

SECTION 00700

GENERAL CONDITIONS

See the following General Conditions:

END OF SECTION 00700

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AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Rooms To Go Distribution Center Expansion, Phase II
901 Rooms To Go Way
Dunn, NC 28334

THE OWNER:

(Name, legal status and address)

Rooms To Go Distribution Company, LLC
11540 Highway 92 East
Seffner, FL 33584

THE ARCHITECT:

(Name, legal status and address)

HagerSmith Design PA
300 South Dawson Street
Raleigh, NC 27601

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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.

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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, Bidding Documents including without limitation the Advertisement or Invitation to Bid, the instructions to Bidders and Addenda or portions thereof relating to any Bidding Documents, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Bid Proposal or any portion therein shall not be a Contract document. 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 Owner. A Change Order Request shall not be a Modification to the Contract.

§ 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.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor, Subcontractor, material supplier or other entity to fulfill the Contractor's obligations whether on or off the site of the Project. 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.

§ 1.1.8 INTENTIONALLY OMITTED

§ 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. Computed dimensions shall take precedence over scale dimensions and large scale drawings shall take precedence over small scale drawings.

§ 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.

§ 1.2.4 If there is an inconsistency in the Drawings, Specifications, or between the Drawings and the Specifications, or between existing site conditions and the Drawings and Specifications, unless otherwise ordered in writing by the Architect or the Owner, the Contractor shall provide the better quality of, or the greater quantity of, more stringent, or higher standard of Work or materials. The Contractor shall promptly, and no later than 48 hours after discovery, notify the Owner and Architect of any inconsistency found in the Drawings, Specifications, or between the Drawings and the Specifications and any existing site condition.

§ 1.2.5 Where a typical or representative detail is shown on the Drawings, such detail shall constitute the standard of workmanship and materials throughout corresponding portions of the Work. Where necessary, the Contractor shall adopt such detail for use in said corresponding portions of the Work in a manner that is satisfactory to the Architect.

§ 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 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. All copies of the Instruments of Services, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work.

§ 1.5.3 Drawings issued by the Architect concerning clarifications, proposed changes (in form of "bulletins") or changes will be in the form of a reproducible print of each such Drawing. The Contractor, at his expenses, shall do all printing or duplication and distribution of such reproducible prints as necessary for the proper performance of the Work.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

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

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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.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide a written statement acknowledging that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 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.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations 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 but shall exercise proper precautions relating to the safe performance of the Work, provided, however, Contractor shall review any such surveys, soil tests, or legal descriptions submitted by the Owner and notify the Owner within twenty (20) days of receipt of any inaccuracies.

§ 2.2.4 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.

§ 2.2.5 The Owner shall furnish to the Contractor one electronic copy of the Drawings and one electronic copy of the Specifications for purposes of making reproductions pursuant to Section 1.5.2. The Contractor shall furnish all other copies of the Drawings and Specifications necessary to perform the Work.

§ 2.3 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. This right shall be in addition to and not in restriction or derogation of the Owner's rights under Article 14 hereof and shall not relieve the Contractor of any of his responsibilities and obligations under the Contract Documents.

§ 2.4 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, including the Contract Time, and fails within a five-day period after receipt of written notice from the Owner by letter, email, or progress meeting minutes 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, immediately correct such deficiencies, including supplementing the Contractor's forces to achieve Substantial Completion within the Contract Time. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies and/or supplementing Contractor's forces, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, at the Owner's option, the excess shall be deducted from any payment thereafter due or shall be paid by the Contractor immediately upon the demand of the Owner.

§ 2.5 ADDITIONAL RIGHTS

The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

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 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.

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

§ 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 the site, become generally familiar with local and on-site conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before commencing 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 2.2.3, 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. The Contractor shall promptly report to the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner 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.

§ 3.2.3 The Contractor shall also ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of any governmental body or public or quasi-public authority. The Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner 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 make Claims as provided in Article 15. 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, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor should have recognized such error, inconsistency, omission, difference or nonconformity and failed to report it to the Owner. If the Contractor performs any construction activity when Contractor should have known it involves a recognized error, inconsistency, omission, difference or nonconformity in the Contract Documents or with existing site conditions without such notice to the Owner, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

§ 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, unless the Contract Documents give

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other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and 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 written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner or Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required 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 or claiming by, through or under the Contractor and for any damages, losses, costs and expenses resulting from such acts or omissions.

§ 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.

§ 3.4 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 authorized by the Architect in accordance with Sections 3.12.8 or 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.

§ 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.

§ 3.4.4 All manufactured articles, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the respective manufacturers, unless otherwise specified.

§ 3.4.5 Contractor shall provide all manpower and deliver all materials at such times and in such quantities as will insure the speedy and uninterrupted progress of the Work and achieve Substantial Completion within the Contract Time. All materials shall be delivered to the Site in proper order and quantity. Contractor shall handle and protect all materials used in performance of the Work furnished by Contractor as the same are delivered to the Site, or to any applicable off-site storage location, and shall be solely responsible for the security and condition of the same. After final completion and acceptance of the Work, or sooner if requested by the Owner, Contractor shall remove all surplus materials, equipment, temporary structures and scaffolding furnished by it which have not been incorporated into the Work.

§ 3.4.6 Title to all materials shall immediately vest to the Owner upon payment in respect of such materials, whether or not then incorporated or installed into the Project, subject to the right of the Owner, or Architect to reject same for failure to conform to the standards of any of the Contract Documents. Title to all Work and materials shall be in owner, free and clear of all liens, claims, security interests or encumbrances.

§ 3.4.7 All materials furnished shall be new unless stated otherwise. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturers' labels stating that the materials meet such standards. The above requirements shall not restrict or affect Owner's right to test materials as provided in the Contract Documents.

§ 3.5 WARRANTY

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, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment 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. The warranty given in this Paragraph shall survive and exceed any warranty limitation period set forth elsewhere in the Contract Documents.

§ 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 Owner shall secure and 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 and will keep the Owner informed of any changes in applicable laws, ordinances, codes or permits affecting the Project. A photocopy of the building permit shall be delivered to the Architect and Owner as soon as it is obtained. Upon final completion, the Contractor shall deliver all original permits, licenses and certificates to the Owner and shall deliver photocopies to the Architect.

§ 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 2 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner 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 make an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner 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 Owner shall promptly notify the Contractor in writing, stating the reasons. If the Contractor disputes the Owner's determination or recommendation, the Contractor may proceed as provided in Article 15. The Contractor shall not receive an adjustment in the Contract Sum or the Contract Time if such unknown or concealed condition is: (i) of a usual nature or does not differ materially from those ordinarily encountered and generally recognized as inherent in construction activities of the character provided for in the Contract Documents; (ii) located below the surface of the ground and does not differ materially from those generally encountered in the general area in which the site of the Project is located or does not differ materially from conditions encountered in any sub-surface investigation completed prior to the date of the Agreement; (iii) not materially different from those conditions disclosed or which reasonably should have been discerned by the Contractor's prior observations, field measurements, work, inspection, tests and reviews; and (iv) of a nature which the Contractor or any Subcontractor should reasonably know or anticipate based on any of the foregoing.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. 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 operations 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.

§ 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.

§ 3.9 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 furnish in writing to the Owner the name and qualifications of a proposed superintendent. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review. Failure of the Owner to reply 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. The Contractor shall provide the Owner with seventy-two (72) hours' notice of its intent to replace the superintendent.

§ 3.9.4 The Contractor shall require each Subcontractor for principal portions of the Work to provide a competent superintendent authorized to represent and speak on behalf of the Subcontractor at the Project site during the progress of the Work.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly and no later than twenty-one days after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed the Contract Time set forth in the Contract Documents plus or minus any adjustments made to the Contract Time by an executed Change Order, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly and no later than twenty-one days after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule and shall submit the schedule(s) for the Owner's and Architect's approval. The Owner's and Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule or fails to submit according to the 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 strict accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The Contractor also acknowledges and represents that it is aware that it will be required to accommodate the Owner's fixturing personnel up to four (4) weeks prior to Substantial Completion, which acknowledgment shall be reflected in the approved schedule. The Contractor shall coordinate the work of the Owner's fixturing personnel with the Work.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Owner in good condition upon completion of the Work and before final payment is made as a record of the Work as constructed.

§ 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 the way by which 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.

§ 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 Owner or 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 requirements of the Contract Documents by the Owner's or Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner or Architect in writing 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 Owner's or 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 Owner or Architect on previous submittals. In the absence of such written notice, the Owner's or 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. 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 cause such services or certifications to be provided by a properly 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 and Owner. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, 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. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 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, and patching shall be restored to the condition existing prior to the cutting, fitting and 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's 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 or 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. The Contractor shall thoroughly wash and clean all glass and mirror surfaces, and shall leave the Work neat and broom clean. The Contractor shall, not less than two times each week, clean up by removing rubbish, including old and surplus materials. The Contractor shall use its best efforts to prevent dust. The Contractor shall be responsible for the overall cleanliness and neatness of Work.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor and, at the option of the Owner, shall be deducted from the next payment to the Contractor or be paid by the Contractor to the Owner.

§ 3.15.3 Refer to the specification section pertaining to Final Cleaning for additional requirements and information.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of copyrights and patent rights and shall save the Owner and Architect harmless from loss (including but not limited to, attorneys' fees and any litigation expenses) unless particular design, process or product of a particular manufacturer or manufacturers is specified in the Contract Documents; provided, however, if the Contractor has reason to believe that the required design, process or product specified is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the Architect and Owner.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, 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 performance of the Work, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 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.

§ 3.19 MEETINGS

The Contractor shall send his qualified representative to meetings held at the Project site every two weeks or at such time as the Architect or Owner shall designate.

§ 3.20 REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute the Agreement, which representations and warranties shall survive the execution and delivery of the Agreement and the final completion of the Work:

.1 that the Contractor is financially solvent, able to pay his debts as they mature and possessed of sufficient working capital to complete the Work and perform his obligations under the Contract Documents;

2 that the Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform his obligations hereunder and has sufficient experience and competence to do so;

3 that the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public and quasi- public authorities having jurisdiction over the Contractor and over the Work and the site of the Project;

.4 that the execution of the Agreement and performance thereof is within the Contractor's duly authorized powers; and

.5 that the Contractor's duly authorized representative has visited the site of the Work, familiarized himself with the existing conditions under which the Work is to be performed and correlated his observations with the requirements of the Contract Documents and that Contractor is competent to perform the Work within the Contract Time and Contract Sum.

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§ 3.21 SURETIES

The Contractor shall keep its surety and any surety for any Subcontractor informed of all information and occurrences as required by any surety bond on the Project.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain 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.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Owner and Architect will provide administration of the Contract as described in the Contract Documents during construction until the date the final payment is issued. 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 Owner and 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 Owner or Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Owner nor the Architect will 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, except as provided in Section 3.3.1.

§ 4.2.3 The Owner will exercise care and diligence in discovering and promptly reporting any defects or deficiencies in the Work of the Contractor or any of his subcontractors or their agents or employees, or any other person performing any of the Work in the construction of the Project to the Contractor. The Owner and Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner and 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 FACILITATING CONTRACT ADMINISTRATION

Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Owner's evaluations of the Contractor's Applications for Payment, the Owner will review and approve the amounts due the Contractor.

§ 4.2.6 The Owner and Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner or Architect consider it necessary or advisable, the Owner or Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner or 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 Owner or Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Owner or 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 Owner's or 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 Owner's or Architect's 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 Owner's or 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 Owner's or Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner or Architect, of any construction means, methods, techniques, sequences or procedures. The Owner's or 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 Owner will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion and will receive written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10

§ 4.2.10 Intentionally Omitted.

§ 4.2.11 The Owner or Architect as applicable will initially interpret and initially decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Owner's or 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 or Owner 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 Owner or Architect as applicable 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 and without negligence.

§ 4.2.13 The Owner'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 Owner or Architect will review and respond to requests for information about the Contract Documents. The Owner's or 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 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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed

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for each principal portion of the Work. The Owner or Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Owner or Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 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 previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, 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, which the Contractor, by these 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. 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.

§ 5.3.2 Contractor shall furnish to Owner a copy of the master Subcontract form to be used within ten (10) days after the signing of this agreement.

§ 5.3.3 Any part of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor, which shall be prepared on a master form of Subcontract which contains provisions that:

- .1 require that such portion of the Work be performed in accordance with the requirements of the Contract Documents;
- .2 require timely submission of Subcontractor applications for payment with lien waivers/releases in order to enable the Contractor to apply for payment in accordance with the provisions of Article 9;
- .3 waive all rights the subcontracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Paragraph 11.3, except for such rights as they may have to the proceeds of such insurance held by the Owner under Subparagraph 11.3.9;
- .4 recognize the rights of the Owner pursuant to the Contingent Assignment of Subcontracts under Subparagraph 5.4.1 and require the Subcontractor (upon notice by the Owner that the Owner has terminated the

Agreement with the Contractor pursuant to the terms of Article 14, and that the Owner has elected, pursuant to Subparagraph 5.4.1, to retain the Subcontractor pursuant to the terms of its Subcontract with the Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under his Subcontract in the manner in which he had been bound to the Contractor;

.5 require the Subcontractor to carry and maintain insurance in accordance with the requirements of the Contract Documents; and

.6 contain no provisions inconsistent with any of the foregoing Subparagraphs .1 through .6 of this Subparagraph 5.3.3.

§ 5.3.4 Contractor's use of Subcontractors and Materialmen shall not diminish Contractor's obligation to complete the Work in accordance with the Contract Documents. Contractor shall control and coordinate the Work of its Subcontractors and Materialmen and shall provide and supervise sufficient and competent manpower and materials to perform the Work in accordance with the Contract Documents. Nothing contained in this Agreement shall create any contractual relationship between Subcontractors or Materialmen and Owner. Nothing in this Article shall obligate Owner to pay or to see to the payment of any sums to any Subcontractor or Materialmen.

§ 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 in writing; 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.

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.5 PAYMENTS TO SUBCONTRACTORS BY THE CONTRACTOR

The Contractor shall pay each Subcontractor, no later than promptly upon receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's Work, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to its Sub-subcontractors.

§ 5.6 PAYMENTS TO SUBCONTRACTORS BY THE OWNER

§ 5.6.1 If the Owner fails to approve an Application for Payment for cause which the Owner determines is the fault of the Contractor and not the fault of a particular Subcontractor, or if the Contractor fails to make a payment which is properly due to a particular Subcontractor, the Owner may pay such Subcontractor directly, less the amount to be retained under his Subcontract. Any amount so paid by the Owner shall be repaid to the Owner by the Contractor in the manner set forth in Paragraph 2.4.

§ 5.6.2 The Owner shall have no obligation to pay, or to see to the payment of, any monies to any Subcontractor. Nothing contained in Paragraph 5.6 shall be deemed to create any contractual relationship between the Owner and any Subcontractor or to create any rights in any Subcontractor against the Owner.

§ 5.6.3 The Contractor shall promptly advise the Owner of any claim or demand by a Subcontractor claiming that any amount is due to such Subcontractor or claiming any default by the Contractor in any of its obligations to such Subcontractor.

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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the 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, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor 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 report to the Owner and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report 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, except as to defects not then reasonably discoverable.

§ 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, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5 and shall indemnify, defend and hold harmless the Owner from any such damages or claims.

§ 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 Owner or 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.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive is issued by the Owner 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.

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

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Contractor and signed by the Owner and Contractor after execution of the Agreement 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.

§ 7.2.2 The compensation specified in a Change Order shall constitute an accord and satisfaction and full payment for the Work covered thereby and a complete release of and for all delay, impact and disruption costs or expenses occasioned by reason of said change in the Work.

§ 7.2.3 No time extension shall be granted Contractor by reason of the issuance of any Change Order unless expressly stated therein.

§ 7.2.4 Notwithstanding the generality of the foregoing, under no circumstances will the Contract Sum be adjusted on account or as a result of any occurrence or transaction arising out of or from the negligence or willful act or failure to act on the part of the Contractor.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner or Architect and signed by the Owner or Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner or Architect 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. Contractor shall immediately proceed with the change even if Contractor disagrees with the proposed adjustment, if any, to the Contract Sum or Contract Time so as to not delay completion of the Work. Any disagreement shall be resolved as set forth in 7.3.7 – 7.3.10 below.

§ 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 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that

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application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with and complete the change in the Work involved. While proceeding with the change, Contractor shall also, within ten (10) days of receipt of the Construction Change Directive, advise the Owner 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 and/or Contract Time. If Contractor does not promptly proceed with the change in the Work, Contractor shall have waived and released any claim for any adjustment in the Contract Sum and/or Contract Time on account of the change and shall be liable to Owner for all direct and consequential damages incurred by Owner as a result of Contractor's delayed performance.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond within ten (10) days or disagrees with the method for adjustment in the Contract Sum, the Owner or Architect shall determine the method and 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 Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .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 related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 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 Owner or Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit 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 Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines to be reasonably justified. The Owner'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 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 Contractor 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 and Owner have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and Owner and shall be binding on the Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including adjustments authorized in writing by the Owner, 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 of the final unconditional Certificate of Occupancy 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.

§ 8.2 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 and that the Contractor is capable of properly completing the Work within the Contract Time.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the critical path of the Project is delayed at any time in the commencement or progress of the Work by an act of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire outside of the Contractor's control, unusual delay in deliveries due solely to the acts of the carrier providing delivery, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect or Owner may determine. Any change shall be an extension of the Contract Time only and the Contractor shall not seek or recover any damage for delay provided for in this Paragraph 8.3.1. The Contractor shall use best efforts to mitigate the effects of any such delay.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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.

§ 9.2 SCHEDULE OF VALUES AND INITIAL SWORN STATEMENT

§ 9.2.1 The Contractor shall submit to the Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 Within thirty (30) days following commencement of the Work, the Contractor shall deliver to the Owner a Contractor's sworn statement, duly executed and acknowledge and in form satisfactory to the Owner, listing all Subcontracts.

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§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 No later than the date established for each progress payment, the Contractor shall submit to the Owner three copies of AIA Document G702, Application and Certificate for Payment and AIA Document G703, Continuation Sheet, itemized in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material 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 material supplier, 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 payments have been 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor shall satisfy or discharge and shall indemnify, defend and hold Owner harmless from any liens, claims, security interest or encumbrances filed by the Contractor, subcontractors, or anyone claiming by, through or under any of them, and will pay on demand any costs or attorneys' fees incurred by Owner if Contractor fails to satisfy, discharge or defend such liens, claims, security interest or encumbrance.

§ 9.3.4 Each Application for Payment shall be accompanied by the following, all in the form satisfactory to the Owner:

.1 duly executed waivers of construction mechanics' and materialmen's liens establishing payment or satisfaction of all such obligations to Subcontractors, required lower tier Subcontractors and Materialmen for the preceeding pay period; and

.2 Contractor's affidavit of payment and waiver of lien for Work done and materials furnished through the date covered by the last preceding partial payment and shall furnish its affidavit certifying that all Subcontractors and Materialmen have been paid for Work performed and materials furnished through such date except for any permitted retainage. Contractor shall attach to each Application or Requisition affidavits of payment and waivers of lien from all Subcontractors, providing labor and/or materials and/or equipment in connection with the Work, and Sub-subcontractors and materialmen who have given notice to Owner for such Work performed and materials furnished. Contractor shall execute a waiver of lien at the time payment is made for a Requisition for all Work performed through the date of Requisition in respect of which payment is being made, as a condition of such payment.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Owner will, within twenty days after receipt of a fully complete Contractor's Application for Payment and the documents required in Section 9.3.4 above, either pay such amount as the Owner determines is properly due, or notify the Contractor in writing of the reasons for withholding payment in whole or in part as provided in Section 9.5.1.

§ 9.4.2 Intentionally Omitted.

§ 9.5 DECISIONS TO WITHHOLD PAYMENT

§ 9.5.1 The Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the Work has not progressed to the point indicated in the Application for Payment or 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 for labor, materials or equipment, and/or to provide the duly executed waivers of construction mechanics' and materialmen's liens from Contractor, Subcontractors, required lower tier Subcontractors and Materialmen;
- .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 failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment while any of the above grounds remain uncured.

§ 9.5.3 If the Owner withholds 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 material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 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 Owner may, on request by any Subcontractor and at the Owner's discretion, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the 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 material and equipment 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 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, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment 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 and 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, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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§ 9.6.8 Because flexibility in funding a project is beneficial to the completion of a successful project, Contractor agrees, and will cause its subcontractor's and materialmen to agree, to subordinate its and their construction, mechanic's and/or materialmen's lien to the mortgage lien of any third-party institutional lender on the Project.

§ 9.7 FAILURE OF PAYMENT

If the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount determined by the Owner, then the Contractor may, upon seven additional days' written notice to the Owner stop the Work until payment of the amount owing has been received.

§ 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 so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion for this Project is and shall be the date of receipt of the final Unconditional Certificate of Occupancy. Owner and Contractor acknowledge that time is of the essence in completing the Project on time so that Owner can schedule the training and start date of its employees, schedule advertisements, deliver furniture and fixtures and so Owner's retail business can operate. They also acknowledge that Owner's damages from any failure to achieve Substantial Completion within the Contract Time will cause substantial damage to Owner and that the amount of that damage cannot be determined at this time. Owner and Contractor therefore agree to liquidate that damage as 0-10 days at \$2,500.00; 11+ days at \$5,000.00 for each day beyond the Contract Time that the Project is not completed and Contractor agrees to pay Owner that amount for each such day.

§ 9.8.2 When the Owner considers that the Work, or a portion thereof which the Owner agrees to accept separately, is sufficiently complete to perform Punchlist Work, the Owner shall prepare and submit to the Contractor a comprehensive list of items to be completed or corrected (the "Punchlist"). 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. The Contractor shall complete all Punchlist work no later than fourteen (14) days after receipt of the Punchlist from the Owner. Contractor acknowledges that the Owner will suffer substantial harm after the Owner occupies the building and puts it to its intended use if the Punchlist work is not promptly performed. As such, the Contractor agrees to pay as liquidated damages, and not as a penalty, to the Owner \$350 per day for each day after the 14th day from receipt of that Punchlist that the Punchlist work is not complete. When the Punchlist work is completed, Contractor's Project Manager and Superintendent shall initial each item on the Punchlist indicating that each item has been performed.

§ 9.8.3 Upon receipt of the initialed Punchlist, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Punchlist, which is not sufficiently complete in accordance with the Contract Documents the Contractor shall complete or correct such item upon notification by the Owner. In such case, the Contractor shall then submit a request for another inspection by the Owner to determine completion. The Contractor shall pay the Owner a reinspection fee ("Reinspection Fee") in the amount of \$400 for each reinspection required before the Work is complete and shall pay the travel costs for the Owner's representative to travel from their home office to the Project site for any reinspections.

§ 9.8.4 When the Work or designated portion thereof is complete, the Owner shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work.

§ 9.8.5 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor the Owner shall make payment of retainage applying to such 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 as required under Section 11.3.1.5 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,

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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, the Contractor shall prepare and submit a list to the Owner 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 and Contractor 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.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract is fully performed, the Owner will within thirty (30) days issue final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner in form and substance satisfactory to the Owner (1) an affidavit 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 and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial 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) final As-built drawings marked by the Contractor with record information as set forth in the Contract Documents; (6) warranty, maintenance and equipment operation documents; (7) a final Contractor's sworn statement from the Contractor duly executed and acknowledged showing all Subcontractors to be fully paid, and similar final sworn statements from Subcontractors and, where appropriate, from sub-subcontractors; and (8) other data establishing payment or satisfaction of obligations, such as receipts, 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 or sub-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. If such lien remains unsatisfied after payments are made and is not bonded over as provided in the previous sentence, the Contractor shall promptly pay to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, and if the Contractor has provided all documents and materials required in the Contract Documents but final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted provided, however, that the retainage held following such payment shall be in an amount equal to two hundred percent (200%) of the cost of finally completing the Work, including without limitation the items included on the Punchlist. 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 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 Owner prior to 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; or
- .3 terms of warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material 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 or the Contractor's Subcontractors or Sub-subcontractors; 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 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 owners and users of adjacent sites and utilities.

§ 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 (other than damage or loss insured under property insurance required by the Contract Documents) 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, except damage or loss 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.

§ 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. The Contractor shall review the structural capability of the structure prior to allowing installation of temporary lifting devices or staging equipment or the temporary off-loading and storage of materials, and shall not exceed design loads without making modifications to building structure to support such loads. All modifications to building structure to support temporary loading shall be submitted to the Architect for review. Costs associated with the Architect's review or redesign of structure to accept temporary construction loading shall be borne by the Contractor.

(Paragraphs deleted)

§ 10.2.8 The Contractor shall replace and make good any loss or injury to the Owner's property or the Owner's tenants' property, the site or adjacent property resulting from the Contractor's negligent acts or omissions.

§ 10.2.9 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, written notice of such 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

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written 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 such material or substance or who are to perform the task of removal or safe containment of such 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 in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 The Contractor shall take all necessary precautions for the safety of the Owner, its representatives and all persons in use or occupancy of the building as well as their licensees.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for 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 indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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 indemnify the Contractor for all cost and expense thereby incurred.

§ 10.3.7 The Contractor shall take all precautionary measures as required by all government authorities having jurisdiction over the Work as well as the Owner to prevent and correct fire causing conditions, and shall conduct all operations with due regard for the avoidance of fire hazards. The Contractor shall comply strictly with and enforce among all workmen on the job all fire and safety regulations of the Owner, including smoking regulations, as the same, from time to time, may be promulgated. Violation of any such regulations shall be cause for dismissal of the offender(s) from the Work. Nothing contained herein shall be construed to make the Owner responsible for the conduct of the Work by the Contractor.

§ 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.

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ARTICLE 11 INSURANCE AND BONDS
§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies acceptable to the Owner and lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor, Owner and such other persons as the Owner may designate from time to time from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or sub-subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Subparagraph 11.1.1 shall include Personal Injury Liability, Broad Form Property Damage Liability endorsement, Explosion, Collapse and Underground Damage Liability endorsement, and contractual Liability (applicable to the Contractor's obligations under Paragraph 3.18) insurance, and shall be written on an occurrence basis for not less than the following limits of liability, or any limits required by law, whichever is greater:

.1 Workmen's compensation insurance shall be written for not less than the statutory limits and shall include Employer's Liability Insurance at a limit of not less than One Million Dollars (\$1,000,000);

.2 Comprehensive General Liability insurance indemnifying and holding harmless the Owner, and the Architect as additional insured, including contractual liability coverage, shall be written for not less than Three Million Dollars (\$3,000,000); Bodily injury and personal injury shall be insured at a limit of not less than Two Million Dollars (\$2,000,000) for each occurrence and Two Million Dollars (\$2,000,000) total aggregate liability; Motor Vehicle Liability Coverage, with coverage limits not less than One Million Dollars (\$1,000,000);

.3 Property damage shall be insured at a limit of not less than One Million Dollars (\$1,000,000) total aggregate liability; and

§ 11.1.3 Prior to the commencement of the Work, Contractor shall file with the Owner valid certificates of Insurance and amendatory riders or endorsements to Contractor's insurance policies, all in form and substance satisfactory to the Owner, naming Owner and any subsidiary, parent or affiliate corporations of Owner and their directors, officers, agents and employees or other persons or entities with an insurable interest designated by Owner as additional insured thereunder. Said endorsements or amendatory riders shall indicate that as respects said additional insured, there shall be severability of interests under said insurance policies for all coverage's provided under said insurance policies. The certificates and amendatory riders or endorsements shall clearly indicate the specific coverage (including the contractual liability for the Contractor's obligations under Paragraph 3.18) and shall contain a provision requiring the giving of written notice to Owner until at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies, as evidenced by return receipt of United States Certified or Registered Mail.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part

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by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 If requested by the Owner after the date of the Agreement, the Contractor shall promptly procure, at the Owner's expense, liability insurance in such amounts as the Owner may request insuring against perils not listed in Subparagraph 11.1.1.

§ 11.1.6 If the Contractor fails to purchase or maintain or require to be purchased and maintained the liability insurance specified in Subparagraph 11.1.1, the Owner may (but shall not be obligated to) purchase such insurance on the Contractor's behalf and shall be entitled to be repaid for any premiums paid therefor by the Contractor in the manner set forth in Paragraph 2.4.

§ 11.1.7 When such insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall, not less than thirty (30) days prior to such expiration or renewal date, supply the Owner with updated replacement certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the certificates and amendatory riders or endorsements originally supplied.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 CONTRACTOR-SUPPLIED PROPERTY INSURANCE

§ 11.3.1 **Builder's Risk Insurance.** If required by the Contract, the Contractor shall purchase and maintain Builder's Risk insurance, in a form and with coverages acceptable to the Owner. Coverage shall be on an all-risk or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including theft, vandalism, malicious mischief, collapse, testing and startup, temporary buildings, and debris removal including demolition occasioned by the enforcement of law. Coverage shall be or 100% of the estimated completed replacement cost value of the Project (including all leasehold improvements, materials, and work to be incorporated into the Project). Such policy shall be written on a completed value form (100% non-reporting) without any coinsurance. In addition, the Builder's Risk policy shall:

a. Include coverage, in addition to the 100% completed replacement cost coverage, for at least 25% of the Project soft costs. Such soft costs coverage shall include without limitation advertising, design fees, professional fees, financing, lease administration, realty taxes, general administration, lease expenses, permit fees, insurance premiums, and including architects services and expenses as required as a result of a loss (including but not limited to interest expense; fees; and plans, specifications, blueprints and models, in connection with any restoration following an insured loss).

b. Include 100% coverage for flood unless the Project is located in a Flood Zone "A", as defined by the National Insurance Flood Plan. If the Project is located in a Flood Zone "A", Borrower shall maintain flood limits providing for the first 20% of the completed replacement cost, with a deductible not greater than 3% of completed replacement costs.

c. Include windstorm coverage with a deductible no greater than 5% of the estimated completed replacement cost value of the Project.

d. Include earthquake coverage with a sub-limit of no less than the first 25% of the completed replacement cost of the Project, unless the Project is located in Earthquake Mercalli Zone VII or greater. If the Project is located in an Earthquake Mercalli Zone VII or greater, Contractor shall maintain earthquake limits providing for the first 75% of the completed replacement cost, with a deductible not greater than 5% of completed replacement costs.

e. Include business income delay in completion coverage for a period of at least 6 months on an actual loss sustained basis, for benefit of Owner.

f. Include coverage for off-site storage of portions of the Work, portions of the Work in transit, and testing coverage for at least 90 days. Such coverage shall be for 100% of the replacement value of the completed property.

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g. Not include in its limits, unless by separate limits, any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as construction equipment which may be on the Project site and the capital value of which is not included in the Work. Contractor shall make its own arrangements for any insurance it may require on any construction equipment, and all such policies shall include a waiver of subrogation provision in favor of Owner.

h. Not include an exclusion for sidewalks, retaining walls, or underground property, nor an exclusion for interior water damage of any type.

i. Not contain a "permission to occupy" limitation.

j. Other than as specified above, have a deductible no greater than 1% of the estimated completed replacement cost value of the Project.

k. If limits are to be met via a policy that covers other projects (for example, a blanket limit policy), then that policy shall be endorsed to provide segregated limits for each of the limits and coverages required herein.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires minimum deductibles, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract documents, the Owner shall pay costs not covered because of deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

(Paragraph deleted)

§ 11.3.2 EQUIPMENT BREAKDOWN/BOILER AND MACHINERY INSURANCE

If required by the Contract, the Contractor shall also maintain boiler and machinery insurance, which shall specifically cover loss or damage to any equipment to be installed or that is installed in the Project that is not otherwise covered by the Builders' Risk policy until final acceptance by the Owner. Such coverage shall specifically include hot and cold testing and start up coverage. This insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 All of the policies set forth in this section 11.3 shall be obtained from companies authorized to do business in the jurisdiction in which the Project is located, and shall be procured from companies with at least and "A-" financial strength rating and "VIII" financial size category from A.M. Best.

§ 11.3.4 If the Owner requests in writing that insurance for special hazards that are not encompassed by this Section 11.3, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.

§ 11.3.5 All policies required by this Section 11.3 shall contain waivers of subrogation by endorsement or otherwise in favor of the Owner.

§ 11.3.6 Prior to commencing the Work, Contractor shall 1) provide Owner with copies of each policy required by this Section 11.3; 2) cause an Accord 27 Evidence of Property Insurance form to be issued by each insurer and provided to Owner, naming Owner as Loss Payee and Additional Interest on the policies required by this section, and requiring that Owner receive 30 days prior written notice of cancellation of non-renewal of any such policy; and 3) shall cause each policy to be endorsed with Owner as both an additional insured and as loss payee (as Owner's interests appear). All insurance shall insure interests of Owner, Contractor, and Subcontractors of all tiers in the Work.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other, any of their wholly owned subsidiaries and agents, their members, principals, officers and employees, and any subcontractors of any tier, agents and employees, each of the other and their wholly owned subsidiaries and agents, and (2) the Architect, Architect's consultants, separate contractors described in the Agreement, if any, and any of their subcontractors of any tier, agents and employees, (3) Landlord and its agents, members, officers and employees, and (4) Lender and its subsidiaries, agents, participants, officers and employees for any loss or damages to the extent of actual recovery of any insurance obtained pursuant to this Section 11.3 or other applicable insurance, except such rights as they may have to proceeds of such insurance held by the Owner or Contractor. The Contractor shall require similar written waivers in favor of the Owner and Contractor from all Subcontractors of any tiers and their agents and employees, the Architect, Architect's consultants, and separate contractors, if any. The foregoing waivers of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though that person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(Paragraph deleted)

§ 11.3.8. The Contractor shall promptly investigate and make a full written report to the Owner and any insurance carriers as to all alleged accidents and/or claims for damages relating to construction of the Project or relating to any other property of the Owner, including any damage or destruction to the Project or such other property and the estimated cost of repair and shall perform all necessary recordkeeping related to same. The Contractor shall do nothing to jeopardize the rights of the Owner and/or any other party insured under said policies. The Contractor shall notify Owner and any insurance carriers of any loss, and shall cooperate fully with any insurance carrier in connection with any such claim. A loss under any policy in this section 11.3 shall be diligently adjusted by the Contractor, at the Contractor's sole expense, in good faith on behalf of both Owner and Contractor, with loss made payable to either or both the Owner and Contractor as their interest may appear, subject, however, to requirements of any applicable mortgagee clause as may be required. The Contractor shall not settle any losses or portions of losses, complete loss reports, or endorse loss drafts without the prior written consent of the Owner. The Owner may at any time assume from the Contractor any or all rights and duties of adjustment and settlement, to the extent desired by the Owner at Owner's sole discretion, upon written notice to the Contractor.

§ 11.3.9 The Owner may, in its sole discretion, elect to receive all or any portion of any insurance payments, and will deposit in a separate account proceeds to received, which the Owner shall distribute in a good faith manner. In the event the Owner makes such election, the Contractor and Subcontractors of all tiers will, as necessary, instruct any insurer to make all payment directly to the Owner. If after such any loss no other special agreement is made, regarding loss payment that would cause sums to be paid to the Contractor (including Subcontractors of all tiers), then to that extent replacement of damaged property shall be covered by appropriate Change Order. Should any parties in interest (a term which does not include any insurer) object in writing, within 10 days of notice, to the manner of adjustment and/or settlement of any loss, resolution shall proceed as provided in Paragraph 15.3. The parties in interest shall, in that case, adjust and make settlement with insurers in accordance with the direction of tribunal. The Contractor shall pay Subcontractors their just share of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

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§ 11.3.10 Coverage under the policies required by this Section 11.3 shall be maintained for the full term of the Project until the acceptance of the completed Project by the Owner.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 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.

§ 11.5 FAILURE TO PURCHASE OR MAINTAIN INSURANCE

If the Owner or the Contractor is damaged by failure of the other to purchase or maintain insurance required under Article 11 and so notifies the damaged party, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs properly attributable thereto.

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 Owner or Architect, be uncovered for the Owner's or 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 Owner or Architect has not specifically requested to examine prior to its being covered, the Owner or 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Owner or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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 Owner's or 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 an 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, at the Contractor's sole expense, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition and of the Substantial Completion of the Work. The Owner shall give such notice promptly after discovery of the condition. The notice may be sent by the Owner, the Tenant in possession of the Project, or a successor owner of the Project. 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 2.4.

§ 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 be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors 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 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.

§ 12.2.6 Eleven (11) months after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, or after any extended period as set forth in Subparagraph 12.2.2, and before any warranty or correction period can expire, Contractor shall notify Owner that the warranty is about to expire and Contractor and Owner shall attend an on-site meeting and perform a thorough walk-through of the Project. The purpose of the walk-through is to identify any Work that is not in accordance with the requirements of the Contract Documents or any issues relating to any warranty, regardless of whether any such Work was identified on any prior punch list or Notification of Warranty Work/Request for Correction of the Work. Contractor shall promptly correct all such Work identified by the Owner. Contractor's correction or warranty period and obligations shall be extended for any additional time period until this walk-through is performed and until Contractor completely performs those corrections.

§ 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. The Work shall comply with all applicable laws, statutes, ordinances, codes, rules, regulations or orders during its performance and at its completion.

§ 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. The Contractor shall not assign the Contract as a whole or in part without written consent of the Owner. If the Contractor attempts to make such an assignment without consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Except as provided elsewhere in this Agreement, written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

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§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 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 at law or in equity.

§ 13.4.2 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 there under, except as may be specifically agreed in writing.

§ 13.4.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the Owner or the Contractor except as specifically provided herein.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 If the Contract Documents, or any laws, statutes, ordinances, building codes, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction over the Work or the site of the Project require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Architect and Owner timely notice thereof so the Architect and Owner may observe such inspection, testing or approval. The Owner shall bear all costs of such inspections, tests or approvals except where the Contract Documents provide otherwise. Contractor shall secure any required certificates of inspection, testing or approval and promptly deliver them to the Architect and the Owner as provided in Article 8.7 of the Agreement.

§ 13.5.2 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 13.5.1, the Owner will perform or 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 Owner and Architect of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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 Owner's and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 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 Owner and Architect.

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

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

§ 13.5.7 No inspection or examination shall relieve the Contractor of the obligation to perform the Work in accordance with the Agreement. No payment, either partial or full, by the Owner to Contractor shall relieve Contractor of responsibility for complying with the Agreement. The Contractor shall remedy all defects and pay the cost of any damage to other work resulting therefrom.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may 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.

§ 13.7 TIME LIMITS ON CLAIMS

No action or proceeding shall lie or shall be maintained by the Contractor against the Owner or Architect unless such action or proceeding shall be commenced within six (6) months after the date payment is mailed or otherwise made in respect of the Final Application for Payment or, if this Contract is terminated by the Owner, unless such action or proceeding is commenced within six (6) months of the date of such termination.

§ 13.8 CLOSEOUT OF PROJECT

The Contractor shall provide all warranty documents, operation and maintenance manuals and as-built drawings to Owner within thirty (30) days after Substantial Completion. The Owner and Contractor acknowledge that damages will be suffered by the Owner in its operation of the completed building without the benefit of this documentation is difficult to quantify and therefore agree that the Contractor will be assessed liquidated damages, not as a penalty, in the amount of \$250 per day for each day following the date of Substantial Completion that the Owner has not been provided with all warranty documents, maintenance and operation manuals and as-built drawings.

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 or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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 Owner has not made payment on an Application for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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' written 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

(Paragraphs deleted)

If the Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if he submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if he fails to make prompt payment to Subcontractors or Suppliers for materials or labor or otherwise breaches his obligations under any subcontract with a Subcontractor; or if a mechanic's or materialman's lien or notice of lien is filed against any part of the Work or the site of the Project and not promptly bonded or insured over by the Contractor in a manner satisfactory to the Owner; or if the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any

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governmental body or public or quasi-public authority having jurisdiction of the Work or the site of the Project; or if he otherwise violates any provision of the Contract Documents; then the Owner, without prejudice to any right or remedy available to the Owner under the Contract Documents or at law or in equity, may, after giving the Contractor and the surety under the Performance Bond and under the Labor and Material Payment Bond described in Paragraph 11.4, seven (7) days' written notice, terminate the employment of the Contractor. If requested by the Owner, the Contractor shall remove any part or all of his equipment, machinery and supplies from the site of the Project within seven (7) days from the date of such request, and in the event of the Contractor's failure to do so, the Owner shall have the right to remove or store such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination. The Owner's right to terminate the Agreement pursuant to this Subparagraph 14.2.1 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity.

§ 14.2.2 When any of the above reasons 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' written 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 If the unpaid balance of the Contract Sum exceeds all costs to the Owner of completing the Work, then the Contractor shall be paid for all Work performed by the Contractor to the date of termination. If such costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference to the Owner immediately upon the Owner's demand. The costs to the Owner of completing the Work shall include (but not be limited to) the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another contractor or other subcontractors, any additional interest or fees which the Owner must pay by reason of a delay in completion of the Work, attorney's fees and expenses, and any other damages, costs and expenses the Owner may incur by reason of completing the Work or any delay thereof. The amount, if any, to be paid to the Contractor shall survive the termination of the Contract.

§ 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 Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. 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, upon seven (7) days' written notice to the Contractor, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written 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.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed to the date of termination. The Owner shall, upon the Contractor executing such confirmatory assignments as the Owner shall request, accept and assume all of the Contractor's obligations under all Subcontracts executed in accordance with the terms of the Contract Documents that may accrue after the date of such termination and which the Contractor has incurred in good faith in connection with the Work. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

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, 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 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party with a copy sent to the Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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 in accordance with the Contract Documents.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given within seven (7) days after the Contractor becomes aware of the condition causing or threatening to cause delay. 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.

§ 15.1.5.2 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 and shall be submitted to the Owner upon Substantial Completion of the Work.

§ 15.1.5.3 Should the Contractor be or anticipate being delayed or disrupted in performing the Work hereunder for any reason including, without limitations, its financial condition or Contractor's general nonpayment of its debts as such debts become due, it shall promptly, and in no event more than seven days after Contractor becomes aware of the commencement of any condition which is causing or is threatening to cause such delay or disruption, notify the Owner in writing of the condition and of the effect of such condition upon the progress schedule, stating why and in what respect the condition is causing or is threatening to cause delay, provided, however, that notwithstanding the above, if such delay or disruption, or anticipated change in the Contractor's financial condition, the Contractor shall notify the Owner forthwith of such cause or anticipated cause. Failure to comply strictly with this notice requirement shall be sufficient cause to deny the Contractor a change in schedule and to require it to conform to the progress schedule then in effect.

§ 15.1.6

(Paragraphs deleted)

INTENTIONALLY OMITTED.

§ 15.2 INTENTIONALLY OMITTED

(Paragraphs deleted)

§ 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 9.10.4 and 9.10.5 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 litigation but, in such event, mediation shall proceed in advance of litigation, 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.

§ 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.

§ 15.4 MECHANICS LIEN AND CLAIMS

If any mechanic's lien or other claim shall be filed for or on account of the Work or if any Restraining Notices related to Contractor's performance of Work or Judgments shall be filed against such Contractor, then Contractor shall within fourteen (14) days after notification thereof, discharge or bond off such lien or claim or otherwise make provision satisfactory to Owner for its satisfaction. Any failure to comply with the terms of this provision shall constitute a material breach of this Agreement. If Owner discharges or bonds off any mechanic's lien after Contractor's failure to do so, all costs, including reasonable attorneys' fees related to said discharge, shall be chargeable to Contractor.

(Paragraphs deleted)

ARTICLE 16 ADDITIONAL PROVISIONS

§ 16.1 PAYMENT OF EMPLOYEES

The Contractor and each Subcontractor and Sub-subcontractor shall pay all employees engaged in the Work in full, less legally required deductions, in accordance with the applicable labor laws and all other applicable governmental regulations.

16.2 WAIVER OF REMEDIES

16.2.1 The Contractor acknowledges that he can be compensated adequately by money damages for any breach of the Contract which may be committed by the Owner. The Contractor agrees that no default, act or omission of the Owner shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the same or to suspend or abandon performance thereof, or entitle Contractor to an injunction or restraining order, except as otherwise provided in the Contract Documents; and the Contractor hereby waives any and all rights and remedies to which the Contractor might otherwise be or become entitled because of any wrongful act or omission of the Owner or Architect saving only the Contractor's right to money damages or statutory lien rights.

16.3 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and government regulation required by law to be inserted in the Contract Documents shall be deemed to be inserted therein and this Contract shall read and shall be enforced as though so included therein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party this Contract shall be deemed to be amended to make such insertion or correction.

16.4 JURISDICTION AND VENUE

The Contract Documents and all disputes between the parties shall be governed by the laws of the place where the Project is located per Section 13.3 and the jurisdiction and venue for any action between the parties shall lie solely and exclusively is Federal or State Court in the county in which the Project is located.

16.5 SEVERABILITY

The invalidity or unenforceability of any particular provision in the Contract Documents shall not affect the other provisions in the Contract Documents and the Contract Documents shall be construed in all respects as if such invalid or unenforceable provision was omitted.