

Masterfile Authorization Agreement

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, ("Effective Date") by and between Bennett Engineering Group, Inc., a Florida corporation, 4191 Dairy Ct, , Port Orange, Florida 32127 ("Bennett") and (Company)_____ (Address)_____ (City)_____ (State) _____ (Zip) _____ (Email address)_____ (County) _____ (License number)_____ (Phone number)_____ (Fax number)_____ ("Contractor").

WHEREAS, Bennett is the author, developer, and copyright owner of the Aluminum Structures Design Manual ("Masterfile"); and

WHEREAS, pursuant to Florida Statutes section 489.113(9)b), licensed contractors may utilize designs and engineering from such master design manuals rather than performing site specific engineering; and

WHEREAS, Contractor desires to obtain authorization from Bennett to use the Masterfile for this purpose.

NOW, THEREFORE, in light of the foregoing, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1) **Authorization to Use Materfile.** Bennett hereby authorizes Contractor to use the Masterfile, subject to the further terms and conditions hereof. Such authorization shall allow Contractor to request designs and/or materials from the Masterfile, as provided by Bennett's and/or Bennett's distributor.
- 2) **Limitations on Use.**
 - a) **Use of Copyright Notice.** Any and all designs or other materials from the Masterfile shall retain any copyright or other notices printed thereon, and where not already affixed, Contractor shall add the following copyright notice: © Bennett Engineering Group 1994-2009. As evidence of the foregoing authorization, Bennett shall issue a card (the "Approval Card") indicating that Contractor is authorized as set forth herein, which shall be effective for only so long as this Agreement is in force.
 - b) **Notification of Errors.** If Contractor identifies any error in the Masterfile and/or portions thereof obtained by Contractor pursuant to this Agreement (excluding mere spelling or punctuation errors), including but not limited to numerical typographical errors or errors in any calculation, Contractor shall immediately notify Bennett of same.

- c) **Permitted Use.** Contractor may only use the Masterfile designs in accord with the provisions of this Agreement, Florida Statutes section 489.113(9)(b), and the notes limiting the appropriate use of the plans, designs and calculations in the Masterfile or portions thereof.
 - d) **Use by Third Parties Prohibited.** The authorization granted to Contractor hereunder is personal to Contractor. Contractor may not provide plans to any third party, including but not limited to homeowners, building owners, or other licensed contractors.
- 3) **Intellectual Property Ownership.** Contractor acknowledges Bennett's exclusive rights in, and ownership of, the copyright and all other rights in the Masterfile and that use of the Masterfile, or portions thereof, beyond the scope of the authorization granted hereunder shall constitute copyright infringement. Contractor shall not, at any time during or after the term of this Agreement, dispute or contest, directly or indirectly, Bennett's exclusive right and title to the copyright in the Masterfile or the validity thereof.
- 4) **Training.** Prior to using the Masterfile, but in no event more than two years prior to using the Masterfile, Contractor shall attend Bennett's training course regarding proper use of the Masterfile (the "Training Course"). Contractor shall pay the then current fee for the Training Course. Failure to comply with this training requirement and/or attend the Training Course at least once in every two-year period shall be a material breach of this Agreement, and grounds for immediate termination of this Agreement and the authorization granted hereunder.
- 5) **Statutory Authorization for Use of Masterfile.** The Masterfile constitutes a "master design manual" as that term is defined in Florida Statutes section 489.113(9)(b) as of the Effective Date. Contractor acknowledges and agrees that the Masterfile may only be used for those structures identified in such statute and in the notes to each structure. Contractor acknowledges that any modification to the Masterfile plan may result in rejection by a building department. Regardless of the scope, or lack, of modification of the plan, Contractor acknowledges that Bennett is under no obligation to take any action with respect to the refusal of a plan in the Masterfile by any building department official.
- 6) **Contractor Licensure.** Only licensed contractors are permitted to be authorized to use the Masterfile, or portions thereof. Contractor represents and warrants that it is in compliance with all of its licensing requirements and is in good standing with all licensing authorities. Contractor shall provide documentary evidence of its status as a contractor in good standing in the State of Florida within ten (10) days of the Effective Date and at any time upon request of Bennett and/or its distributors. Contractor further agrees that it will return the Masterfile, or portions thereof, and Approval Card, and that the authorization granted hereunder shall be automatically terminated, if Contractor becomes unlicensed.
- 7) **Contractor Responsibility.** Contractor is solely responsible for its construction of any and all structures using the Masterfile. If Contractor has any questions or concerns regarding the Masterfile plans and wishes to obtain an opinion from Bennett, such opinion shall be available in Bennett's sole discretion and at Bennett's then current hourly rate.

- 8) **Term.** The term of this Agreement shall be for two (2) years, commencing on the date Contractor attends the Training Course, unless otherwise earlier terminated as provided herein. Contractor acknowledges that while this Agreement commences on the Effective Date, the authorization granted herein, and therefore Contractor's permission to use the Masterfile, does not commence until the date Contractor attends the Training Course, if different.
- 9) **Renewal.** In order to use the Masterfile after the end of the term of this Agreement, Contractor must obtain a new authorization from Bennett. Contractor acknowledges that use of the Masterfile after the end of the term of this Agreement or after any other termination of the authorization granted herein shall constitute copyright infringement.
- 10) **Termination.** Bennett may terminate this Agreement and the authorization granted hereunder at any time upon material breach by Contractor. Such termination shall be effective immediately upon notice from Bennett to Contractor of the breach. Contractor may terminate this Agreement at any time upon return of the Masterfile, or portion thereof, to Bennett.
- 11) **Contractor Representations and Warranties.** Contractor represents and warrants that: (i) it will use its best efforts to perform its obligations hereunder, and when using the Masterfile, or portion thereof, in a timely and professional manner; (ii) it is, and shall remain, in compliance with all applicable laws and regulations and with all representations made to Bennett; (iii) its performance of its obligations hereunder does not violate any agreement with any third party.
- 12) **Indemnification.** Contractor agrees to indemnify, defend, and hold Bennett harmless, from and against any action brought against Bennett, by any third party (including but not limited to any customer or subcontractor of Contractor), with respect to any claim, demand, cause of action, debt, or liability, including reasonable attorneys' fees, to the extent that such action is based upon, or in any way related to, Contractor's use of the Masterfile.
- 13) **Disclaimer of Warranties.** **CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE MASTERFILE IS PROVIDED "AS IS" AND "AS AVAILABLE." BENNETT HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND NON-INFRINGEMENT. IN PARTICULAR, BENNETT, ITS LICENSORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND SUCCESSORS, DO NOT REPRESENT OR WARRANT THAT (A) USE OF THE MASTERFILE WILL MEET YOUR REQUIREMENTS; OR (B) THAT THE MASTERFILE IS FREE FROM ERROR.**
- 14) **Limitation of Liability.** Contractor agrees that the Bennett's entire liability, if any, for any claim(s) for damages relating to this Agreement which are made against Bennett, whether based in contract, negligence, or otherwise, shall be limited to the amount paid by Contractor to Bennett. In no event will Bennett be liable for any consequential, exemplary, incidental, indirect, or special damages, arising from or in any way related to, this Agreement or relating in whole or in part to Contractor's use of the Masterfile, even if Bennett has been advised of the possibility of such damages.

15) **Acknowledgment.** Contractor acknowledges and agrees that (1) Contractor has read and understood this Agreement; (2) the terms of this Agreement are fair and reasonable, and not unduly restrictive; and (3) Contractor has had the opportunity to confer with legal counsel of Contractor's choosing regarding this Agreement prior to executing same.

16) **Survival.** Upon termination or expiration of this Agreement, the provisions of paragraphs 3, 7, and 12 through 17 shall survive.

17) **General Provisions.**

a) **Notices.** All notices, requests, consents and other communication hereunder shall be in writing, shall be addressed to the receiving party's address as listed above or as a party may designate by notice hereunder, and shall be deemed to have been given (i) if by hand, at the time of delivery thereof to the receiving party at the address of such party set forth above, (ii) if made by e-mail or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, or (iii) if sent by overnight courier, on the next business day following the day such mailing is made.

b) **Entire Agreement.** This Agreement comprises the entire understanding between the parties with respect to, and supersedes any prior understanding or agreement, oral or written, relating to, the subject matter hereof. This Agreement may only be amended by a writing signed by both parties. In the event that any portion of this Agreement conflicts with any other agreement by and between Bennett and Contractor regarding the Masterfile, including without limitation any provision on the Approval Card or any materials executed by Contractor in favor of Bennett upon obtaining designs from the Masterfile, this Agreement shall govern.

c) **Attorneys' Fees.** In connection with any litigation or arbitration arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees, whether incurred during settlement, at trial, in arbitration, on appeal, or in any bankruptcy proceeding.

d) **Governing Law; Jurisdiction; Venue.** The parties agree that this Agreement is being entered into in and shall be governed and construed in accordance with the laws of the State of Florida, without regard to conflicts of laws principles. The parties agree that in any action or proceeding arising out of the parties' relationship, such proceeding shall be brought exclusively in the courts of the State of Florida, County of Volusia or the federal court with subject matter jurisdiction and encompassing the County of Volusia, Florida. Process in any action or proceeding referred to in this subsection may be served on any party anywhere in the world and may be served by delivery of service of process by certified mail, return receipt requested, and the party receiving such service waives any and all objections to delivery of service of process in this manner, and shall indemnify the other party for any damages arising from any claims to the contrary.

e) **Waiver.** Any waiver by Bennett of any breach of, or failure to comply with, any provision of this Agreement must be in writing and signed by Bennett in order to be valid. Such waiver

shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement.

- f) **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

- g) **Counterparts; Headings; Facsimile Signature.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement. The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof. This Agreement may be executed by facsimile signature.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Bennett Engineering Group, Inc.

Contractor: _____

Signature: _____

Signature: _____

Print: Robin Gawel _____

Print: _____

Title: President _____

Title: _____