BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: CORLE BUILDING SYSTEMS C2004-2

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president, and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia (hereinafter "the Board") for the purpose of agreeing to disciplinary action to be taken against Corle Building Systems [hereinafter at times referred to as Respondent]. As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The Board is a state entity created by West Virginia Code ' 30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering pursuant to West Virginia Code ' 30-13-1 *et seq.*

2. Corle Building Systems LLC is a corporation organized under the laws of the State of Pennsylvania with its principal office in Imler, Pennsylvania.

3. John J. Corle is the President of Corle Building Systems and has the power and authority to make admissions and otherwise act on behalf of Respondent.

4. This complaint was filed on March 11, 2004, by James M. Lucas, a former employee of Respondent, who at that time was Corle's named engineer-in-responsible-charge on Respondent's Certificate of Authorization (COA).

5. Respondent's COA #CO1267 was first issued on May 21, 2003, to Fab Tech, Inc., d/b/a Corle Building Systems.

6. Mr. Lucas' employment with respondent was terminated in June of 2003, but

Mr. Lucas was not removed as the named engineer-in-responsible-charge on Respondent's COA.

7. Another employee, James Eisenman, applied for and received his West Virginia P.E. license on September 2, 2004, and was named by Respondent as the engineer-in-responsible-charge on its COA renewal application received by the Board and issued on September 27, 2004.

8. The Complaint alleges "an issue, incident, or violation of statute, rule or regulation of the WV Code" and relates to the structural soundness of metal buildings manufactured by Respondent during and after 1992 through 2002 for placement in West Virginia [hereinafter referred to as the "Corle buildings"; *see* Attachment 1].

9. Due to the nature of the allegations in the Complaint, the Board, in fulfilling its obligation "to safeguard life, health and property and to promote the public welfare, contacted the owners and requested response from Corle.

10. A response to the Complaint was filed by Andrew W. Barbin, Respondent's counsel, on April 5, 2004. The response asserted that existing problems were exaggerated by a disgruntled former employee, that the known deviations did not implicate structural integrity, and that Corle was taking steps to investigate and correct the deviations. A copy of the full response is attached; *see* Attachment 2.

11. A hearing was originally noticed for January 17, 2005, but the parties, through their respective counsel, agreed to stay the hearing to address issues raised in the Complaint through formal discovery, mutual agreements, and the assistance of independent engineers and Corle's in-house engineers.

12. Over the next three years, several of the Corle buildings were reviewed in accordance with a mutually agreed upon protocol.

13. Between the Fall of 2004 and the Spring of 2007, Respondent, through its in-house engineers or third-party engineers approved by the Board and paid by Respondent,

recalculated twenty-eight (28) buildings selected by the Board.

14. The outside engineer mutually agreed upon by the Parties, Gary Chubb, PE, reviewed six (6) buildings, confirmed that certain buildings had deviations from required tolerances and recommended required repairs, but was of the opinion that these deviations did not raise structural integrity issues.

15. In each case where a repair was deemed to be required, Corle promptly made arrangements to make the required repair, except as to one vacant building where reasonable efforts to secure owner consent to enter and repair were not successful. As to this building, at the Board's request, Corle contacted the local building authority; *see* Attachment 3.

16. By Agreement of the Parties, Corle then replicated the Chubb reports as to forty-one (41) additional buildings, some of which were reviewed and agreed to by Chubb, with similar results as those found by Mr. Chubb.

17. The Board finds that the deviations shown by these reviews form a reasonable basis to take disciplinary action, and further finds that it does not need to characterize the degree of seriousness of those deviations since Corle, by this consent order, has agreed to complete the reviews as to all the buildings identified in Attachment 1 and correct any remaining deviations.

18. Respondent admits it approved and sealed Corle buildings that did not conform to accepted engineering standards, in violation of West Virginia engineering law and specifically in violation of the rules of professional responsibility for professional engineers, but states the violation was unintentional.

19. Respondent admits it practiced engineering without a certificate of authorization from 1992 until May of 2003, and practiced without a valid COA from the Summer of 2003 (Mr. Lucas' termination) until September 27, 2004, because it had no qualified engineer in responsible charge.

20. Respondent agrees to warrant that each and every Corle building conforms to accepted engineering standards by reviewing each building on Attachment 1 and, as to any building determined not to be in compliance with the local building code in effect at the time of construction or, if no local building code was in effect, the West Virginia state building code then applicable, Respondent agrees to offer to the current owner to make any necessary repairs at Corle's expense.

21. Corle also agrees to inform the Board and the appropriate local authority in writing in the event an owner cannot be located after reasonable efforts to attempts same or declines an offer of repair. For purposes of this consent order, "appropriate local authority" shall mean the building authority in that jurisdiction or, if there is none, the chief governing officer of the municipality in which the building is located or, if outside a municipality, a local authority approved by the Board, which approval shall be requested by Corle on an "as needed" basis.

22. The Board finds that, inasmuch as it initially notified or attempted to notify owners of Corle buildings, diligently worked with Corle to determine whether there was cause for concern, determined and advised Corle that there indeed was cause for concern, and is instituting a deadline by which Corle must identify and rectify any deficiencies in the Corle buildings, the Board has met any duty imposed by statute and fulfilled its obligation to the citizens of West Virginia.

23. The primary factors which mitigate the amount of civil penalties and administrative costs imposed by the Board include the following:

a. the deviations do not appear to have been intentional;

b. Corle has incurred considerable cost and will incur additional costs in identifying and rectifying any and all problems with the Corle buildings; and,

c. such costs in and of themselves pose a substantial economic deterrent to any recurrence of the violations.

24. While the Board acknowledges that Corle cooperated in the investigation remediation of issues raised in the Complaint, the Board finds that Corle did not take the necessary steps on its own to promptly investigate the West Virginia buildings and correct the deviations and that this process was unnecessarily delayed at various points by Respondent's actions, which delay counterbalances the mitigating factors identified above.

25. The Board, in its discretion, will not include a finding that Respondent's engineers practiced engineering in West Virginia without a license although the Board finds it is within its power to find such a violation.

26. The Board has incurred administrative costs in the amount of at least $25,000, including over $12,500 in staff investigator time, $7500 in attorney's fees, and $2850 to its engineering experts.

27. Respondent has waived its right to a hearing on this matter and other rights set forth in W. Va. Code ' 30-13-1 *et seq.* and the procedural rules of the Board.

CONCLUSIONS OF LAW

28. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. West Virginia Code ' 30-13-17.

29. The Board may take disciplinary action against any firm which fails to comply with any provisions of West Virginia Code ' 30-13-1 *et seq.* or any of the rules promulgated under it. West Virginia Code ' 30-13-21(a)(4); *see also* W. Va. Code ' 30-13-21(d).

30. The Board is required to adopt "rules of professional responsibility for professional engineers." West Virginia Code ' 30-13-9(a).

31. The "rules of professional responsibility for professional engineers" are set forth in 7 CSR 1-12, including a registrant's obligation to society to "approve and seal only those design documents and surveys that conform to accepted engineering standards and

safeguard the life, health, property and welfare of the public." 7 CSR 1-12.3(b).

32. The Board is authorized to "assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board." West Virginia Code ' 30-13-21(b); *see also* W. Va. Code ' 30-13-21(d)(4).

33. Practicing or offering to practice engineering without a valid COA, to which Respondent has admitted herein, is an action that could subject a firm to discipline by the Board, including a civil penalty up to $5000.00. 7 CSR 1.15.1.

34. "Misfeasance or malfeasance" or "Professional misconduct, negligence or incompetence", both applicable to matters to which Respondent has admitted herein, are offenses that could subject a firm to discipline by the Board, including a civil penalty up to $1000.00. 7 CSR 1.15.1.

35. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.

36. In determining the amount of civil penalty to be assessed by the Board, the Board may consider several factors and assess a civil penalty in the amount it deems appropriate. 7 CSR 1.15.4.

CONSENT OF RESPONDENT

37. John J. Corle, President of Corle Building Systems, by affixing his signature hereon, agrees to the following on behalf of Corle Building.

a. Respondent has been represented by counsel and is aware of its option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives its right to do so;

b. Respondent intelligently and voluntarily waives its right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein;

c. Respondent admits it approved and sealed Corle buildings that did not conform to accepted engineering standards, in violation of West Virginia engineering law, including the rules of professional responsibility for professional engineers, but states the violation was unintentional;

d. Respondent admits it practiced engineering without a certificate of authorization from 1992 until May of 2003, and practiced without a valid COA from the Summer of 2003 (Mr. Lucas' termination date) until September 27, 2004, because it had no qualified engineer in responsible charge;

e. Respondent agrees to offer the global warranty defined in Paragraph 20 above as to each and every Corle building included on Attachment 1, which warranty shall include a review of each building and an offer to the current owner to make any necessary repairs at Corle's expense. Corle shall have no duty to perform offered repairs if the current owner, after reasonable notification efforts, cannot be notified or does not accept the offer within six (6) months of the transmittal of the written offer to perform the repairs, in which case Corle shall provide written notice to the Board and the appropriate local authority as defined above of Corle's inability to

notify the current owner or the current owner's rejection or failure to accept a repair offer;

f. Respondent accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion;

g. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate; and

h. Respondent acknowledges that proof of any misstatement or misrepresentation made in connection with this matter or non-performance of any act required herein will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any certificate of authorization issued to Respondent, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

ORDER

38. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code ' 30-13-22(b).

39. The Board **ORDERS** Respondent to provide verification to the Board on or before November 1, 2007, that Respondent has reviewed each and every Corle building and has notified or attempted to notify each and every current owner that the building has

been reviewed and is either (1) warranted to conform to accepted engineering standards or (2) will be so warranted upon the making of any necessary repairs at Corle's expense.

40. The Board **ORDERS** Respondent to pay administrative costs in the amount of Ten Thousand Dollars ($10,000.00) within thirty (30) days from the date of entry of this Order, which amount shall be made payable to the WV P.E. Board and deposited to the appropriate Board account to cover the costs of this enforcement action.

41. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) for practicing engineering without a certificate of authorization.

42. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Forty-Four Thousand Dollars ($44,000.00) for approving and sealing buildings that did not conform to accepted engineering standards, in violation of West Virginia engineering law and the rules of professional responsibility for professional engineers. The Board agrees to abate one half of these civil penalties, provided Corle completes and certifies the completion of the reviews and any required notifications by November 1, 2007. If the Certification is not made as of this date, the remaining balance of the civil penalties shall be due no later than November 10, 2007.

43. The Board may extend the date, in the event of exigent circumstances outside of Corle's control, such as inability to identify a current building owner or the documented sudden incapacitation of the individual completing the reviews. In such case, the Board's representative, on written request from Corle documenting grounds for which an extension is requested, shall exercise reasonable discretion to determine what extension, if any, is warranted. Absent extreme exigent circumstances, any request shall be made by October 15, 2007, and any extension shall be by written addendum to this agreement.

44. The portion of civil penalties imposed herein not subject to abatement

($22,250) must be paid within thirty (30) days of the date Respondent receives notice of the Board President's signature hereon, such amount to be made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt. Corle shall not accept or process any existing orders in West Virginia if such payment is not made until such payment is made.

45. If the required amount of civil penalties not subject to abatement is not paid within the time set forth above, Respondent shall immediately cease accepting or processing further orders for West Virginia, unless and until it makes such payment and gets approval from the Board to resume accepting or processing such orders.

46. If the required reviews are not complete by November 1, 2007 (or the extended date as provided above), Respondent shall on that date case accepting or processing further orders for buildings in West Virginia, unless and until it performs the reviews and repairs required by this Consent Order, makes the additional $22,000 payment required in accordance with the terms of the abatement provisions and gets approval from the Board to resume accepting or processing orders for West Virginia.

47. This matter shall remain open until after November 1, 2007, or such time as the reviews ordered herein are completed and provided to the Board, so that the Board has an opportunity to determine whether additional Corle buildings ordered after the last date of the buildings listed on Attachment 1 need to be reviewed or other corrective or disciplinary action needs to be taken.

48. This Consent Order is not a final order in this matter. Either a Final Order will be entered after the reports have been received and accepted by the Board, or the Board shall continue this disciplinary action, or the parties may agree to an(other) addendum to this Consent Order.

49. Respondent acknowledges this Consent Order, the underlying Complaint, and any documents exchanged between the parties are public records and agrees that the

sum and substance of any of these documents in part or in their entirety may be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

50. Any violation of the terms of this Consent Order shall be immediate cause for revocation of Respondent's Certificate of Authorization and for further disciplinary action by the Board.

51. Nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative action brought by Respondent.

52. If the civil penalties and administrative costs imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein, together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

53. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

54. This is the entire Agreement between the Parties, and any amendment or addendum hereto shall be in writing signed by the parties.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: _____

LEONARD J. TIMMS, P.E.

Board President

Date: 11/29/07

CORLE BUILDING SYSTEMS
By **JOHN J. CORLE**, Its President

Date: 11-1-07