

**Certifications:
The Owner is On the Phone and the Lender
Wants These Papers Signed Now!**

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INTRODUCTION

A few, special experiences prove unforgettable in life. Some are instant hits. Others do not amount to much at first, but they revisit us until they, too, become unforgettable.

For me, one particular question on the bar exam has achieved unforgettable status. Despite a diligent mental purge of the overall experience, that one question has remained.

The male defendant, in the facts given, accosted two females. He threatened the first (but not the second) with a pistol. At the same time, he demanded and captured favors from the second. The first was otherwise unharmed. The question was presented as follows: "What offenses were committed as to each victim? Answer all defenses. Take the entire twenty minutes, if required. "

Whatever the answer was that year, the issues were durable stuff, returning, as they did, to haunt numerous business and legal situations. The exam question proved instructive, and perhaps that was the point.

A gratuitous certificate demanded of you by a financial institution is yet another return to that question. The favors are sought from you by the lender while your client is under the pressure of pending or renewed financing.



IT IS ABOUT RISK AND PROFIT

Construction was a risky business in the beginning, and it hasn't changed. What change we do see is a growing appetite in society for assurances against an uncertain future. Sureties, financial institutions, government agencies, prospective purchasers, and clients, one and all, increasingly seek those assurances through certificates prepared for execution by architects and engineers.

Each of these parties has an interest to protect in the project. Sureties want to know their principal's performance is on target for release of the bond. Financial institutions want to know the project is good and able security for their sizeable loans. Subsequent purchasers want to know the property is a sound investment.

All certificates require careful analysis. The more onerous of those demanded by financial institutions providing interim and permanent funding are the subject of this issue of *Practice Notes*.

WHOSE CONSULTANT? WHY YOU?

Every participant in a building project takes risk and anticipates a profit. No doubt, it is prudent for each to evaluate, protect, and monitor his or her investment. Design is one of the areas prudence calls a person to look into. The owner usually answers the call by retaining an architect or engineer. Depending on how compelling the call may be, he or she retains design consultants for greater or lesser services.

The lender also hears the call. But it is heard neither on the same day, nor at exactly the same volume as it is by the owner, and much mischief is made of this.

We are not lenders, but we know something about construction risk. It occurs to us that institutions betting their money and their depositors' money should seek assurances from a design professional whose duty to them matches the measure of their risk. Occasionally, they will hire their own consultants, but, more predictably, lenders seek satisfaction from someone else's consultant: You.

Why you? Presumably, having addressed the owner's requirements, you can answer equally well for the lender's risk. That may be quite untrue, if we are to judge from the certificates lenders prepare. You are more likely selected because it is perceived that your services are already paid for, and, to the extent you are obligated by contract or loyalty to the owner, you are susceptible to the lender's demands. Your predicament would make a good bar exam question.

GETTING PREPARED

Lender's certificates are not uniform. A few seek, in varying degrees, to acknowledge the design professional's proper role in construction. Others are wholly self-serving adhesions. Even so, their common features enable examination of a composite form as typical.

A composite, sample certificate is presented as Appendix A to this *Practice Note*. Suggested changes and deletions are listed on [Appendix B](#). The background and reasoning you need to understand the suggestions and act upon them is contained in the section following the composite sample. We

recommend you use this section as a working guide to help you, together with able advisors, prepare for the assessment and revision of lenders' certificates.

You will need tools to know what to look for and tools to construct alternative forms. Inquiries are your primary set. The following are the most useful:

1. Does the certificate ask me to state an opinion or a fact?
2. Am I under a duty to the owner to state or to know what is asked?
3. Do I know the facts stated? Do I have enough information, and is it current information?
4. Do I have a professional opinion about the issues raised, and are they stated the way I would state them?
5. Does the form ask for conclusions beyond my expertise as a design professional?
6. Does the certificate require facts knowable only by follow-up services on my part? Will I perform them?
7. Are there potential legal or insurance issues I have been warned about and need to address?

Okay. For a tool kit, these are a little long. Just remember: "facts, " "opinions, " "duty, " true, " false, " "unknown, " "expertise, " and "strange, call for help! " Now take a look at [Appendix A](#).

A WORD ON TIME AND PRESSURE

We offer tools here, but we cannot include the time and conviction you will need to resist and correct unreasonable certificates. When time is short and the pressure is on, it will be up to you to insist on adequate opportunity and respect for the performance of your professional obligations.

Yours is not a hired signature. You are a professional by virtue of a social sanction embodied in a public trust which entitles you to weigh and determine what, in your considered opinion, you ought to do and say. Such persons neither lend their name for expediency, nor resign principle to leverage. This resolve is an attribute of a dignified person. Do not lose it, for, without dignity, people are powerless in their own behalf.

The 1987 edition of the AIA's standard form owner/architect agreement, AIA Document B141, attempts to give the architect place to stand for argument and at least two weeks to do it. Paragraph 4.11 limits the architect's duty to sign certificates to those which require knowledge and services within the scope of (your) agreement. Two weeks minimum are provided to review and prepare an acceptable form. Note that the short form, AIA Document B151, lacks similar protection. Your contract should not.

TAKE YOUR TOOLS AND DIG IN

"We hereby certify.... "Straight off, you are asked to certify what is written in the balance of the certificate. A certification is not casual commentary. "Certify" is a word with a specific meaning, and it is for that meaning the lender chose it. To "certify " means to establish a thing as a fact. "Certify" is a rapacious word which strips the paragraph of other meanings; it specifically supplants matters of opinion.

The design professions are grounded in judgments constructed on science while borrowing inspiration from art. The law acknowledges the inconclusive, judgmental quality of professional services, and it holds



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practitioners to a standard of reasonable professional care. That is the humble suit you wore when you were retained by your client.

But the lender, how he has cut a new coat for you! It is not tailored with the due care of professionals applying talent, skill, interpretation, judgment, and inspiration. Look here, the coat the lender has stitched is all fact: Its corners are perfectly square, and the fabric is black and white. You look awful in that coat. Only a pointed gun could make you wear such a coat. You see, there is that bar exam question again.

You probably know that, when you put on that coat and it does not fit, all fault will be yours. Facts are facts. That is why the lender chose this particular coat for you from his or her private rack.

It is a mystery why lenders insist on backing borrowers and their consultants into predicaments where there is no financial security for error. Lenders must have very deep pockets.

Your professional liability insurance company will not like the lender's coat on you either, and it would likely decline coverage for any claim based on certification. One of the additional consequences of establishing a thing as a fact is to state a warranty of truth. Your professional liability insurance policy excludes warranties. The lender need not put any pockets in this coat, because you will not have any money to carry around in them anyway.

What all this means is this: You simply cannot certify, because it is a wholly inaccurate description of what you have to contribute as a professional. Take a close look at the alternatives to the sample lender's form. When coupled with other revisions suggested below, these have the virtue of accuracy.

SORTING THROUGH THE ISSUES

Paragraph 1 is straightforward enough and requires no comment.

Paragraph 2 struggles with the understandable desire to make something simple and pure out of the complex and somewhat messy task of code compliance. Nearly every tool we have to offer applies here.

This paragraph asks you to state flatly that the drawings and specifications comply with every stone tablet etched upon by legislators. The real world is not that simple. Compliance is more a process of satisfying the interpretations and demands (some quite bizarre) of regulatory enforcement officials. The result may be construction documents better than the code requires and, likely, in some respects different from documents approved in another jurisdiction or under a different code enforcement regime in the same jurisdiction. A flat, "they comply" misses the smoky flavor and slightly rare texture of actual practice.

The best you can say is that the drawings and specifications have been prepared by you in conformance with code and with the practices (or predilections) of local officials.

Notice that, in addition to all laws, rules, regulations, and codes, you are also called upon to know about the laws of the Kitchen Sink Kingdom and the Black Hole of Calcutta. When lawyers run out of things they know, they say things like, "of every nature and description." You do not talk that way, so strike this out. Wherever the ubiquitous and vacuous "etc." might appear, strike it, as well.

Lawyers also repeat themselves a great deal. After asking you to comply with laws, they might recite a few, the Federal Clean Air Act, for example. Either they are particularly sensitive to some laws, or they are showing off. Or they think you do not know what laws are. It is just good drafting hygiene to eliminate repetitions. Good documents are clean machines.

Finally, at the end of this Paragraph 2, you are asked to make a statement about the likelihood that the completed construction will comply with codes, laws, and regulations. In a sense, the statement is tautological. It says, "If everything is done correctly, it will be correct." That is not big news, and it is probably not worth saying. There may be another message, however. The statement may mean that the drawings and specifications are a sufficiently clear expression that, when followed by the typical contractor, a code conforming project will result. This expression is not so obviously true.

Drawings and specifications are not perfect communication devices. Even if they could be, there are no reliably perfect receptors. Long experience has demonstrated that the execution of construction documents in real materials and labor requires the continued service of a design professional. Periodic observation of the construction is required, not only to check the quality of the work, but also to verify that the message intended by the drawings and specifications is received and understood. All standard families of construction documents contemplate that function and uniformly appoint the architect or the engineer to interpret the construction documents in the event all receptors do not receive a harmonious message.

You would want to delete this second paragraph of Paragraph 2 if you will not be providing construction phase services at an appropriate level. Where adequate services will extend into the construction phase, the amended paragraph is suggested. Of course, this clause anticipates that construction is to follow the statement. Other certificates are directed to the placement of permanent financing after construction, and these ask for your guarantee that the construction in place complies with all codes, laws, and regulations. More on this later.

Paragraph 3 has both an historical and a current component. You are asked to state that no site modifications or preparations at any time are or were subject to zoning or environmental laws. Nearly every state, in addition to the Federal Government, now controls coastal, lake, river, and estuary development, to name a few. As to the history of the land, you may have no information. You may be unclear about the legal status of prior modifications or preparations. Maybe only a lawyer can say. If you do not know, you cannot say. Check this with the truth and duty tools.

Land modifications and preparations designed by you probably were accompanied by research into the required permits. If so, you might use the suggested alternative clause. Where your information is based on work done by your client, his or her lawyer, or others, that qualification is required.

Paragraph 4 is just recently sweeping the country. The toxic waste concerns raised by it are worthy. However, some mistakenly believe that mainstream design professionals in private practice are in the business of researching and evaluating land contamination from prior use or adjoining parcels. This work, where it is done at all by the private sector, is performed by a few specialized firms. Perhaps they will get rich doing it, so you won't have to.

More than a few owners may find their financing frustrated by the lack of prior and current pollution research. But, unless pollution research is within your expertise and your plan for fame and fortune, you

should not allow yourself to be pressed into this service. Remember, your professional liability insurance policy expressly and broadly excludes pollution-related damages.

In a variation on this practice, lenders may request you at least to state that the reported spill records maintained by appropriate government agencies show no contamination. Two points here: One, don't you just know folks have been reporting all their serious spills and private dumping pits ever since life itself became impossible without chemicals; and two, lenders interested in this information can seek it themselves. In rejecting this request you have made good use of the duty, truth, and expertise tools.

It is becoming fashionable to soften a representation with a qualifier: "To the best of our knowledge and belief, " such and such a thing is the case. This qualifier has a place, but it is not a universal solvent for otherwise objectionable statements. The phrase concedes that there is knowledge and belief about the thing. The representation goes to the very limit of the best of that knowledge and belief.

Plainly, the phrase is a misrepresentation if you have either no information or so little information that the formation of a "belief " would be unreasonable and premature. "To the best of our knowledge information, and belief " is not a substitute for, "We do not know! "

Pull out your duty tool. Now apply it to your contract, and, in particular, to your scope of services. If you are a mainstream design professional in the building trades, it is unlikely that you have expressly undertaken to determine the current contamination of the project site, and, it is even more remote that you have agreed to examine the immediately adjoining land. These are risks that belong to the owner. They are not customarily assumed by architects and engineers in private practice. Absent a duty, your information will be meager, your belief a speculation, and your story in court a mite hollow.

Your duty tool has done most of the work, but you can finish the clause off with your knowledge tool. If all that remains is better described by, "we do not know " or by, "we do not know enough to have a belief we would ask anyone to rely on, " you will not wish to look at those paltry remains through Elton John glasses.

This paragraph is best disposed of by the bold strokes outlined above, but it would be called out on technicalities, anyway. Ambiguity abounds. For example, does it matter if the asbestos present is within the EPA limit of one percent by weight for asbestos containing building materials (ACBM)? Do you have any idea what evidence would convince a "reasonable " observer that there is no history of contamination on the adjacent land? Given the growing social and legal sensitivity to toxins, one might suppose that any evidence, however slight, would be convincing to a reasonable observer. The standard is probably quite high for anyone professing a "best knowledge and belief. "

About that immediately adjacent land. Is it limited to the next platted lot, or does it extend to all adjacent land under common ownership? Does it include what is going on inside closed buildings? How far into that adjacent land should you look? Hereabouts, we have immediately adjacent land that extends into sundown tomorrow. What can you say about land immediately adjacent to a railroad right of way? That could go a piece. Maybe lenders should drive out and have a look for themselves.

It is simple. Either the owner or lender has retained a specialist to research and test the land and its environment, or there will not be the knowledge necessary to support any meaningful statement about the sources and degree of contamination.

Contamination is a newly rising concern in construction. Specialists only will answer that concern. There is no need for you to fall into a "best guess " trap. There are analogies. Geotechnical engineers gather information and form professional opinions about subsurface soil conditions. Other design professionals and the owner are advised by their findings and recommendations. Architects and engineers not otherwise engaged in soil mechanics do not go about saying, "To the best of our knowledge and belief, there is no loose fill, shifting sand, bog, or bat cave below. " They do not say this because the correct answer is, "We do not know. "

Paragraph 5 on soils will alert you to pull out a fist-full of tools. Figure on duty, truth, expertise, fact, and opinion. No, just get them all out. In all probability the owner obtained the soils report, and the best you could have done is conform the design to the recommendations contained in that report. Give us a break! The geotechnical engineer has nothing more than an opinion about the bearing capacity of the soils and would not express it as fact. There is no valid reason for you to do so, either.

Paragraph 6 contains an interesting variation on your skillful use of the duty and expertise tools. It is standard practice for the owner to furnish the required legal support for the project. This is apparent from any number of standard documents. All conclusions you make regarding the validity and free exercise of easements and subsurface rights must be grounded on legal opinions furnished by the owner. The owner is also likely to furnish the survey, and you rely on its accuracy, as well--to avoid conflicts between the improvements and other interests in the land. Clearly, this paragraph needs a qualifier.

The final sentence stops all water at the lot line. This is a curiosity. Projects which do not drain water to some other land must use a storm sewer system only dreamed about in my home town. This lender could not finance projects on top of the hill, and those on the bottom would not be favored, either. You cannot help this lender find what he or she is looking for. Just delete the sentence.

Paragraph 7 Our comments on Paragraph 6 apply equally here, only louder and plainer. Yes, a design professional locates improvements with due respect for the legal rights of others, but, certainly, it is the owner's duty to advise fully on those rights. Use a good qualifier.

Paragraph 8 has been cleaned up for repetitions; notice, however, that abundant legal conclusions have also been stripped out of it. The validity of a permit is a fine legal point on which two lawyers can feast long and fiercely. The feast has put countless children handsomely through college. A validly issued permit is one that a judge will enforce. What remains in full force and effect is what a judge will let stand. You are out of place here, and you look just awful wearing a black robe!

Paragraph 9 has you dressed all silly. Your astrological robes and transfixed gaze into a crystal ball are not becoming. Sure, it is only an "express opinion " that permits will be issued in due course in the months and years ahead, but it is an opinion about the affairs of man in politics and government. That is neither your expertise, nor, apparently, that of a good number of far wiser politicians since Socrates misjudged the Athenians and was invited in for a drink. This is a simple deletion, but a satisfying one.



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Paragraph 10 is a mouse trap tour de force. Get this! The lender needs some hook to convince a judge to enforce this certificate on its behalf and against you. So (this is the good part), it has you certify that you gave the certificate as an inducement to make the loan. In fact, you talked the lender into it! My, you do dress strangely, and you are sneaky, too.

If we do not certify, certainly, we do not induce. What we can do is acknowledge that we know about the loan. We require something in return, however. We require an acknowledgment that the certificate will be used for no other purpose and by no other person for any purpose. We guard here against subsequent sale of the property, where the certificate might be used to "induce" a buyer to part with his or her money.

AN ADDITIONAL FORM OR TWO

Certificates are frequently accompanied by an "Architect's Consent to Assignment of Contract," wherein the architect/engineer agrees that the lender may take over the design contract and utilize the drawings and specifications should the owner/borrower default. There may be other provisions bearing on the reuse of the construction documents and additional assurances from the design professional. The point is, each document presented for signature must be critically read and analyzed by you or by an advisor on your behalf. A legal document is what its contents say it is, not what its title announces.

When construction is substantially complete, or nearly so, lenders proposing permanent financing frequently present another form of certificate containing many of the earlier guarantees and adding the following:

The improvements ("Project ") have been built and comply in all respects with the drawings and specifications prepared by _____ for the Project and comply in every respect with all laws, rules, regulations, and codes of every governmental body or agency having jurisdiction.

Lenders may be surprised to hear you declare, "I don't know if that's true." The usual reaction is, "What are architects and engineers for, anyway?" Architects and engineers are for many useful things, but among them is not amassing knowledge about every stick and stroke in the building.

Observation of construction is among the services assaulted by ever shrinking budgets for professional services. Few owners wish to pay for a full time representative on the job. Even the customary observation is frequently stripped down to a few visits at a critical time or two. Some projects receive no independent review on the owner's behalf at all.

The absence of uniform practices means you must say what you know and how you came about your limited knowledge. The following may be better suited to the realities of current practice:

The Architect/Engineer was retained to observe the construction at irregular intervals numbering _____ site visits during the course of construction commencing _____(date)_____ and ending _____(date)____, and, on the basis of the limited information gathered on those occasions and from the information furnished by the contractor, it is the opinion of the undersigned that the work substantially complies with the drawings and specifications and has been conformed, in general, with applicable laws, rules, regulations, and codes, and the practices of the agencies having jurisdiction thereof.

A FINAL WORD

We have run out of paragraphs. That is too bad. It has been fun dressing up in outrageous clothing and emerging, finally, as ourselves. We do not exactly intend to have our fun at the expense of the lender, but we do think it a benefit for lenders to see their requirements from our point of view.

Doubtless, the lender perceives its certificate as a requirement imposed only on the owner, but it does not serve the lender to press its demand on the owner if the owner's design consultants cannot comply. Neither business nor professional practice is a bar exam where people willingly navigate onerous paper trails on command.

Lenders do have a legitimate need to evaluate their security, and design is an element requiring assessment. When this is done best, lenders are upstanding with design professionals. We have observed that, on important projects, particularly where the lender is also a part owner, design may be checked at the lender's insistence by peer reviewers or directly across the drawing board by the lender's experienced design and construction personnel. Lenders may later retain inspectors to verify the quality of the construction.

The greater bulk of the transactions, we fear, is handled by fiat. The ensuing paper war neither enhances the prospect for successful construction, nor protects the lender from financial ruin if failure follows.

A construction transaction can be dressed in paper, but the building is not made stout by it. Whatever we raise up is from the day built drawn down by all the great forces of the universe. This is a sobering thought. What stands longest testifies to that designed and built with the greatest talent, foresight, and care. There are no monuments to even the best papered projects.

* George J. Vogler is a lawyer from Missouri, where he is President of Reserved Resource Insurance Agency. He specializes in professional liability insurance and loss prevention services for architects and engineers, a specialty he has pursued since the early 1970s. Mr. Vogler is a graduate of the University of Kansas and received his law degree from the University of Washington. He is a member of the Bar in the State of Missouri.

Appendix A

THE COMPOSITE SAMPLE

ARCHITECT'S CERTIFICATE

To: Lender

Ref: The Project/The Owner



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Date: _____

We hereby certify to Lender, with reference to the Project which is to be constructed in accordance with the Drawings and Specifications attached as Exhibit "A ", as follows:

1. The Land on which the Project is to be constructed lies in (insert zoning classification) under the zoning ordinances and/or by-laws of X county, Y state.
2. The Drawings and Specifications comply with all applicable Federal, state, and municipal laws, rules, regulations, and ordinances of every nature and description, including, without limitation, zoning, building, and fire codes and ordinances, subdivision ordinances and environmental laws, rules, and regulations, including, without limitation, the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended, and the Project, if constructed in accordance with the Drawings and Specifications, will likewise comply with all applicable Federal, state, and municipal laws, rules, regulations, and ordinances of every nature and description relating to the construction and the intended use thereof.
3. We are familiar with the on-the-ground conditions of the Land and the building site, and site conditions are such that any provision of any law relating to the filling, dredging, excavation, or other usage of lands classified as wetlands or lands which are subject to periodic flooding or have thereon standing or moving bodies of water are not applicable to the construction of the Project.
4. We are familiar with the prior uses of the Land, the surrounding land, and the building site, and the history is such that no wastes, toxins, pollution, or contamination adversely affecting the intended use are present on the site or in the soil or ground water.

To the best of our knowledge and belief, there are no (i) asbestos containing materials, (ii) polychlorinated biphenyls, or (iii) fuel storage tanks or chemical storage tanks located in or upon the Property or on any real property immediately adjacent to the Property, and there is no evidence which would indicate to a reasonable observer that such materials have previously been located in, on, or upon the Property or on any real property immediately adjacent to the Property.

1. All necessary soils testing has been performed, and the soils conditions are satisfactory for the structural support of the improvements on the Project.
2. Satisfactory methods of access to and egress from the Project and adjoining or nearby public ways are available and are sufficient to meet the reasonable needs of the Project and all applicable authorities. Sanitary water supply, storm sewer, and sanitary sewer facilities and other required utilities (gas, electricity, telephone, etc.) are likewise available and sufficient to meet the reasonable needs of the Project and all applicable requirements of public authorities at or within the lot lines of the Land. No easements over land of others are required for such means of access and egress or for any such utilities. Design conditions are such that no drainage of surface or other water across land of others is called for or indicated by the Drawings and Specifications.
3. We have reviewed and are familiar with the locations of all easements, rights-of-way, and subsurface rights in force relating to the Land, and the Drawings and Specifications have been so prepared that the Project will not encroach over, across, or upon any such easements, rights-of-way, or subsurface rights.
4. All permits, licenses, and approvals ("Permits ") required for the construction and intended use of the Project, including, building permits, curb-cut permits, permits relating to the use of utilities, and permits required by the Federal Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, and by state law or regulations consistent with the requirements of said Acts



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have been validly issued by the appropriate authorities and are now in full force and effect as follows:

(Insert names of Permits issued)

However, construction of the Project is not as of this date sufficiently complete to obtain the following Permits, which are also required for the project:

(Insert names of Permits to be issued)

Upon substantial completion of the Project, the following Permits and certificates are required to be issued by the identified governmental authorities for the use of and occupancy of the Project:

(Insert names of Permits required at substantial completion)

1. It is the express opinion of the undersigned that the foregoing Permits and certificates will duly be issued in the ordinary course of construction and completion of the Project and that such Permits are the only Permits required by any and all governmental authorities having jurisdiction of the Owner or the Project.
2. This Certificate is being given to Lender incident to completion of negotiations between Owner and Lender for the purpose of arranging construction and/or permanent financing for the Project, and it is intended by the Undersigned as an inducement to the extension of such credit by Lender, who shall be entitled to rely upon the contents and accuracy of this Certificate in concluding its arrangements with Owner with respect to such financing.

- (Name of design professional firm)

By: _____(You) _____

Appendix B

SUGGESTIONS AND ALTERNATIVES

ARCHITECT'S STATEMENT

We hereby represent to the Lender...

(or) We hereby state to the Lender...

(or) We are Architects/Engineers retained by the Owner for performance of certain professional services more particularly described in our professional services agreement with the Owner. With respect to our professional services on the Project, which is to be constructed in accordance with the Drawings and



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Specifications attached as Exhibit "A ", we hereby represent and confirm to Lender that to the best of our knowledge, information, and belief,...

(or, in the event the word "certify " cannot be expunged, asterisk (*) the words "Certificate " and "certify " and insert the following footnote):

* The word, "certify, " as used in any of its forms herein, is an expression of a professional opinion only and shall not be construed or understood to be a statement of fact, a warranty, or a guarantee of any kind, expressed or implied.

1. This language is straightforward as it stands.
2. The Drawings and Specifications have been prepared in the regular course of our professional services in conformance with current, published, applicable, Federal, state, and municipal laws, rules, regulations, and codes and the prevailing practices of the agencies having jurisdiction thereof.

The Project, if constructed in accordance with the Drawings and Specifications and the interpretations and instructions of the Architect, would likewise comply with such current, published, applicable laws, rules, regulations, codes, and prevailing practices.

(Note: You would not include this second paragraph at all if your contract does not include adequate construction phase services.)

1. (Note: Be specific here. If a coastal, wetland, or any other protected land permit is required, state it. Otherwise, this paragraph should be deleted.)

The Project requires a permit for construction in a protected (coastal, wetland, historical) area, which has/has not been granted. If not granted, application is pending.

1. (Note: Unless your practice is unusual, you will have no opinion on the matters asserted here, and these paragraphs should be deleted. Qualifications, such as, "to the best of my knowledge, " are not advisable in this context. There is no recommended, "improved " language.)
2. The design has been conformed to the recommendations of the Project soils report for structural support of the Project improvements.
3. The Drawings and Specifications provide for access to and egress from the Project adequate for the Project, and adjoining or nearby public ways are available to meet the reasonable needs of the Project and of the applicable authorities. Sanitary water supply and storm sewer, sanitary sewer facilities, gas, electricity, and telephone facilities are likewise available and sufficient to meet the reasonable needs of the Project for connection at or within the lot lines of the Land. Based on information and legal opinions furnished by the Owner, no easements over land of others are required for such means of access and egress or for any such utilities, except as listed in the Exhibit attached.
4. Based on information and legal opinions furnished by the Owner, the Drawings and Specifications have been prepared so that the Project will not encroach over, across, or upon the easements, rights-of-way, or subsurface rights relating to the Land, but only to the extent the Owner has advised us that they exist on the Land.



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5. The following Permits and Licenses ("Permits ") for the construction and intended use of the Project have been issued as hereinafter listed:

(Note: The other sections of Paragraph 8 are reasonably acceptable.)

1. This paragraph should be deleted.
2. This Certificate is given to the Lender incident to completion of arrangements between Owner and Lender for construction financing, and it may be used by the Lender for no other purpose or by any other person for any purpose whatsoever.