

**IN THE UNITED STATES DISTRICT COURT OF ILLINOIS  
FOR THE NORTHERN DISTRICT  
EASTERN DIVISION**

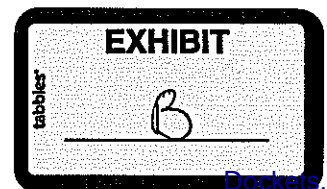
EMPLOYERS MUTUAL CASUALTY )  
COMPANY, an Iowa corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KEYSTONE MECHANICAL INDUSTRIES, INC., )  
an Illinois corporation, KEYSTONE ELECTRIC )  
COMPANY, INC., an Illinois corporation, )  
KEYSTONE MECHANICAL INDUSTRIES )  
OF WISCONSIN, INC., an Illinois corporation, )  
d/b/a DIPIETRO MECHANICAL INDUSTRIES, )  
INC., KEYSTONE SERVICE COMPANY, an )  
Illinois corporation d/b/a DIPIETRO PLUMBING, )  
KEYSTONE HEATING & COOLING, INC., an )  
Illinois corporation and YALE SMITH, an )  
Illinois citizen, )  
 )  
Defendants. )

No: 1:08-cv-7408

**AFFIDAVIT OF RUTA KRUMINS**

I, Ruta Krumins, having been first sworn on oath, depose and state, and could competently testify to the following matters within my personal knowledge if called upon to testify at the trial of the above referenced cause:

1. I am a Bond Claims Adjuster for Employers Mutual Casualty Company ("EMC"). I manage and investigate performance, payment and other surety claims for EMC and at all relevant times have been responsible for managing the performance and payment bond claims against EMC involving the Defendants.



2. During the relevant time period, EMC was in the business of issuing surety bonds to various entities guaranteeing, among other things, their performance and payment obligations for construction projects.

3. EMC issued payment and performance bonds (the "Bonds") on behalf of the Defendants, as principal. The Bonds secure the obligations of the Defendants to perform work required by its contracts with various Illinois entities (the "Projects") and to pay for labor and materials required for the completion of the Projects. (A true and accurate listing of the Bonds is attached hereto as Exhibit "A").

4. As a condition of EMC issuing the Bonds on behalf of the Defendants, each of the Defendants executed a General Application and Agreement of Indemnity ("Indemnity Agreement") with EMC on or about November 18, 2002. (A true and accurate copy of the Indemnity Agreement is attached hereto as Exhibit "B").

5. The Indemnity Agreement, in part, requires the Defendants to indemnify and hold EMC harmless from any claims asserted against the Bonds and costs incurred by EMC in enforcing the terms of the Indemnity Agreement, including attorneys' fees and expenses. Additionally, the Indemnity Agreement provides that the Defendants are required to post collateral upon EMC's demand to cover any loss, contingent or otherwise. (See Exhibit "B").

6. EMC has received payment and performance bond claims on the Bonds and has been required to investigate and pay claims arising out of the Bonds which have caused EMC to incur losses in payments totaling \$394,993.17 plus attorneys fees, consulting fees, costs and expenses in the amount of \$5,559.92 for a total loss of \$400,553.09 as of April 21, 2009. (See Exhibit "A").

7. EMC has demanded and requested that the Defendants indemnify and hold EMC harmless for the claims on the Bonds and post collateral in accordance with the terms of the Indemnity Agreement. As of the date of this Affidavit, none of the Defendants have indemnified EMC, nor have they posted any collateral.

8. Since and after April, 2009, EMC will continue to incur attorneys' fees and expenses that are recoverable under the Indemnity Agreement which are not yet included within the amounts set forth in Paragraph 6 above.

9. I swear under the penalty of perjury that the foregoing declaration is true and correct to the best of my knowledge, information and belief.



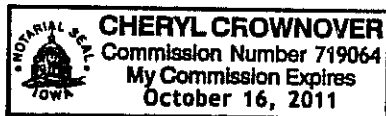
Ruta Kruminis  
Bond Claims Adjuster  
Employers Mutual Casualty Company

Subscribed and sworn to before me  
This 21 day of April, 2009



Notary Public

My Commission Expires:

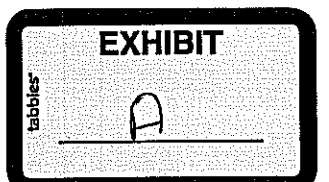


Named Insured	Bond No.	Bond Amount	Claimed Amount	Date Paid	Amount Paid
Keystone Mechanical	S28 69 88	\$150,000.00	\$186,658.22	12/1/08	\$150,000.00
Keystone Mechanical	S28 79 24	\$20,000.00			
Keystone Heating	S28 79 22	\$50,000.00	\$187,560.71	12/1/08	\$50,000.00
Keystone Mechanical	S28 79 25	\$90,000.00	\$108,166.46	12/18/08	\$90,000.00
Keystone Mechanical	S34 18 07	\$60,000.00	\$181,396.41	11/3/08	\$60,000.00
DIPietro Plumbing	S28 69 89	\$45,000.00	\$18,630.50	12/30/08	\$4,993.17
DIPietro Plumbing	S34 18 08	\$40,000.00	\$53,892.88	11/21/08	\$40,000.00
Keystone Electric	S28 69 57	\$10,000.00			
Keystone Electric	S28 69 58	\$150,000.00			
Keystone Electric	S28 79 34	\$43,000.00			
Keystone Electric	S28 79 35	\$22,176.00			
Keystone Heating	S28 69 67	\$20,000.00			
Keystone Mechanical	S28 79 21	\$21,000.00			
Keystone Mechanical	S28 79 29	\$45,000.00			
Keystone Mechanical	S34 18 13	\$5,000.00			
Keystone Mechanical	S35 28 06	\$10,000.00			
Keystone Service	S37 34 78	\$10,000.00			
DIPietro Plumbing	S28 79 26	\$45,000.00			

Total Paid as of 12/30/08

\$394,993.17

**EXHIBIT "A"**



  
**EMC Insurance Companies**

BONDS  
MAY 7 @ 2003

Employers Mutual Casualty Company, 717 Mulberry Street, Des Moines, Iowa 50309  
EMCASCO Insurance Company, 717 Mulberry Street, Des Moines, Iowa 50309  
Dakota Fire Insurance Company, 1838 E. Interstate Avenue, Bismarck, North Dakota 58501  
Illinois EMCASCO Insurance Company, 815 Commerce Drive, Oak Brook, Illinois 60523  
Ulton Insurance Company of Providence, 60 Jefferson Park, Warwick, Rhode Island 02889  
EMC Property & Casualty Company, 717 Mulberry Street, Des Moines, Iowa 50309  
Hamilton Mutual Insurance Company, 1520 Madison Road, Cincinnati, Ohio 45201

(Hereinafter referred to collectively as the Surety)

**GENERAL APPLICATION AND AGREEMENT OF INDEMNITY**

THIS AGREEMENT is made by the Undersigned for the continuing benefit of the Surety (as defined above) for the purpose of saving it harmless and indemnifying it from all loss and expense in connection with any Bonds executed on behalf of any one or more of the following persons, firms or corporations: Keystone Mechanical Industries, Inc., Keystone Electric Company, Inc., 310 Wainright Dr. Northbrook, Illinois 60062. DiPietro Mechanical Industries, Inc., DiPietro Plumbing, 440 Lake Cook Rd., Deerfield, Illinois 60015. Keystone Heating & Cooling, Inc., 205 Berg Street Algonquin, Illinois 60102. Yale Smith, 5829 Blue Heron Dr., Long Grove, Illinois 60047  
(hereinafter any one of which may be the Principal)

**WITNESSETH:**

WHEREAS, the Principal, in the performance of contracts and the fulfillment of obligations generally, whether in its own name solely or as co-adventurer with others, may desire, or be required to give or procure certain surety bonds, undertakings or instruments of guarantee, and to renew or continue or substitute the same from time to time; or now bonds, undertakings, or instruments of guarantee with the same or different penalties, and/or conditions, may be desired or required, in renewal, continuation, extension or substitution thereof; any one or more of which are heretofore and hereafter called Bonds; or the Undersigned may request the Surety to refrain from canceling said Bonds; and

WHEREAS, at the request of the Undersigned and upon the express understanding that this agreement of indemnity be given, the Surety has executed or procured to be executed, and may from time to time hereafter execute or procure to be executed, said Bonds on behalf of the Principal; and

WHEREAS, the Undersigned have a substantial, material and beneficial interest in the obtaining of the Bonds or in the Surety's refraining from canceling said Bonds.

NOW, THEREFORE, in consideration of the promises the Undersigned for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally hereby covenant and agree with the Surety, its successors and assigns as follows:

**Section 1 -- PREMIUMS**

The Undersigned will pay to the Surety, at its Administrative Office in the City of Des Moines, Iowa, premiums or charges at the rates and at the times specified in respect of each such instrument in the Surety's manual of rates which, with any additions or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual until the Surety shall be discharged and released from any and all liability and responsibility upon and from each such instrument or matters arising therefrom, and until the Principal and/or Undersigned shall serve or cause to be served upon the Surety competent written legal evidence of such discharge or release from each such instrument and all liability by reason thereof. The Surety may also retain for the purpose of offset, any and all earned premiums subject to refund or rebate to the Principal and/or Undersigned in the event its right to indemnity is activated.

**Section 2 -- INDEMNITY**

The Undersigned shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to interest, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed or procured the execution of the Bonds; (2) By reason of the failure of the Principal or the Undersigned to perform or comply with the covenants and conditions of this Agreement or (3) in enforcing any of the covenants and conditions of this Agreement. Payment by reason of the aforesaid causes shall be made to the Surety by the Undersigned as soon as liability exists or is asserted against the Surety whether or not the Surety shall have made any payment therefor. In the event Surety shall have set a reserve, it may also retain any and all earned premiums which may be available for refund or rebate to the Principal and/or Undersigned. This right shall be in addition to its stated rights herein, not in substitution for same. Such payment shall be equal to the amount of the reserve set by the Surety. The surety may pay or compromise any claim, demand, suit, judgment or expense arising out of such bond or bonds and any such payment or compromise shall be binding upon the Undersigned and included as a liability, loss or expense covered by this Indemnity Agreement. In the event of any such payment or compromise by the Surety, an itemized statement thereof sworn to by an officer of the surety, or the voucher or vouchers of other evidence of such payment or compromise, shall be prima facie evidence of the fact and amount of the liability of the Undersigned under this Agreement.

**Section 3 -- SETTLEMENT OF CLAIMS**

The Surety shall have the exclusive right for itself and for the Undersigned to decide and determine whether any claim, demand, suit or judgment upon any such bonds shall, on the basis of liability, expedience or otherwise be paid, settled, defended or appealed, and its determination shall be final, conclusive and binding upon the Undersigned.

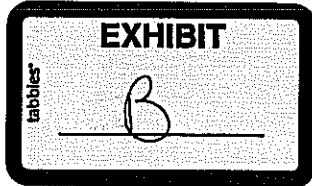
**Section 4 -- ASSIGNMENT AND SECURITY INTEREST**

To facilitate the carrying out of all provisions of this Agreement and to secure the obligations in any and all paragraphs of this Agreement and the payment, and all other performance of all the Undersigned(s), present and future debts, obligations and liabilities to Surety, of whatever nature ("Obligations"), the Undersigned assign, transfer and set over to Surety and grant Surety a security interest in all the Undersigned(s) equipment, fixtures, accounts, contract rights, chattel paper, instruments, documents, general intangibles and inventory, whether now owned or hereafter acquired and all additions and accessions to, and all proceeds and products of, any of the foregoing ("Collateral"); and (a) all the rights of Principal in and growing in any manner out of, all contracts referred to in the Bonds, or in, or growing in any manner out of the Bonds; (b) all the rights, title and interest of the Principal in and to all machinery, equipment, plant, tools and materials which are now or may hereafter be, about or upon the site or sites of any and all of the contractual work referred to in the Bonds or elsewhere, including materials purchased for or chargeable to any and all contracts referred to in the Bonds, materials which may be in process of construction, in storage elsewhere, or in transportation to any and all of said sites; (c) all the rights, title and interest of Principal in and to all subcontracts (or to be let in connection with any and all contracts referred to in the Bonds, and in and to all surety bonds supporting such subcontractor; (d) all actions, causes of action, claims and demands whatsoever which Principal may have or acquire against any subcontractor, laborer or materialman, or any person furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools or other equipment in connection with or on account of any and all contracts referred to in the Bonds; and against any surety or sureties of any subcontractor, laborer or materialman; (e) any and all sums that may be due or hereafter become due on account of any and all contracts referred to in the Bonds and all other contracts whether bonded or not in which Principal has an interest; (f) all rights the Undersigned have in patents, patented processes, licenses, copyrights, trademarks and all other intellectual property rights required for the performance of the work for which the Surety issued Bonds, and expressly authorizes the Surety to use these property rights as required in the Surety's discretion to complete the work for which the Surety issued Bonds.

The Surety and its attorneys are hereby authorized, without notice to the Undersigned, to make schedules of all property assigned under this Agreement, and to attach the same hereto at any time, and the same when attached, shall by this reference be incorporated herein and make a part of this Agreement, and when any such schedules have been made and attached, the Surety and its attorneys are authorized to file or record a copy of same under provisions of law governing such.

**Section 5 -- DEFAULT**

Upon the occurrence of one or more of these events of default: (a) any abandonment, forfeiture or breach of any contracts referred to in the Bonds or of any branch of any said Bonds; (b) any breach of the provisions of any of the paragraphs of this Agreement or the Obligations; (c) a default in discharging such other indebtedness or liability when due; (d) any assignment by Principal for the benefit of creditors, or the appointment, or any application for the appointment of a receiver or trustee for Principal, whether insolvent or not, or Principal becomes insolvent or the subject of bankruptcy or insolvency proceedings; (e) any proceeding which deprives Principal of the use of any of the machinery, equipment, plant, tools, or materials referred to in Section 4 hereof; (f) Principal dies, ceases to exist, absconds, disappears, becomes incompetent, is convicted of a felony, or imprisoned, if Principal



be an individual; (g) any representation made to induce Surety to execute any bond is false in a material respect when made; or (h) any other event which causes Surety in the reasonable belief to deem itself insecure; all of the Obligations will, at the option of Surety and without notice or demand, mature immediately; and Surety will have all rights and remedies provided for herein, all rights and remedies for default provided by the Uniform Commercial Code as well as under any other applicable law and the Obligations. With respect to these rights and remedies, (1) Surety may require Principal to assemble the collateral and to make it available to Surety at a convenient place designated by Surety; (2) written notice, when required by law, sent to any address of the Undersigned in this Agreement at least five calendar days (counting the day of sending) before the date of a proposed disposition of the Collateral or other action is reasonable notice; (3) the Undersigned shall reimburse Surety for any expenses incurred by Surety in protecting or enforcing its rights under the Agreement, including without limitation, reasonable attorney's fees and legal expenses and all expenses of taking possession, holding, preparing for disposition and disposing of the Collateral. After deduction of these expenses, Surety may apply the proceeds of disposition to the Obligations in such order and amounts as it elects; (4) Surety may permit the Undersigned to remedy a default without waiving the default remedied, and Surety may waive a default without waiving another subsequent or prior default by the Undersigned.

#### Section 6 — COMMERCIAL CODE

This Agreement shall constitute a Security Agreement to the Surety and also a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect and may be so used by the Surety without in any way abrogating, restricting or limiting the rights of the Surety under this Agreement or under law, or in equity.

#### Section 7 — TAKEOVER

In the event of any breach or default asserted by the obligee in any said Bonds, or the Principal has abandoned the work on or forfeited any contract or contracts covered by any said Bonds, or has failed to pay obligations incurred in connection therewith or in the event of the death, disappearance, Principal's conviction for a felony, imprisonment, incompetency, insolvency or bankruptcy of the Principal, or the appointment of a receiver or trustee for the Principal or the property of the Principal, or in the event of an assignment for the benefit of creditors of the Principal, or if any action is taken by or against the Principal under or by virtue of the National Bankruptcy Act, or should reorganization or arrangement proceedings be filed by or against the Principal under said Act, or if any action is taken by or against the Principal under the insolvency laws of any state, possession or territory of the United States or upon any other event which causes Surety in the reasonable belief to deem itself insecure, the Surety shall have the right, at its option and in its sole discretion and is hereby authorized, with or without exercising any other right or option conferred upon it by law or in the terms of this Agreement, to take possession of any part of all of the work under any contract or contracts covered by any said Bonds, and at the expense of the Undersigned to complete or arrange for the completion of the same, and the Undersigned shall promptly upon demand pay to the Surety all losses and expenses so incurred.

#### Section 8 — RIGHT OF JOINT CONTROL

If it becomes necessary or advisable in the judgment of the Surety to control, administer, operate or manage any or all matters connected with the performance of any contract within the purview of this agreement for the purpose of attempting to minimize any ultimate loss to the Undersigned or the Surety or for the purpose of enabling Surety to discharge its obligations of suretyship, the Undersigned expressly covenants and agrees that such action on the part of the Surety shall be entirely within its rights and remedies under the terms of this agreement and as Surety.

#### Section 9 — BOOKS, RECORDS AND INFORMATION

At any time, and until such time as the liability of the surety under any and all said Bonds is terminated, the Surety shall have the right to reasonable access to the books, records, and accounts of the Undersigned; and any bank depository, materialman, supply house, or other person, firm, or corporation when requested by the Surety is hereby authorized to furnish the Surety any information requested including, but not limited to, the status of the work under contracts being performed by the Principal, the condition of the performance of such contracts and payments of accounts.

#### Section 10 — TRUST FUND

The Undersigned covenants and agrees that all payments received for or on account of contract(s) which are bonded by the Surety shall be held as trust funds in which the Surety has an interest. To secure said interest, it is agreed that all monies paid to the Principal and/or Undersigned covered by the Bond(s) are trust funds for the benefit of and the payment for direct labor, materials and services furnished in the prosecution of the work specified in the contract(s) for which the Surety may be or become liable under any of said Bond(s). The trust funds are specifically reserved as set forth above, and any breach of said duty shall be deemed a breach of the duties or obligations of the Undersigned under this Agreement of indemnity.

#### Section 11 — RIGHT TO DEMAND RESERVE

If for any reason the Surety shall be required or at its option and in its sole discretion shall deem it necessary to set up a reserve in any amount to cover any: (a) judgment, actual or contingent, with interest and costs, in any action instituted against one or more of the Undersigned or, (b) unadjusted claim(s) or other claims under said Bond or Bonds of which the Surety has notice or, (c) loss, costs, attorneys' fees, engineers' fees, investigative charges and other disbursements and/or expenses in connection with said Bond or Bonds or in anticipation of loss thereunder, whether or not the Surety shall heretofore have paid any such sums or any part thereof, or (d) any default(s) of the Principal or, (e) abandonment of any contracts, failure to comply with any material provision thereof or cease to promptly perform any part of the work required to be performed thereunder, or to pay claims of suppliers of labor, material or services required under such contracts or, (f) liens filed or, (g) disputes with the owner or obligee or, (h) for any reason whatever and regardless of any proceedings contemplated or taken by the Principal or the pendency of any appeal, the Undersigned, within 10 calendar days after mailing by the Surety of written demand by registered or certified mail shall deposit with the Surety, cash or collateral in the amount of such reserve and every increase thereof, to be held by the Surety as collateral with the right to use any such funds or any part thereof, at any time, without notice to the Undersigned in payment or compromise of any judgment, claim, liability, loss, damage, attorneys' fees, engineers' fees, investigative charges and other disbursements and/or expenses in connection with said Bond or Bonds or in anticipation of loss thereunder. If the Undersigned shall fail to deposit such cash or collateral with the Surety, upon such request, the Surety at its option and in its sole discretion may engage counsel to proceed by suit or otherwise to procure the deposit with the Surety of such cash or collateral and the Undersigned shall be obligated to pay the Surety its reasonable costs, charges and expenses including counsel fees, incident to such litigation.

The Surety is hereby irrevocably authorized by the Undersigned to release or return to the Undersigned any part of such cash or collateral at any time, without prejudice to any of the Surety's present or future rights, remedies and defenses against the Undersigned. The Surety shall have no obligation to invest, or to provide a return on said cash or collateral deposited by the Undersigned.

Any notice or demand hereunder shall be sufficient if sent by registered mail or certified mail to the Undersigned at the addresses stated in this instrument or the addresses last known to the Surety.

#### Section 12 — NOTICE OF SUIT

Upon any demand being made, notice given or action or proceeding commenced against the Principal upon any claim for which the Surety may be held liable in whole or in part, one or more of the Undersigned will immediately cause written notice thereof to be given by registered mail to the Surety at its Administrative Office in Des Moines, Iowa. In the event of a suit or legal proceedings against the Surety upon or on account of any such Bond, the Surety shall have the right to apply to the court in which such action is brought for an order making one or more of the Undersigned parties defendant, and each of them hereby consents to the granting of such application and agrees to become such a party defendant and, in the event any judgment be rendered against the Surety to allow judgment in like amount to be rendered against one or more of the Undersigned, in favor of the Surety if the Surety so requests. The Surety shall be entitled to enforce the obligations hereof directly against the Undersigned, without the necessity of first proceeding against the Principal. The Surety shall be entitled to reasonable attorneys' fees in the enforcement of this agreement.

#### Section 13 — WAIVER OF EXEMPTIONS

Each of the Undersigned does, jointly and severally, bind his or her property and does hereby release and abandon, as to the Surety all right to claim property including their homestead (except where prohibited by state law or constitution), as exempt from levy, execution sale or other legal process under the law of any state, province or other government, as against the rights of the Surety to proceed against the Undersigned for indemnity hereunder.

#### Section 14 — AGREEMENT NOT TO LIMIT RIGHTS

The Undersigned shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of the Undersigned, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of said Bonds, from the Undersigned or others, it being expressly understood and agreed by the Undersigned that any and all other rights which the Surety may have or acquire against the Undersigned and/or other under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of the rights afforded the Surety under this Agreement.

#### Section 15 — CHANGES NOT TO AFFECT

The Surety is authorized and empowered, without notice to or knowledge of the Undersigned to assent to any change whatsoever in the Bonds and/or any contracts referred to in the Bonds, and/or in the general conditions, plans and/or specifications accompanying said contracts, including, but not limited to, any change in the time for the completion of said contracts and to payments or advances thereunder before the same may be due, and to assent to or take any assignment or assignments, to execute or consent to the execution of any continuations, extensions or renewals of the Bonds and to execute any substitute or substitutes therefor, with the same or different conditions, provisions and obligations and with the same or larger or smaller penalties, it being expressly understood and agreed that the Undersigned shall remain bound under the terms of this Agreement even though any such assent by the Surety does or might substantially increase the liability of said Undersigned.

#### **Section 16 — ATTORNEY IN FACT**

The Undersigned hereby irrevocably nominate, constitute, appoint and designate the Surety as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the Undersigned that are assigned, transferred and set over to the Surety in this Agreement, and in the name of the Undersigned to make, execute, and deliver any and all additional or other assignments, documents or papers deemed necessary and proper by the Surety in order to give full effect not only to the intent and meaning of the within assignments, but also in the full protection intended to be herein given to the Surety under all other provisions of this Agreement. The Undersigned hereby ratify and confirm all acts and actions taken and done by the Surety as such attorney-in-fact.

#### **Section 17 — NOTICE OF EXECUTION**

The Undersigned hereby waive notice of the execution of said Bonds and of the acceptance of this Agreement, and the Undersigned hereby waive all notice of any default, or any other act or acts giving rise to any claim under said Bonds, as well as notice of any and all liability of the Surety under said Bonds, and any and all liability on their part hereunder, to the end and effect that, the Undersigned shall be and continue liable hereunder notwithstanding any notice of any kind to which they might have been or be entitled, and notwithstanding any defenses they might have been entitled to make.

#### **Section 18 — OTHER SURETIES**

In the event the Surety procures the execution of the Bonds by other sureties, or executed the Bonds with co-sureties, or reinsures any portion of said Bonds with reinsuring sureties, then all the terms and conditions of this Agreement shall inure to the benefit of such other sureties, co-sureties and reinsuring sureties, as their interest may appear.

#### **Section 19 — ADVANCES AND LOANS**

The Surety is authorized and empowered to guarantee loans, to advance or lend to the Principal any money, which the Surety may see fit, for the purpose of any contracts referred to in, or guaranteed by the Bonds; and all money expended in the completion of any such contracts by the Surety, or lent or advanced from time to time to the Principal, or guaranteed by the Surety for the purposes of any such contracts, and all costs, and expenses incurred by the Surety in relation thereto, unless repaid with legal interest by the Principal to the Surety when due, shall be presumed to be a loss by the Surety for which the Undersigned shall be responsible, notwithstanding that said money or any part thereof should not be used by the Principal.

#### **Section 20 — SETTLEMENT WITH ONE**

In the event of any claim or demand made by the Surety against the Undersigned by reason of the execution of any Bonds, the Surety is hereby expressly authorized to settle with one or more of the Undersigned individually and without reference to the others, and, such settlement or composition shall not affect the liability of any of the other parties included in the designation "Undersigned", and the Undersigned hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consents to any settlement or composition that may hereafter be made.

#### **Section 21 — RIGHT TO OBTAIN OWN RELEASE**

The Surety may at any time hereafter take such steps as it may deem necessary or proper to obtain its release from any and all liability under any Bonds, and to secure and further indemnify itself against loss, and all damages and expenses which the Surety may sustain or incur, or be put to, in obtaining such release, or in further securing itself against loss, shall be borne and paid by the Undersigned. In addition, the Undersigned will, on request of the Surety, procure the discharge of the Surety from any such Bond, and from all liability by reason thereof. Such request may be made and such discharge procured whether or not the Principal is in default of any undertaking underwritten by the Surety.

#### **Section 22 — DECLINE EXECUTION**

Unless otherwise specifically agreed in writing, the Surety may decline to execute any Bond and the Undersigned agree to make no claim to the contrary in consideration of the Surety's receiving this Agreement; and if the Surety shall execute a Bid or Proposal Bond, it shall have the right to decline to execute any and all of the Bonds that may be required in connection with any award that may be made under the proposal for which the Bid or Proposal Bond is given and such declination shall not diminish or alter the liability that may arise by reason of having executed the Bid or Proposal Bond.

#### **Section 23 — SEVERAL SUITS**

Separate suits may be brought hereunder as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether theretofore or thereafter arising.

#### **Section 24 — RIGHT TO EXERCISE RIGHTS**

The Surety, its officers, directors, agents, servants, employees and attorneys, shall not be liable to one or more of the Undersigned for any damages or injuries that may be sustained by them, whatever kind or nature such may be, caused by or arising out of any action taken or statements, verbal, written or otherwise, made, in the reasonable belief by the Surety in exercising or attempting to exercise any of its rights or privileges under this agreement or under any other agreement between the Surety and any one or more of the Undersigned, or under law or in equity, or under or relating to any Bonds executed by the Surety. All rights and remedies of the Surety under this Agreement shall be cumulative, and the exercise of or failure to exercise, any right or remedy at any time shall not be an election of remedy or a waiver of any other right or remedy. Failure of the Surety to pursue any remedy against one or more of the Undersigned shall not release or waive any right against any other of the Undersigned. The Surety is not required to exhaust its rights or remedies against the Principal or to await receipt of any dividends from the legal representatives of the Principal before asserting its rights under this agreement against the Undersigned.

#### **Section 25 — WAIVER OF DEFECTS**

In case any of the parties mentioned in this Agreement fail to execute the same, or in case the execution hereof by any of the parties be defective or invalid for any reason, such failure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability hereunder of any of the parties executing the same, but each and every party so executing shall be and remain fully bound and liable hereunder to the same extent as if such failure, defect or invalidity had not existed. It is understood and agreed by the Undersigned that the rights, powers, and remedies given the Surety under this Agreement shall be and are in addition to, and not in lieu of, any and all other rights, powers and remedies which the Surety may have or acquire against the Undersigned or others whether by the terms of any other agreement or by operation of law or otherwise.

#### **Section 26 — INVALIDITY OF ONE PROVISION**

If any provision or provisions of this instrument be void or unenforceable under the laws of any place governing its construction or enforcement, this instrument shall not be void or vitiated thereby, but shall be construed and enforced with the same effect as though such provision or provisions were omitted.

#### **Section 27 — CONSTRUCTION**

This obligation shall be liberally construed so as to fully protect and indemnify the Surety. It shall be construed and interpreted in accordance with the laws of the State of Iowa.

#### **Section 28 — MODIFICATION**

This Agreement may not be changed or modified orally. No change or modification shall be effective unless made by written endorsement executed to form a part hereof.

#### **Section 29 — TERMINATION**

Each of the Undersigned expressly recognizes and covenants that this Agreement is a continuing obligation applying to and indemnifying the Surety; however, one or more of the Undersigned may notify the Surety at its Administrative Office, 717 Mulberry Street, Des Moines, Iowa 50309, of such Undersigned's withdrawal from this Agreement; such notice shall be sent by certified or registered mail and shall state when, not less than twenty days after receipt of such notice by the Surety, such withdrawal shall be effective. Such Undersigned will not be liable under this Agreement as to any Bonds executed by the Surety after the effective date of such notice; provided, that as to any and all such Bonds executed or authorized by the Surety prior to the effective date of such notice and as to any and all renewals, continuations and extensions thereof or substitutions therefor (and, if a proposal or Bid Bond has been executed or authorized prior to such effective date, as to any contract Bond executed pursuant thereto) regardless of when the same are executed, such Undersigned shall be and remain fully liable hereunder, as if said notice had not been served. Such withdrawal by any Undersigned shall in no way affect the obligation of any other Undersigned who has given no such notice of termination.

#### **Section 30 — SPECIAL PROVISIONS:**

(if none, write "NIL")

"THE UNDERSIGNED REPRESENTS TO THE SURETY THAT THEY HAVE CAREFULLY READ THE ENTIRE AGREEMENT AND THAT THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH MAY IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN"

IN WITNESS WHEREOF, we have executed this Agreement to be effective the 18th day of November, 2002

Keystone Mechanical Industries, Inc.

By: [Signature]  
President

Keystone Electric Company, Inc.

By: [Signature]  
President

DiPietro Mechanical Industries, Inc.

By: [Signature]  
President

DiPietro Plumbing Services, Inc.

By: [Signature]  
President

Keystone Heating & Cooling, Inc.

By: [Signature]  
President

Yale Smith

[Signature]  
Individual

EACH ACKNOWLEDGEMENT TAKEN MUST BE SIGNED AND SEALED BY A NOTARY PUBLIC

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF Illinois ss:  
COUNTY OF Lake  
On this 18th day of November, in the year 2002, before me personally came(s)  
Yale Smith :

to me known and known to me to be the person(s) who (is) (are) described in and who executed the foregoing instrument and acknowledge(s) to me that he executed the same

"OFFICIAL SEAL"  
MARY A. SCHWEINHAGEN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 11/16/2006  
[Signature]  
(Signature of Notary Public - My commission expires: 11-16-2006)

CORPORATE ACKNOWLEDGEMENT

STATE OF Illinois ss:  
COUNTY OF Lake  
On this 18th day of November, in the year 2002, before me personally came(s)  
Yale Smith

to me known, who being by me duly sworn, deposes and says that he resides in the City of Long Grove that he is the president of the Keystone Mechanical Industries, Inc., Keystone Electric Company, Inc., DiPietro Mechanical Industries, Inc., DiPietro Plumbing Services, Inc., Keystone Heating & Cooling, Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal is annexed to the instrument in such corporate order as was ordered by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

"OFFICIAL SEAL"  
MARY A. SCHWEINHAGEN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 11/16/2006  
[Signature]  
(Signature of Notary Public - My commission expires: 11-16-2006)