that the terms of this Work Order conflict with any of the terms of the Agreement, and this Work Order explicitly states that it intends to modify the conflicting terms, this Work Order supersedes the Agreement, in all other cases, however, the terms of the Agreement shall control.

**[ONLY FOR USE FOR PROJECTS WHERE CLEARSPAN IS RESPONSIBLE FOR THE FOUNDATION.**

**The Agreement is hereby, solely in connection with the Project, modified by amending and restating Section 1.1.5 thereof as follows:**

**1.1.5 The Work for a Project is the Installation Documents procured or furnished in accordance with Section 3.1.1 for that Project and the Installation Services provided in accordance with Section 3.2.2 for that Project; the Work, however shall not include the performance by Clearspan of any site work for that Project or any other services relating to the preparation of the Worksite for the proper completion of that Project.]**

By submitting this Work Order, Owner hereby:

A. requests Clearspan to install at the Worksite set forth below the Equipment described on Exhibit A attached hereto in accordance with the Installation Documents attached hereto as Exhibit B-1 (the “Project”);

B. Owner hereby confirms that the information set forth on Exhibit B-2 attached hereto is true and accurate; and

C. Represents and warrants to Clearspan that the title holder to the real property at which the Project and the worksite are to be located is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

As used herein, Worksite means: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Owner shall compensate Clearspan for the installation of the Equipment described on Exhibit A in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_), which amount shall be paid as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Installation Fee”). The unpaid balance of the Installation Fee shall be due and payable upon Substantial Completion of the Project. Interest at the lower of one and 50/100 percent (1.50%) per month or the highest rate permitted by law shall accrue on the unpaid balance of any amounts not timely paid by Owner to Clearspan, which interest shall be payable by Owner on demand.

The date for the Substantial Completion of the Project shall be no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_) days after the start of the Installation Services for the Project.

Owner’s Representative for this Project shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or such replacement therefor as shall be reasonably acceptable to Clearspan.

This Work Order has been submitted by Owner on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

OWNER:

By:

This Work Order has been accepted by Clearspan on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

CLEARSPAN FABRIC STRUCTURES

INTERNATIONAL, INC.

By:

**EXHIBIT A**

**EQUIPMENT**

**EXHIBIT B-1**

**INSTALLATION DOCUMENTS**

**EXHIBIT B-2**

**OWNER PROVIDED INFORMATION**

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