



AIA® Document A102® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 11 day of March in the year 2024
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

JTC Palatka Apartments LLC
7160 Chagrin Road, Suite 250
Chagrin Falls, OH 44023
Florida Limited Liability Company

and the Contractor:

(Name, legal status, address and other information)

Lloyds Construction and Consulting LLC
11633 Phillips Highway
Jacksonville, FL 32256
Florida Limited Liability Company

for the following Project:

(Name, location and detailed description)

Palatka Apartments
507 Third Avenue
Palatka, FL 32177

The Architect:

(Name, legal status, address and other information)

RDL Architects, Inc.
21111 Chagrin Boulevard, Suite 110
Beachwood, OH 44122
Ohio Corporation

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A102™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of

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the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☒ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

Date of Commencement shall be five days after the date of the Notice of Commencement sent by Owner to Contractor following issuance of building permit and site plan approval

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

- ☒ Not later than Three Hundred Sixty Five (365) calendar days from the date of commencement of the Work.
- ☐ By the following date:

§ 4.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
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§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

§ 4.3.4 The Contractor acknowledges that the Contract Time requires that the Substantial Completion of the Work, including but not limited to the issuance of all certificates of occupancy or temporary certificates of occupancy, occur on or before the date for Substantial Completion set forth in section 4.3 above as amended by change order pursuant to the terms of this Agreement. The Contractor acknowledges and agrees that the Owner may suffer severe financial loss due to loss of revenues, interest on loans, decreased profits, and decreased return on investment, loss of tax credits, and other actual damages, if Substantial Completion is not achieved by the date specified above.

§ 4.3.5 All time limits are of the essence in this Contract. The Contractor acknowledges that the Contract Time requires that the Substantial Completion of the Work occur on or before 365 days from commencement.

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ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)

Two percent (2%) of the Cost of the Work for overhead, six percent (6%) of the Cost of the Work for General Conditions, and six percent (6%) of the Cost of the Work for profit.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

The Contractor's Fee will be adjusted as outlined in Exhibit C, and in Section 5.1.1 above.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

5% for materials and 10% for labor of the Cost of the Work of each Change Order

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed seventy five percent (75 %) of the standard rental rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
N/A		

§ 5.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Notwithstanding anything to the contrary in any other Contract Documents, Contractor shall achieve Substantial Completion of the Work by no later than Three Hundred Sixty Five (365) calendar days (the "Substantial Completion Date") following the Date of Commencement. Time is of the essence to the Contract Documents and all obligations thereunder, including but not limited to the date of Substantial Completion.

In the event the Contractor does not achieve Substantial Completion of the Work on or before the Substantial Completion Date, Contractor shall pay Owner, _____ dollars \$ _____ per unit per day as agreed liquidated damages, subject to adjustment as provided herein for each calendar day beyond Substantial Completion Date set forth herein until the Work achieves Substantial Completion by the applicable date. Only units not substantially completed and turned over for use by residents shall be counted for the per-unit-per-day liquidated damages calculations. The parties acknowledge and agree that the actual delay damages which Owner will suffer in the event of a delay in achieving Substantial Completion of all or a portion of the Project, are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the other is expected to suffer in the event of such delay (and are not a penalty) and are the sole and exclusive remedy for any and all such delays and are in lieu of and are not in addition to actual delay damages.

§ 5.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Seven Million Seven Thousand One Hundred Seventy Seven Dollars (\$7,007,177.00), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price.

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Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
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§ 5.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
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§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
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§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption.)

See Exhibit D

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

§ 5.2.7 Contractor acknowledges that it will be subject to a Florida Housing General Contractor Cost Certification (hereinafter "GCCC") as described in Exhibit C with respect to this Agreement. Contractor shall comply with each provision of Exhibit C at all times and shall fully cooperate with Owner and its agents in completing the GCCC in accordance with Exhibit C.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™-2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of

Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work, as set forth in Exhibit C.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs: As Authorized by Exhibit C Attached Hereto

(Paragraphs deleted)

§ 7.3 Subcontract Costs: Pursuant to the Requirements of Exhibit C Attached Hereto

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction: Pursuant to the Requirements of Exhibit C Attached Hereto

(Paragraphs deleted)

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items: Pursuant to the Requirements of Exhibit C Attached Hereto

(Paragraphs deleted)

§ 7.6 Miscellaneous Costs: Pursuant to the Requirements of Exhibit C Attached Hereto

(Paragraphs deleted)

§ 7.7 Other Costs and Emergencies: Pursuant to the Requirements of Exhibit C Attached Hereto

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval, and pursuant to the requirements of Exhibit C.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017, and pursuant to the requirements of Exhibit C.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others, and pursuant to the requirements of Exhibit C.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the

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related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED: PURSUANT TO THE TERMS OF EXHIBIT C

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly authorized by Exhibit C; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

However, Contractor shall be entitled to a payment of 2% of the Cost of the Work to compensate Contractor for such home office expenses overhead expenses, and 6% of the Cost of the Work for general conditions costs, pursuant to the requirements of Exhibit C, as part of its fee as set forth in Section 5.1.1 above.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the

Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 20th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 In accordance with AIA Document A201–2017, as amended by the parties, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017 as amended by the parties;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 as amended by the parties;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Owner shall withhold ten percent (10%) of each payment of the Contractor's Fee made, until the Work is fifty percent (50%) complete, at which point no further retainage shall be required from subsequent payments of the Contractor's Fee.

§ 12.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

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§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

After the completed Work has reached 50% of the GMP, no retainage will be deducted from progress payments thereafter, unless the Owner determines in its sole discretion, that the quality of the Work is less than that required by the Contract Documents or that the Project cannot be completed within the Contract Time, at which time the Owner may decline to reduce retainage on subsequent progress payments.

§ 12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8 with the exception of amounts determined in the Owner's sole discretion to be the value of the incomplete Work, and or punchlist Work, and any claims the Owner has, including but not limited to liquidated damages pursuant to Section 5.1.6 above. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 12.1.10 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the

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Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and the fulfillment of the other conditions of Final Payment as set forth in Article 9.10 of the A201 General Conditions of this Agreement.

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

§ 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

6 % Six Percent per annum

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction, non-jury

☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

§ 13.2 JURY TRIAL WAIVER

(Paragraphs deleted)

THE PARTIES HERETO CONSENT TO TRIAL BY JUDGE OF ALL DISPUTES ARISING FROM OR RELATING TO THIS AGREEMENT, AND WAIVE ALL RIGHTS TO TRIAL BY JURY AS TO ANY AND ALL SUCH CLAIMS AND DISPUTES.

§ 13.3 ATTORNEYS' FEES

(Paragraphs deleted)

THE PARTIES AGREE THAT IN ANY LITIGATION ARISING FROM OR RELATING TO THIS AGREEMENT, THE PREVAILING PARTY IN SUCH LITIGATION SHALL RECOVER ITS REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING ALL SUCH FEES AND COSTS INCURRED AT TRIAL AND APPELLATE LEVEL.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

§ 14.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

§ 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 The Owner's representative:

(Name, address, email address and other information)

§ 15.3 The Contractor's representative:
(Name, address, email address and other information)

§ 15.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A102™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 15.7 Financing

The parties acknowledge that the enforceability of this Agreement is contingent upon Owner closing on all financing necessary to fund the GMP price. If Owner fails to obtain acceptable financing before the issuance of the Notice to Proceed, this Agreement is null and void and Owner has no liability to Contractor for any damages, including but not limited to costs or lost profits.

§ 15.8 Applicable Law

The parties agree that this Agreement will be interpreted pursuant to the laws of the State of Florida.

§ 15.9 Approximately 30 days prior to the anticipated date of Substantial Completion of any part of any building, Contractor and Owner shall cooperate to develop a Turnover procedure, that will spell out the timeframes for Owner's punch walks and punch list completion.

§ 15.10 Notwithstanding anything to the contrary in the Contract Documents, Contractor shall comply with the requirements of the Florida Housing Finance Corporation's rules and regulations applicable to this Project, a copy of which is attached hereto as Exhibit N.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended
- .4

(Paragraphs deleted)

Drawings

Number	Title	Date
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- .5 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

- .6 Addenda, if any:

Number	Date	Pages
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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

- .7 Other Exhibits:

(Check all boxes that apply.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

Title	Date	Pages
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☐ Supplementary and other Conditions of the Contract: See added language in Article 17 pertaining to Chapter 558.

Document	Title	Date	Pages
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- .8 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

EXHIBIT A – A201 General Conditions, as amended.

EXHIBIT B - List of Plans and Specifications.

EXHIBIT C - Florida Housing General Contractor Cost Certification

EXHIBIT D -	Qualifications and Clarifications
EXHIBIT E -	Schedule of Values
EXHIBIT F -	Payment and Performance Bonds
EXHIBIT G -	Form of Change Order
EXHIBIT H -	Form of Contractor's Interim Lien Waiver and Release Upon Progress Payment
EXHIBIT I -	Form of Subcontractor's Interim Waiver and Release Upon Progress Payment
EXHIBIT J -	Form of Contractor's Final, Unconditional Lien Waiver and Release Upon Final Payment
EXHIBIT K -	Form of Subcontractor's Final, Unconditional Lien Waiver and Release Upon Final Payment
EXHIBIT L -	Schedule
EXHIBIT M -	Sample Subcontract
EXHIBIT N -	FHFC Requirements

ARTICLE 17 NOTICE REQUIRED FOR CONSTRUCTION DEFECTS UNDER FLORIDA STATUTES CHAPTER 558

§ 17.1 CHAPTER 558 NOTICE OF CLAIM


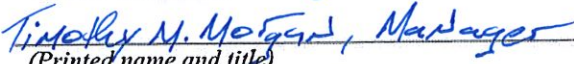
§ 17.1.1 Chapter 558 Florida Statutes requires that the following notice be given to any person entering into a contract for the design, construction or remodeling of real property:

CHAPTER 558 NOTICE OF CLAIM


CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT, SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

§ 17.1.2 In the event of any claim by Owner relating directly or indirectly, to construction defects, the Contractor and its subcontractor(s) shall have notice and opportunity to inspect the Project and to make the repairs or replacements necessary to remedy the alleged defects. Contractor and its subcontractor(s) shall have all rights, notices, access and opportunity to cure any alleged construction defects as provided in Florida Statutes Chapter 558 which shall be deemed to be incorporated herein by this reference.

This Agreement entered into as of the day and year first written above.


OWNER (Signature)

Timothy M. Morgan, Manager
 (Printed name and title)


CONTRACTOR (Signature)


Joseph Campbell - Partner
 (Printed name and title)

AIA® Document A102® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 11th day of March in the year 2024.
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Palatka Apartments
507 Third Avenue
Palatka, FL 32177

THE OWNER:
(Name, legal status and address)

JIC Palatka Apartments LLC
7160 Chagrin Road, Suite 250
Chagrin Falls, OH 44023
Florida Limited Liability Company

THE CONTRACTOR:
(Name, legal status and address)

Lloyds Construction and Consulting LLC
11633 Phillips Highway
Jacksonville, FL 32256
Florida Limited Liability Company

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. However, if the loss or damage is caused by the negligence or failure of Contractor or its subcontractors to exercise due care, the Contractor shall be responsible for the full amount of such deductibles or self-insured retention.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure

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User Notes:

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against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

☐ **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

☐ **§ A.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, its lenders, and Tenant, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner, its lenders, and Tenant as an additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 33 04 13, CG 20 37 04 13.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$ 1,000,000.00) each occurrence, two million dollars (\$ 2,000,000.00) general aggregate, and two million dollars (\$ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

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- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy in the amount of five million dollars (\$5,000,000.00) under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000.00) each accident, one million dollars (\$ 1,000,000.00) each employee, and one million dollars (\$ 1,000,000.00) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than five million dollars (\$ 5,000,000.00) per claim and five million dollars (\$ 5,000,000.00) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

For a period of four years following Final Completion of the Project

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- ☐ § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

- ☐ § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate, for Work within fifty (50) feet of railroad property.

- ☐ § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- ☐ § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the

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construction site on an "all-risks" completed value form.

[] § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[] § A.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type

Penal Sum (\$0.00)

Unconditional Payment Bond

Amount of GMP

Performance Bond

Amount of GMP

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

N/A

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EX. A

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Palatka Apartments
507 Third Avenue
Palatka, FL 32177

THE OWNER:

(Name, legal status and address)

JIC Palatka Apartments LLC
7160 Chagrin Road, Suite 250
Chagrin Falls, OH 44023
Florida Limited Liability Company

THE ARCHITECT:

(Name, legal status and address)

RDL Architects, Inc.
21111 Chagrin Boulevard, Suite 110
Beachwood, OH 44122
Ohio Corporation

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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User Notes:

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- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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User Notes:

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(Paragraphs deleted)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties; (2) a Change Order; (3) a Construction Change Directive; or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the Owner or Contractor.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents (whether expressly or by reasonable inference), whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

(Paragraphs deleted)

§ 1.1.9 KNOWLEDGE

The terms "**knowledge**", "**recognize**" and "**discover**", their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes or discovers in exercising the care, skill and diligence required by the Contract Documents. Analogously, the expression "**reasonably inferable**" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of

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the Contractor by the Contract Documents.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable codes, laws or ordinances or applicable industry standards, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2, 3.4.2, or 3.7.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 In the case of discrepancies between the INSTRUCTIONS TO BIDDERS, DRAWINGS, SPECIFICATIONS or addenda as it relates to each Subcontractor's Work Category responsibilities, the precedence for resolution of such discrepancies shall be as follows (listed in decreasing order of precedence):

- .1 ADDENDA
- .2 INSTRUCTIONS TO BIDDERS
- .3 SPECIAL and OTHER CONDITIONS of SPECIFICATIONS
- .4 SUPPLEMENTARY CONDITIONS of SPECIFICATIONS
- .5 GENERAL CONDITIONS of SPECIFICATIONS
- .6 TECHNICAL SPECIFICATIONS
- .7 DRAWINGS

(Paragraphs deleted)

§ 1.6 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.6.1 Except to the extent transferred to the Owner in accordance with the Owner's agreement(s) with the Architect, the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.6.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.8 and 1.9, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

(Paragraphs deleted)

§ 1.7 Notice

§ 1.7.1 Except as otherwise provided in Section 1.7.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.7.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.8 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.9 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Notwithstanding anything in the Contract Documents to the contrary, for any decision, approval or consent of the Owner to be binding against the Owner it must be in writing and for any modification that changes the Contract Sum or Contract Time to be valid it must be signed by either the Owner's Designated Representative or Chief Executive Officer.

(Paragraph deleted)

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 If requested by the Contractor prior to commencement of the Work, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence if requested by Contractor. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner has retained an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations of known utilities for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner, except as otherwise provided therein or in the Contract, but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.6.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Nothing herein shall be deemed to limit the Owner's rights with respect to termination as set out in Article 14 herein.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7)-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect, and may, , withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses (including attorneys' fees) and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Rapid Response to Emergencies

If the Contractor neglects to prosecute the Work properly or to perform any provision of the Contract Documents, or does, or omits to do, anything, whereby the safety or proper construction may be endangered or whereby damage or injury may result to person or property, and such circumstances are judged by Owner to create a bona fide emergency, then the Owner, after twenty-four (24) hours' written notice to the Contractor, may, but shall not be obligated to, without prejudice to any other right or remedy of the Owner, take such action as the Owner deems necessary or desirable to endeavor to correct such condition, and may deduct the cost thereof arising from Contractor's neglect, negligence, or willful misconduct from the amounts then due or thereafter due the Contractor. No action taken by the Owner pursuant to this Section 2.6 shall affect or diminish any of the Owner's other rights or remedies under the Agreement, at law or in equity, nor shall it relieve the Contractor from any liability under this Agreement arising from its actions or omissions.

§ 2.7 Extent of Owner's Rights

The rights and remedies stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any other rights and remedies of the Owner: (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means,

methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The Contractor may change its designated representative with ten (10) days' prior written notice to the Owner. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents, and also in accordance with approved submittals as provided in and subject to Section 3.12 below.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor shall coordinate and hold at least bi-weekly jobsite meetings with the Architect, the Owner and representatives of such Subcontractors and suppliers as the Contractor may deem advisable, for the purpose of: (a) reviewing status of the Work, (b) the progress of the Work as compared to the most recent construction schedule, (c) responses to submittals and requests for information, (d) proposed and pending Change Orders and Construction Change Directives, (e) Applications for Payment, (f) and other items relevant to the Project. The Contractor shall prepare an agenda for each such meeting and deliver the agenda at least three (3) business days in advance of the meeting and, after the meeting, shall prepare minutes of the meeting and deliver such minutes to the Owner and the Architect with reasonable promptness after the meeting. Further, the Contractor shall endeavor to send a representative, with full authority to act on behalf of and bind the Contractor, to the foregoing bi-weekly and to such other meetings and conferences relating to any Work as may be requested from time to time by the Owner.

§ 3.1.5 The Contractor accepts the relationship of trust and confidence established between the Contractor and the Owner by the Agreement and the Conditions of the Agreement. Contractor covenants with the Owner to furnish its best skill and judgement as a general contractor and not as a design professional and to cooperate with the Architect in furthering the interests of the Owner to furnish efficient business administration and superintendence to use its best efforts to furnish at all times an adequate supply of workmen and materials, to perform the Work in an expeditious and economical manner consistent with the interests of the Owner and the requirements of this Agreement.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited and inspected the site, become familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, and evaluated and satisfied itself as to the condition and limitations under which the Work is to be performed, including: (a) the location, condition, layout and nature of the Project site and surrounding areas, including conditions bearing upon ingress to and egress from the Project site, delivery, handling and storage of materials, disposal of waste, availability of water and electric power, ground water table or similar physical conditions of the ground, the character, quality and quantity of surface and sub-surface conditions and materials to be encountered, and the character of equipment and facilities needed prior to and during the execution of the Work; (b) generally prevailing climatic conditions; (c) anticipated labor supply and costs; (d) availability and cost of materials, tools and equipment; and (e) all other matters which can in any way affect the Work or the cost thereof under this Contract. The Contractor shall take reasonable steps to locate prior to performing any Work all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, and pipes.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor discovers, (or fails to discover because of the Contractor's negligence, or willful disregard of, the Contract Documents) any errors, inconsistencies, omissions, or discrepancies in the Contract Documents and proceeds with ordering of materials or construction of the Work without obtaining necessary clarification or instruction from the Architect and Owner, the Contractor shall assume full responsibility for such performance and shall bear all costs of correcting and resulting errors, inconsistencies, omissions, or discrepancies in the Work without adjustment of the Guaranteed Maximum Price or the Contract Time.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Owner or Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit a Proposed Change Order (PCO) and Change Order Request (COR) in accordance with Section 7.5. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws.

§ 3.2.5 The Contractor shall be responsible for the satisfactory and complete execution of the Work described in the Contract Documents. The Contractor represents that it has carefully examined all Contract Documents, including but not limited to the Drawings and Specifications for the Work to be performed, that it has made investigations essential to the construction methods for the Project, and that it has the experience and necessary personnel, equipment, and material at its disposal to complete the Work in a good workmanlike manner in accordance with the Contract Documents without defects in materials or workmanship. The Owner and the Contractor acknowledge that questions may arise concerning the level and scope of performance required under the Contract Documents. The Owner and the Contractor will in good faith attempt to resolve such questions and uncertainties in a manner that is consistent with the design intent of the Contract Documents and with the intent to do so without adjustment to the Guaranteed Maximum Price or Contract Time.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall prepare and maintain daily reports recording the date, weather conditions, deliveries received, Subcontractors on site, general description of work accomplished, problems or conflicts in the field. Said reports shall be maintained at the job site in an orderly manner and available to the Owner, the Architect, and the Owner's representatives for review at any time. The Contractor shall submit the format of such daily report to the Owner for approval prior to commencement of the Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit or submits an alternate product or method in lieu of what has been specified in the Contract Documents, subsections 3.4.2.1 and 3.4.2.2 apply.

§ 3.4.2.1 The Contractor must submit to the Architect and the Owner (a) a full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (b) a written explanation of the reasons for the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (c) the adjustment, if any, in the Guaranteed Maximum Price, in the event the substitution is acceptable; (d) the adjustment, if any, in the time of completion of the Work and the construction schedule in the event the substitution is acceptable, and (e) an affidavit stating that the proposed substitution conforms and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted electronically and in hard copy to the Architect and Owner in sufficient time to allow them no less than ten (10) business days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

§ 3.4.2.2 In addition to and without limitation of the requirements of subsection 3.4.2.1, by making requests for substitutions, the Contractor: (a) represents that it has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (b) represents that it will provide the same or better warranty for the substitution as it would have provided for the product specified and the manufacturer will provide the same or better warranty for the substituted product; (c) certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, except for the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and (d) shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall also be responsible for labor peace on the Project and shall at all times use its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide harmony. The Contractor shall be responsible to control any labor disputes that may arise among its employees or the employees of its Subcontractors. Only competent laborers who satisfactorily perform their duties shall be employed on Work. When requested by the Owner or Architect, the Contractor, without entitlement to adjustment of the GMP or Contract Time, shall within three (3) days discharge and shall not reemploy on work any person who commits trespass or who is, in the Owner's opinion, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. If Contractor objects to the direction to discharge an employee, Contractor shall raise such objection within the three (3) day period outlined herein and Owner shall make a final decision on the issue of removal or discharge within two (2) days upon receipt of the objection from Contractor, and Contractor shall immediately act in accordance with Owner's decision.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, and will be performed in a good and workmanlike manner and in compliance with Applicable Laws. Work, materials, or equipment (including items specified as sole source) not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. Further, the Contractor hereby assigns to the Owner, on a non-exclusive basis, all third party warranties pertaining to the Work and the materials and equipment incorporated therein that are not issued in the name of the Owner, including warranties of all Subcontractors and suppliers, and, upon completion of the Work, as a condition to final payment, the Contractor shall deliver to the Owner all such warranty documents. The Contractor shall perform the Work in such manner so as to preserve all such warranties. All warranty periods shall commence as of the date of Substantial Completion or the date the Certificate of Occupancy is effective, whichever occurs last, on a floor-by-floor basis. All manufacturer warranties shall be: (i) for a minimum of one (1) year for parts and labor.

§ 3.5.3 The Contractor's warranties given herein are not in derogation of such longer warranties as may be provided by the Contractor's Subcontractors, suppliers and the manufacturers of equipment and materials incorporated into the Project. Further, the Contractor's warranties will not be affected or limited by the terms of any manufacturer's warranty that has lesser terms or otherwise. The Contractor is responsible for ensuring that all warranties and guarantees required by the Contract Documents for materials, systems, equipment and work provided to and incorporated into the Work shall be issued in the name of and for the benefit of the Owner. The Contractor shall perform the Work in such a manner so as to preserve any and all such warranties. The Contractor shall assist the Owner without charge in asserting manufacturer and other third party warranty claims.

§ 3.5.4 The Contractor is responsible for any Subcontractor's nonperformance of warranty Work. The refusal of a Subcontractor or supplier to correct defective Work for which it is responsible will not excuse the Contractor from performing under the Contractor's warranty.

§ 3.5.5 The Contractor shall deliver to the Owner three (3) bound volumes of all guarantees and warranties on material furnished by all manufacturers and suppliers to the Contractor and its Subcontractors, with duly-executed instruments properly assigning the guarantees and warranties to the Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall obtain from manufacturers and suppliers, the guarantees and warranties according to the Contract terms and upon the optimum terms and longest periods reasonably obtainable. The documentation must also describe operational and maintenance activities required to sustain said warranties.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and the Owner shall pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters prehistoric artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, or human remains or recognizes the existence of burial markers, or archaeological sites, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such subsurface operations in the vicinity of the discovery until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. Only items clearly specified as "allowances" in the Contract Documents shall be deemed allowances for purposes of this Section 3.8.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.8.4 Contractor shall on the first day of each calendar month submit for Owner's review and approval a log showing amounts spent by Contractor against each allowance. Under no circumstances shall the Contractor incur any costs in excess of 25% more than an allowance amount without the prior written authorization of the Owner.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may

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notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 If, Owner determines in its sole discretion, that the Contractor's superintendent, any other personnel of the Contractor or personnel of Subcontractors, or any laborers by whomever employed, are not qualified to supervise or perform work considered or do not conduct themselves in a proper manner, or are interfering with the operations of any facility on or adjacent on the site of the Work, the Contractor shall cause such persons(s) to be replaced with qualified personnel immediately upon written notice from the Owner, without any additional cost to the Owner and without extension of the Contract Time. Neither the Owner's rights herein, nor the Owner's exercise or failure to exercise such rights, shall relieve the Contractor of the obligations to select, assign, and supervise competent and qualified personnel or otherwise make the Owner responsible for original or replacement personnel.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's initial construction schedule for the Work. This construction schedule and all updates thereto shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, the date of Substantial Completion, and the dates for completion of punchlist work and the closeout requirements; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The construction schedule, including all updates thereto, shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor's construction schedule, including all updates thereto, shall include all significant activities required to complete the Work, including all field tasks, significant material deliveries, other off-site constraints such as permits, inspections, approvals, and milestones for start dates, completion dates and availability dates, and other activities the Contractor, the Owner, or the Architect deem significant. The Construction Schedule shall be in time-scaled precedence format with the critical path clearly indicated and shall indicate Float (as defined in Section 8.2.4 below) values. Tasks shall be broken down into activities that allow monitoring their monthly progress. The Contractor shall submit monthly an updated schedule accurately reflecting progress achieved and any changes in the Contractor's planned activities. The Contractor shall give specific notice to the Owner and its consultants of any change in the logic of the schedule or any part thereof, or the removal of any restraints, or the deduction of any duration. If any schedule update shows that the progress of the Work is delayed in comparison to the prior construction schedule, the Contractor shall, if required by the Owner, provide a proposed "recovery schedule" showing how the Contractor proposes to correct the delay, including overtime and additional labor. No schedule updates shall modify the milestone dates contained in the initial construction schedule or subsequently agreed to by the Parties in any update thereto ("Milestone Dates"), the Contract Time, the Substantial Completion Date, or the Final Completion Date, unless the Parties execute a Change Order which modifies the Contract Time.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect, provided that no such schedule may adjust the Milestone Dates, Contract Time, the Substantial Completion Date, or the Final Completion Date without the Owner's written approval pursuant to a Change Order or Construction Change Directive.

§ 3.10.4 In the event the Contractor misses a Milestone Date identified in the most recent construction schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of

construction, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to as "**Extraordinary Measures**"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. Unless the delay giving rise to the need for Extraordinary Measures is a delay for which the Contractor is entitled to an increase in the Contract Time or Guaranteed Maximum Price pursuant to Section 8.3 below, the Contractor shall not be entitled to an adjustment of the Guaranteed Maximum Price in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.4. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Dates or completion deadlines set forth in the Contract Documents.

§ 3.10.5 In addition to construction schedule updates, the Contractor shall deliver to the Owner and the Architect monthly written reports on the progress of the entire Work with each Application for Payment. The progress report shall specify, among other things, a narrative summary of the Work performed and significant events occurring during the month, an estimated percentage of completion, whether the Project is on schedule and, if not, the reasons for the delay and a recovery schedule, as well as the projected Work to be completed the following month.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor, as part of the Guaranteed Maximum Price, as a precondition to Final Completion, or upon earlier termination of the Agreement, and as a condition precedent to the certifying of the final payment under the Contract, shall forward to the Owner and Architect the Record Drawings and Record Documents in hard copy, digital, and/or such other format as the Owner requires, along with a certification that such Record Drawings and Record Documents are true, correct and complete to the best of the Contractor's knowledge, information and belief.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action. All Shop Drawings shall (i) comply with performance specifications and other criteria established by the Architect, (ii) comply with all governmental requirements; and (iii) permit the Work, when completed, to perform as intended by the Contract Documents. Shop Drawings shall be modified at no cost to the Owner as necessary to obtain any permits or approvals and as required to comply with any requirement of the Contract Documents.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal

schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall use its best efforts to minimize impacts to the surrounding areas and environment. The Contractor acknowledges that the property on which the Project and Work is located may be occupied and in use during the execution of the Work. The Contractor shall perform and coordinate its work in such a manner the portions of the property occupied and in use will not be encumbered or the use interfered with or interrupted. Any use or occupancy of the property shall not give rise

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to any right on the part of the Contractor or any of its Subcontractors to any increase in the Guaranteed Maximum Price or Contract Time unless said use is an unscheduled event that disrupts, delays, stops or requires resequencing of work.

§ 3.13.2 The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and structures, as amended from time to time; Contractor may, in the event of an impact caused by such amendment, submit a claim in accordance with Articles 7,8, and 15. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend (at Owner's request with counsel reasonably acceptable to the Owner, which acceptance shall not be unreasonably withheld) and hold harmless the Owner, and its officers, directors, agents and employees (collectively "Indemnitees"), from and against claims, liabilities, damages, losses, and expenses, including attorneys' fees (collectively, "Indemnity Claims"), arising out of or resulting from performance of the Work, including Indemnity Claims attributable to bodily injury, sickness, disease or death (the Contractor's employees included), or to injury to or destruction of tangible property (including loss of use), but only to the extent caused, by the negligent or willful acts or omissions of the Contractor, or any of the Contractor's Subcontractors, suppliers, or agents of any tier or their respective employees, regardless of whether or not such Indemnity Claim is caused in part by any act, omission, or default of an Indemnatee arising from this Agreement

or its performance, provided that Contractor shall not be obligated to indemnify the Indemnitees to the extent (on a comparative negligence basis) a court of competent jurisdiction determines the Indemnity Claim was caused by the act, omission or default of an Indemnitee arising from this Agreement or its performance. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to an Indemnitee. The Owner and the Contractor acknowledge and agree that Section 725.06, Florida Statutes, does not require a monetary limitation on the extent of the indemnification provisions of this Section 3.18. If, notwithstanding this agreement, a monetary limitation on the extent of indemnification is deemed necessary to enforce any indemnification provision contained in the Contract, the specifications for the Project shall be deemed to include a monetary limitation on the extent of the indemnification required by said provision equal to the greater of, on a per occurrence basis: (a) the amount of the GMP, or (b) the amount of all deductibles and self-insured retentions applicable to the Contractor's insurance policy or policies applicable to such Indemnity Claim(s) plus the amount of insurance proceeds paid or payable under the Contractor's insurance policy or policies applicable to such Indemnity Claims. The Contractor and the Owner expressly agree that this monetary limit bears a reasonable commercial relationship to the Contract. The Contractor's indemnification obligations under this Agreement, including those in this Sections, shall be deemed to fully comply with Sections 725.06 and 725.08, Florida Statutes, to the extent applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to be in compliance with Sections 725.06 and 725.08, Florida Statutes, to the extent applicable, including any amendments thereto, it shall be deemed stricken and the remaining words, clauses, and provisions shall remain in full force and effect.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations shall also specifically include all fines, penalties, damages, liabilities, costs, expenses (including reasonable attorneys' fees and court costs), and punitive damages (if any) arising out of, or in connection with, any (a) violation of or failure by the Contractor or its Subcontractors to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom any of them is responsible, (b) means, methods, techniques, procedures or sequences of execution or performance of the Work, and (c) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required of the Contractor under the Contract, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person for whom any of them is responsible.

§ 3.18.4 The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by the Contractor of the tender of any Indemnity Claim from an Indemnitee which under the written content of the claimant's description of its claim reasonably appears to be within the Contractor's indemnification obligation. By proceeding to defend an Indemnity Claim, the Contractor shall not be deemed to have admitted to an obligation to provide indemnification and defense and Contractor may provide a defense under a written reservation of rights. Should the Contractor breach its defense and indemnity obligations, the Owner may, and without relieving the Contractor of its indemnity obligations, assume any defense obligation and try or settle such claim, and the Contractor: (1) shall reimburse the Owner for all costs and expenses incurred or paid by any Indemnitee in such defense, settlement, trial or arbitration, and (2) pay any judgment or award obtained against the Indemnitees or any of them. This provision is separate and distinct from, and in addition to, any other provision, paragraph or section in the Contract Documents, including any provision, paragraph or section concerning indemnification and procurement of insurance.

§ 3.18.5 The provisions of Sections 3.17 and 3.18 shall survive Substantial Completion and Final Completion of the Work, and the termination or expiration of this Contract, and no payment or partial payment shall waive or release any rights afforded by Sections 3.17 and 3.18.

§ 3.18.6 If due to no fault of the Owner any claim of lien or stop-notice or any other demand for payment or security therefore, including claims or demands upon performance and payment bond sureties for this Contract, is made or filed with the Owner or the Project by any person claiming that Contractor or any Subcontractor or supplier or any other person claiming under any of them has failed to perform its contractual obligations or to make payment for any labor, services, materials, equipment, taxes or other item furnished or obligation incurred for, or in connection with the

Work, or if at any time there shall be evidence of such non performance or non payment of any claim or lien or stop-notice or other demand for which, the Owner or the Project might become liable if Contractor fails to cure or resolve the claim within 21 days, then the Owner shall have the right to retain from any payment then due or thereafter to become due under the Contract or to be reimbursed by Contractor for an amount sufficient to satisfy, discharge and defend against any such claim or lien or stop-notice or other demand, or any action or proceeding thereon which may be brought to judgment or award. In addition to the foregoing, Contractor shall defend, indemnify and hold Owner harmless from any claim, suit or assertion of damages or demand by any subcontractor, sub-subcontractor or supplier against Owner claiming that Contractor has not paid the subcontractor, sub-subcontractor, or supplier as required under any agreement between Contractor and subcontractor, sub-subcontractor or supplier.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 At the Owner's discretion, the duties of the Architect described herein, other than those that require licensure as an architect under applicable law (or the duties of Architect as Initial Decision Maker), may be performed by the Owner or the Owner's other designated representative (e.g., the role of reviewing and certifying Applications for Payment and approving Change Orders). The Owner may do so by providing the Contractor written notice of any such role which the Owner or other designated representative is to assume. Neither this nor any other provision of the Contract Documents shall be deemed to relieve the Architect of its obligations to the Owner under the separate agreement between the Owner and the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. The Contractor shall provide a copy of all written communications between the Contractor and Architect simultaneously with the communication.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number

and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Copies of all bids or other proposals and executed subcontracts from subcontractors and sub-subcontractors shall, upon the request of the Owner, be submitted to the Owner for review. All subcontractors and sub-subcontractors shall be subject to the reasonable approval of Owner's lender, if any, which approval or denial to be provided within ten days of submission of list of subcontractors. If Owner rejects any subcontractor proposed by Contractor, and such rejection results in Contractor entering into a subcontract for the scope of work at a higher price, the Owner shall provide an equitable adjustment to the Agreement to cover the increased subcontract price.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall cause this Contract to be incorporated by reference in all agreements entered into between it and its Subcontractors, such that the terms and conditions of the Contract flow down to and bind all Subcontractors, whether specifically required or not by any provision of the Contract Documents. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract. The Contractor shall indemnify and hold harmless the Owner from any expenses or liability arising from or related to Work by any Subcontractor prior to the date of assignment, and from any Subcontractor rights or claims accruing prior to the date of assignment except only if and to the limited extent such Subcontractor claims include amounts for which the Owner undisputedly owed to but failed to pay the Contractor in accordance with the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed

construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays to the Critical Path of the Work, improperly timed activities that delay the Critical Path of the Work, or damage to the Work or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's: (a) delays that delay the critical path of the Work, (b) improperly timed activities that delay the critical path of the Work, and (c) damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Except as permitted in Section 7.3 and Subsection 9.7.2, a change in the Guaranteed Maximum Price or Contract Time shall be accomplished only by a Change Order or written directive issued by Owner to Contractor. Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone, subject to the Owner's prior written approval.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 In order to facilitate checking of quotations for extras or credits, all proposals (including as part of CORs, as defined below in Section 7.5) shall be accompanied by a complete itemization of both budgeted costs and actual costs, including labor hours, labor rates agreed in the Agreement, and material, equipment, and subcontract costs, all of which shall be broken down by CSI Division (or by line item in the approved Schedule of Values, if different) and supported by supported by Subcontractor and supplier quotes and other actual cost documentation, and such other supporting documentation and information as reasonably requested by the Owner or the Architect. Where major cost items are subcontracts, they shall be itemized also.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work or directing the Contractor to proceed with Work identified in a COR disputed by the Owner prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15 subject to the Contractor's full compliance with notice requirements and other preconditions to and limitations on claims for adjustment in the Contract Time in the Contract.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and notify the Owner and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for the Contractor's Fee shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The

Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect, with the Owner's prior written approval, may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 If the Contractor becomes aware of any circumstance that may be a change in the scope of the Work, or of an act or failure to act by the Owner, the Architect, or the Owner's other consultants, that in the Contractor's opinion justifies a change to the Guaranteed Maximum Price or Contract Time, or if the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, then the Contractor must as soon as practical (but no longer than ten days after Contractor becomes aware of circumstances that may give rise to a change in the Work) submit a written Notice of Potential Change Order to the Owner and the Architect in a format acceptable to the Owner and must specify the reasons for such proposed change and of the anticipated time and/or cost impacts if known at that time. The Contractor shall also submit a written COR, which shall include a detailed description of the changed Work, a price proposal and any requested adjustment to the Contract Time, together with any substantiating data required by Sections 7.1.4 or 15.1.6, or otherwise required by the Owner or the Architect, within twenty-one (21) days after delivery of the initial notice. The Contractor's failure to deliver a timely Notice of Potential Change Order, and COR within such twenty-one (21) calendar-day period shall be deemed a waiver of the right to adjustment of the Guaranteed Maximum Price or the Contract Time for the alleged change. Any such COR that is approved by the Owner will be incorporated in a Change Order. If the Owner determines that the Work in question is not a change in the scope of the Work and the COR is denied but the Contractor believes that it does have merit, the Owner may issue a Construction Change Directive under Section 7.3.1, and the parties will have preserved their rights for resolution of the issue in accordance with the procedures set forth herein. The time frames in this Section 7.5 shall control over those specified in Article 15. Further, notwithstanding anything herein to the contrary, the Contractor must comply with the provisions of this Section 7.5 as a condition to entitlement to any Claim for an increase in the Contract Time or Guaranteed Maximum Price.

§ 7.6 The Owner may issue a request, in writing, to the Contractor, describing a proposed change to the Work and requesting the Contractor submit an itemized proposal in a format acceptable to the Owner within twenty-one (21) days after the Owner issues the request. The Contractor's proposal shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs and the Contractor's proposed methods to minimize costs, delay and disruption to the performance of the Work. If the Contractor fails to submit a written proposal or request additional time for submitting the proposal within the time period above, then the Owner may send a subsequent written notice to the Contractor requesting the Contractor's proposal. If the Contractor fails to submit a written proposal or request for additional time for submitting the proposal within three (3) days after receipt of such subsequent written notice, it shall be presumed that the change described in the Owner's request for a proposed change will not result in a modification to the Guaranteed Maximum Price or Contract Time and the change shall be performed by the Contractor without additional compensation. The Owner's request for a proposed change does not authorize the Contractor to commence performance of the change, unless otherwise specified in writing. If the Owner decides that the proposed change shall be performed, the Work shall be authorized according to the Change Order or Construction Change Directive procedures set forth above.

§ 7.7 The cost or credit to the Owner for work covered by approval changes shall be determined by unit prices listed in the contract if still in effect. For changes not covered by unit prices, cost or credits will be on the basis of either:

- .1 A previously agreed upon and approved lump sum, or, if no agreement can be reached,
- .2 the actual cost of the work.

The lump sum proposal shall be based upon:

- .1 Estimate of Labor (show manhours and hourly rates)
- .2 Estimate of Materials (show quantities, UOM and price.
- .3 Estimate of Applicable Taxes
- .4 Estimate of Equipment Rentals (show hours of use and hourly rates)
- .5 Sub-Subcontractor estimate cost (without overhead and profit)
- .6 Overhead and Profit – To the above items 1, 2, 3, 4, and 5, there shall be added a maximum fixed fee

of fourteen percent (14%) for subcontractors and a maximum fixed fee of fourteen percent (14%) for general contractors. The fees shall be compensation to cover the cost of supervision (job and office), overhead, profit and any other general expenses.

All lump sum proposals shall include a detailed cost breakdown for each component of work indicating both quantities and unit prices and shall be submitted to the Architect within fourteen (14) calendar days after receipt of the proposal request. The Owner shall have fourteen (14) calendar days to approve or disapprove the lump sum proposal unless Contractor requires a shorter turn around that is reasonable.

The actual cost or credit for the work shall be based upon:

- .1 Labor (including Social Security Insurance, Worker's Compensation Insurance, Unemployment Insurance, Welfare Contributions, and other fringe benefits)
- .2 Materials
- .3 Applicable Taxes
- .4 Equipment Rentals
- .5 Sub-Subcontractors' costs (without overhead and profit)
- .6 Overhead and Profit – The maximum total aggregate fees and direct or indirect expenses on items 1,2,3,4, and 5 must not exceed fourteen percent (14%). The fees shall be compensation to cover any fees and direct or indirect expenses.

All labor, material and equipment expenditures for work performed at actual cost shall be approved daily by the Owner. Material invoices shall be presented to the Owner with all payment requests.

§ 7.8 The Contractor shall make a good faith determination of the validity of the nature and amount of changes requested by Subcontractors before passing through such requests to the Owner. It is the Contractor's responsibility to check all Subcontractor and supplier questions for correctness, completeness, detail and fairness before submitting to the Owner.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.5 The term "Force Majeure" as used in the Agreement and these General Conditions shall mean delays caused by acts, events, or circumstances not reasonably within the control of the Party claiming the delay and which, by the exercise of due diligence, such Party is unable to prevent or overcome. Such term shall include, but not be limited to: (i) acts of God, (ii) labor disputes, strikes, lockouts or other industrial acts of the public enemy, (iii) wars, blockades, insurrections, riots, epidemics, pandemics, including but not limited to COVID-19, acts of terrorism, unavoidable casualties, adverse governmental actions unrelated to allegations of defective or improper construction, (iv)

transportation shortages, unusual delay in deliveries caused by labor strikes or trade embargos (v) abnormal, adverse weather conditions, landslides, lightning, earthquakes, fires, floods, or other natural disasters, and (vi) explosions.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and Final Completion by the Final Completion Date.

§ 8.2.4 In performing any critical path method (CPM) analysis relating to the Work, float or slack time ("**Float**") associated with one chain of activities is defined as the amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as described in the approved construction schedule for the Work, including any revisions or updates to the schedule. The Project owns the Float, which means Float is not for the exclusive use of any of the Parties and it serves whoever needs it first as long as it is used in good faith.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the critical path of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) changes ordered in the Work; (3) events that may constitute force majeure, including but not limited to labor disputes, fire, unavoidable casualties, or adverse weather conditions documented in accordance with Section 15.1.6.2; (4) delay authorized by the Owner pending mediation and binding dispute resolution; or (5) other causes beyond the Contractor's control that the Contractor asserts, and the Architect and Owner determine, justify delay, then the Contract Time shall be extended by Change Order or Construction Change Directive to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time (or, in the case of Final Completion after having achieved Substantial Completion, delay the Contractor in achieving Final Completion by the Final Completion Date) and by exercise of reasonable diligent effort, the Contractor is unable to prevent or overcome. However, adjustments in the Contract Time (or Final Completion Date) will be permitted for a delay only to the extent such delay (a) is not caused by the acts, omissions, or other fault of the Contractor, any Subcontractors or vendors of any tier, any of their employees, or anyone else for whom any of them is responsible, and was not reasonably anticipatable by any of them, (b) delays the critical path of the Work and is of a duration not less than one (1) day, and (c) written notice is provided to the Owner and the Architect in writing as required by Section 7.5 of this Agreement after Contractor knows of the commencement of each such delay. To the extent the Contractor is entitled under the Contract Documents to an extension of time due to a delay, but the performance of the Work is independently suspended, delayed, or interrupted by a delay for which the Contractor is not entitled to an extension of time, the delay shall be deemed to be a "**Concurrent Delay**." In the case of a Concurrent Delay, the Contractor shall be entitled to an extension of the Contract Time but the Contractor shall not be entitled to any additional compensation for delay whatsoever as the parties have agreed that Contractor's mark up on fourteen percent (14 %) on change orders is adequate to compensate Contractor for all delays incurred in completing the Project. The Contractor shall take all reasonable steps to mitigate the impact of any delays, however caused, regardless of whether the Contractor might otherwise be entitled to adjustment of the Contract Time for such delays.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 7.5 and Article 15.

§ 8.3.3 The Contractor waives and releases any and all rights reimbursement or other compensation for time related losses and expenses, whether direct or indirect, and other delay-related rights and claims, including but not limited to: (1) Contractor's Fee markup, (2) extended General Conditions Costs, (3) loss of anticipated profit, (4) indirect expenses, (5) impact costs, (6) loss of productivity, (7) inefficiency costs, (8) home-office overhead, (9) consequential damages, including loss of bonding capacity, loss of bidding opportunities and insolvency; and (10) attorneys' fees, claims preparation expenses, and all other costs of dispute resolution.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or any other reason, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Each Application for Payment shall be accompanied by waiver and release upon progress payment forms acceptable to Owner which conform to Exhibits H and I for all work, labor, equipment and material for which payment has been previously made by prior applications, executed by the Contractor, and releases conforming with Exhibits I and K for each subcontractor that has filed a Notice to Owner. No payment under the Agreement shall be made, except at Owner's option, until and unless such waiver and release forms have been furnished.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's properly completed Application for Payment and all supporting documentation and information required by the Contract Documents, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, and the Owner may withhold a payment, or because of subsequently discovered evidence, offset against any current payment otherwise due amounts previously paid, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, subject to the satisfaction of all other conditions precedent to payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

§ 9.7.1 If the Owner does not pay the Contractor within the time period established in the Contract Documents, the undisputed amount due the Contractor, then the Contractor may, upon fourteen days' notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the reasonable amount of the Contractor's out-of-pocket costs necessarily incurred as a direct result of shutdown, delay and start-up, subject to the preconditions and limitations of Sections 7.5, 8.3 and other provisions of the Contract.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor for undisputed amounts pursuant to the Contract Documents, such payment shall be made within thirty (30) days after the Owner's written demand (unless a different time for such payment is expressly provided for in the Contract Documents). Notwithstanding anything in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner for undisputed amounts or if the Owner incurs any costs and expenses to cure any undisputed default of the Contractor or to correct defective Work, the Owner shall have the right to offset such amount against the Guaranteed Maximum Price and may elect either to: (a) deduct an amount equal to that which the Owner is entitled from any payment then or

thereafter due the Contractor from the Owner, or (b) issue a written notice to the Contractor reducing the Guaranteed Maximum Price by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, with all Project systems operational, so that the Owner can lawfully occupy or utilize the Work for its intended use provided, however, as conditions precedent to Substantial Completion, (a) the Owner must have received all Temporary Certificates of Occupancy and any other permits, approvals, licenses and other documents from any governmental authority having jurisdiction thereof necessary to allow the Owner to occupy and operate the Project for its intended use, (b) all Project systems included in the Work necessary for a Temporary Certificate of Occupancy are operational as designed, scheduled and commissioned.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to Owner and the Architect a comprehensive draft of a proposed "Punch List" setting forth any items that are incomplete or found not to be done in accordance with the Contract Documents. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. In connection with the preparation of the Punch List, the Contractor shall arrange a meeting with applicable Subcontractors to identify and explain all items that are found to be defective, incomplete or otherwise not in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's draft Punch List, the Architect (and, at the Owner's option, the Owner) will make an inspection to determine whether the Work or designated portion thereof is substantially complete and make any revisions to the draft Punch List determined to be necessary. If such inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall complete or correct such item upon notification by the Owner or Architect as a precondition to issuance of the Certificate of Substantial Completion. In such case, the Contractor shall then submit a request for another inspection by the Architect (and, at the Owner's option, the Owner) to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate to include other items identified by the Owner or the Architect as requiring completion or correction (but minor enough so as not to preclude determination of Substantial Completion). Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete (which, without limitation, requires a temporary or permanent Certificate of Occupancy for such portion from the governing authorities having jurisdiction over the Work, and that all mechanical and electrical work be complete and functional within such portion of the Work), the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use

shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. Further, partial occupancy shall not: (1) constitute final acceptance of any Work (2) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents (except as to the floor or unit occupied) unless agreed to otherwise by the Parties in writing.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect (and, at the Owner's option, the Owner) will promptly make such inspection. When the Owner and Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation by the Architect that all conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Neither Final Payment nor the release of any remaining retained percentage shall be due to the Contractor until the Owner has accepted the Work. The Owner shall accept the Work only after all conditions for Final Payment and release of the retained percentage set forth in the Contract Documents have been satisfied, and each of the following events have occurred:

- (1) All labor has been performed and material supplied and incorporated into the Work in a good workmanlike manner consistent with the Contract Documents.
- (2) The Work, premises and surrounding area have been cleaned up consistent with Subparagraph 3.15.1.
- (3) All persons, firms and corporations, including all laborers, materialpersons, suppliers and Subcontractors who have furnished equipment, supplied materials or performed work for or in connection with the Work, including but not limited to those persons who could file a claim of lien, have been paid or will be paid in full out of the remaining retained percentage; and those persons, firms and corporations have submitted their final statements with a waiver of all rights to mechanics' lien, stop notice, or recourse against surety of the bond, subject to final payment. The Contractor shall make these waivers available to the Owner for inspection by the Owner. In the event a dispute has arisen between the Contractor and one of the parties listed above in this Article which prevents the Contractor from obtaining the waiver of rights required by this Article from that party, the Contractor may satisfy the requirements of this Article by (a) file a Notice of Bond pursuant to Florida Statute Section 713, and (b) agreeing to defend and indemnify the Owner against all actions filed by persons who have supplied materials to or performed work for or in connection to the Work. The Contractor shall also have submitted an affidavit to the Owner and lender that all waivers described in this Article have been obtained from all parties described in this Article or that the claims of such parties have been satisfied by the obtaining of a bond.
- (4) All portions of the Work requiring inspection by any governmental authority have been inspected and approved by such authority, and any requisite certificates of occupancy, approvals, licenses and permits have been issued.
- (5) The Owner has received assignments of warranties of all Subcontractors and materialpersons.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until all conditions precedent to final payment set forth in the Contract have occurred or been satisfied and the Contractor submits to the Owner and

Architect (1) a duly executed and notarized Contractor's Final Payment Affidavit in statutory form confirming that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) with the Owner's maintenance personnel, the Contractor shall have directed the checkout and/or commissioning of utilities, operations systems, and equipment for readiness, and assisted in their initial start-up and testing, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted, provided that all other conditions precedent to final payment have occurred or been satisfied. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from

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performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. The Contractor shall not knowingly use or permit the use of any hazardous substance at the Project site without the express written consent of the Owner. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic, or comprised of any items that are hazardous or toxic.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor or anyone for whom the Contractor is responsible or liable brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.5 The Contractor shall cause each Subcontractor to purchase and maintain the insurance as is required of the Subcontractors under the Contract Documents, as well as any other coverage that the Contractor may consider necessary. If a Subcontractor cannot obtain the required insurance limits, Contractor shall notify Owner prior to the

Subcontractor starting work on the project, and request approval for the different insurance limits obtained by the Subcontractor. The Owner shall not unreasonably withhold approval of the requested change in coverage limits if the protection provided by the differing insurance limits is commiserate with the Subcontractor's scope of Work. The coverage afforded under any insurance policy obtained under or pursuant to the Contract Documents shall be primary to any valid and collectible insurance carried separately by any of the additional insureds. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurance liability under this insurance policy shall not be reduced by the existence of other insurance. The Owner shall be included as an additional insured on the general liability policies purchased by the Contractor and each Subcontractors for the Project.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent of insurance proceeds received for those losses from property insurance required by the Contract or other property insurance applicable to the Project. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

(Paragraph deleted)

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

Init.

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. When called upon to perform under this Warranty, Contractor shall commence such performance within seven (7) working days of notification and shall complete all work relating thereto with due diligence. Upon failure of Contractor to correct defective work, Owner shall send a second letter to Contractor notifying Contractor that Owner

will cause such defects to be remedied by a person other than Contractor at Contractor's expense, including furnishing such supervision, materials and/or labor as are necessary to bring the Work up to the required standard. In the event such defect is in the nature of or causes an emergency condition, Owner may undertake the work of correction and replacement on behalf of Contractor if Contractor fails to cure within 72 hours. All reasonable and necessary costs incurred by Owner to remedy such defects (including, without limitation, the cost of emergency work) shall be deducted from any amounts due Contractor, or if such costs exceed the amounts due, Contractor shall promptly pay Owner such excess immediately upon demand and presentation of supporting documentation per 7.3. with a reservation to contest the reasonableness of necessity of the expenses. Contractor shall, at Owner's request, assign to Owner all assignable warranties it obtains from manufacturers or suppliers with respect to any materials, equipment or fixtures incorporated in the Work.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall, within twenty-four (24) hours in the event of an emergency threatening imminent harm to person or property or, otherwise, within seven (7) days of receipt of notice from the Owner, remove from the site portions of the Work that are defective or otherwise not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner in writing.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 The remedies expressed herein are cumulative and in addition to any other right or remedy available to the Owner under statute or Applicable Laws. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither Party shall assign the Contract as a whole without written consent of the other. If either Party attempts to make an assignment without such consent, such assignment shall be void and the Party attempting to assign the Contract, or portion thereof, shall nevertheless remain legally responsible for all obligations under the Contract. Further, the Contractor may not assign any monies due to it under the Contract without the prior written consent of the Owner.

§ 13.2.2 Prior to final payment, the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, to an affiliate of the Owner or to a transferee of all or substantially all of the Owner's interest in the Project, if the lender, affiliate or transferee, as the case may be, assumes the Owner's rights and obligations under the Contract Documents. After final payment, the Owner may assign the Contract and its rights under it, in whole or in part, without the Contractor's consent. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Survival

All of the Contractor's representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents,

will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor in accordance with Florida law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' additional notice to the Owner and Architect, terminate the Contract and shall, as the Contractor's sole remedy, payment for unpaid amounts for Work executed based on the Cost of the Work plus the Contractor's Fee thereon at the percentage rates specified in Section 5.1 of the Agreement (or if the Contractor's Fee is a lump sum, a percentage of the Contractor's Fee equal to the percentage completion of the Work). Further the Contractor shall be entitled to recover reasonable costs of demobilization, re-stocking fees, purchase order cancellation fees and similar direct costs of termination.

§ 14.1.4 If the Work is stopped for a period of one hundred twenty (120) consecutive days or one hundred fifty (150) cumulative days within a five month period through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards Applicable Laws;
- .4 is adjudged bankrupt, filed for bankruptcy protection, or makes a general assignment for the benefit of its creditors, if a receiver is appointed on account of insolvency, or in the event of other evidence of the Contractor's insolvency;
5. fails to prosecute the Work to completion in a diligent and timely manner and in accordance with the provisions of the Contract Documents;
- .6 fails or refuses to provide insurance or proof of insurance as required by the Contract Documents; or
- .7 otherwise is guilty of a material or substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 The Owner may withhold payments to the Contractor until the Work is fully completed, and shall thereafter pay the Contractor for the Work the Contractor satisfactorily completed prior to termination, less cost and damages incurred by the Owner as a result of the Contractor's default. If the costs and damages incurred by the Owner as a result of the Contractor's default exceed the unpaid balance otherwise due to the Contractor, the Contractor shall pay the difference to the Owner with interest thereon at the legal rate prevailing from time to time at the place where the Project is located. This obligation for payment shall survive termination of the Contract. Nothing herein shall be deemed to limit the Owner's rights at law or in equity.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contractor shall promptly recommence the Work upon written notice from Owner directing Contractor to resume the Work. The Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1; provided, however, that adjustment of the Guaranteed Maximum Price shall include only reasonable out-of-pocket costs necessarily incurred by the Contractor for demobilization, remobilization, and protection of the Work during the suspension, and those General Condition Costs that will continue to accrue during the period of suspension. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time at the Owner's sole discretion, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders;
- .4 transfer title and delivery to Owner Work in progress, specialized equipment necessary to perform the Work, the Record Drawings and Record Documents; and
- .5 except for Work directed by the Owner to be performed, incur no further costs or expenses.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall, as the Contractor's sole remedy, pay the Contractor for (a) unpaid Costs of the Work properly installed prior to the effective date of termination, (b) Contractor's Fee thereon at the percentage rates specified in Section 5.1.1 of the Agreement (or if the Contractor's Fee is a lump sum, a percentage of the Contractor's Fee equal to the percentage completion of the entire Work), and (c) the Costs of the Work for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions, and (d) expenses reasonably incurred by Contractor in demobilizing from the site. The Cost of the Work to be paid the Contractor as provided herein shall be the amount determined by audit of the Contractor's records. The Contractor's invoice for compensation in the event of termination must be supported by sufficient records and documentation to enable the Owner and its auditors to verify all amounts claimed by the Contractor. The Owner shall be credited for (i) payments previously made to the contractor for the terminated portion of the Work, (ii) claims which the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Guaranteed Maximum Price.

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Upon termination pursuant to this Section and payment of the amounts owing the Contractor, the Owner shall have no further obligation to the Contractor. The Owner shall in no event be liable to the Contractor for any unabsorbed overhead or unrealized profits with respect to the terminated Work.

§ 14.4.4 If the Owner terminates the Contract for cause (as distinguished from termination for its convenience) and it shall be determined that the Owner's termination was unjustified, such termination shall be deemed to have been a termination for the Owner's convenience under Section 14.4 hereof, and the Contractor's sole rights, remedy and recourse shall be governed and determined by this Section 14.4.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker for matters not covered by Sections 7.3 or 7.5 above. Unless a shorter period of time is specified elsewhere herein, Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes or reasonably should have recognized the condition giving rise to the Claim, whichever is later. Denial in whole or part of a COR submitted in accordance with Section 7.5 shall be deemed proper preservation of each parties' rights to resolve a disputed COR without further notice.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts due in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4, provided that notice shall be given as soon as is reasonably practicable. The costs to the Contractor of preparing and negotiating PCOs, CORs, and Claims shall not be reimbursable under this Contract.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Further, with Claims for additional time, the Contractor shall submit all of the following, without limitation of other requirements under the Contract: (a) the Contractor's COR per Section 7.5; (b) a fragnet CPM analysis demonstrating the impact to the Project's critical path and outlining the time extension requested by the Contractor as further outlined in Section 15.1.6.3; (c) planned construction schedule in accordance with Section 3.10. In the case of an acceleration Claim in connection with the exercise of the Owner's rights to require the Contractor to implement Extraordinary Measures for which the Contractor is entitled to an increase in the GMP pursuant to Section 3.10.4, the Contractor also shall submit other documentation for typical acceleration consequences, including increased levels of manpower/overtime, and equipment.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Only unusual or severe weather conditions for the time of year will be considered as a potential justification for a delay in the completion of the Work and the Contractor agrees that an extension of time will only be granted for actual days lost due to adverse weather conditions that are in excess of the normal days lost due to inclement weather for the given period, and then only if the excessive actual days lost due to adverse weather conditions negatively impact the critical path of the Project.

§ 15.1.6.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§ 15.1.6.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Additionally and notwithstanding anything to the contrary herein, the Parties expressly acknowledge and agree that this waiver of claims for consequential damages does not apply to any damages, liabilities, costs or expenses: (i) covered by insurance, or (ii) if the consequential damages are not covered by Contractor's general liability insurance, such consequential damages may nevertheless be recovered by Owner against Contractor, but such recovery shall be capped at 100% of the greater of the Contractor profit line item on Exhibit E to this Agreement, or six percent (6%) of the Cost of the Work.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision

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shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

(Paragraph deleted)

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.5 and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)

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