

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO.: CACE 15-016282 (14)

GRE PROPERTIES SHERIDAN  
HILLS, LLC

Plaintiff/Counter-Defendant,

v.

BURKE CONSTRUCTION GROUP,  
INC.

Defendant/Counter-Plaintiff.

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**DEFENDANT, BURKE CONSTRUCTION GROUP, INC.'S, ANSWER AND  
AFFIRMATIVE DEFENSES TO COMPLAINT & BURKE CONSTRUCTION  
GROUP, INC.'S COUNTERCLAIM**

Defendant, BURKE CONSTRUCTION GROUP, INC. ("BURKE"), hereby answers, in like-numbered paragraphs, the Complaint filed by Plaintiff, GRE PROPERTIES SHERIDAN HILLS, LLC ("GRE"), and asserts its affirmative defenses thereto and its Counterclaim.

**JURISDICTION, VENUE AND THE PARTIES**

1. Admitted.
2. Admitted.
3. Admitted.
4. Without knowledge, therefore denied.
5. Admitted for venue purposes only, without admitting any liability, which is expressly denied.

6. Admitted for jurisdictional purposes only, without admitting any liability, which is expressly denied.

7. Denied for the reasons more particularly set forth in BURKE's affirmative defenses below, including, without limitation, BURKE's eighteenth, thirty-second, and thirty-third affirmative defenses.

**GENERAL ALLEGATIONS**

8. Admitted that GRE and BURKE entered into a contract and that true and correct copies of the Contract and General Conditions are as Composite Exhibit A to the Complaint. Denied that Composite Exhibit A to the Complaint contains the entire agreement between the parties.

9. Admitted that a portion of the contract is recited in paragraph 9. The subject contract speaks for itself and therefore no response is required to the other and remaining allegations of paragraph 9. To the extent a response is required, denied, and denied that BURKE breached any obligation under the contract.

10. Admitted that a portion of the contract is recited in paragraph 10. The subject contract speaks for itself and therefore no response is required to the other and remaining allegations of paragraph 10. To the extent a response is required, denied, and denied that BURKE breached any obligation under the contract.

11. Denied.

12. Admitted that a portion of the contract is recited in paragraph 12. The subject contract speaks for itself and therefore no response is required to the other and remaining allegations of paragraph 12. To the extent a response is required, denied, and denied that BURKE breached any obligation under the contract.

13. Admitted that a portion of the contract is recited in paragraph 13. The subject contract speaks for itself and therefore no response is required to the other and remaining allegations of paragraph 13. To the extent a response is required, denied, and denied that BURKE breached any obligation under the contract.

14. Admitted that a portion of the contract is recited in paragraph 14. The subject contract speaks for itself and therefore no response is required to the other and remaining allegations of paragraph 14. To the extent a response is required, denied, and denied that BURKE breached any obligation under the contract.

15. Admitted that a portion of the contract is recited in paragraph 15. The subject contract speaks for itself and therefore no response is required to the other and remaining allegations of paragraph 15. To the extent a response is required, denied, and denied that BURKE breached any obligation under the contract.

16. Admitted that a portion of the contract is recited in paragraph 16. The subject contract speaks for itself and therefore no response is required to the other and remaining allegations of paragraph 16. To the extent a response is required, denied, and denied that BURKE breached any obligation under the contract.

17. Admitted.

18. Denied.

19. Admitted that BURKE undertook to install visqueen, tarps and white poly vinyl sheeting, as well as other actions. BURKE denies, however, that the only actions it undertook are those alleged in paragraph 19 and BURKE denies that it breached any duty or obligation to GRE.

20. Denied.

21. Denied.
22. Admitted.
23. Denied.
24. Denied.
25. Admitted.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Admitted that there is a letter from GRE to BURKE attached as Exhibit "C" to the Complaint. Denied as to the contents of Exhibit C and denied as to all other and remaining allegations of paragraph 31. Denied that BURKE was in default of the subject contract.
32. Denied.
33. Admitted that there is a letter from GRE to BURKE attached as Exhibit "D" to the Complaint. Denied as to the contents of Exhibit D and denied as to all other and remaining allegations of paragraph 33.
34. Denied.
35. Denied.
36. Denied.
37. Without knowledge, therefore denied. Denied that BURKE caused or contributed to the cause of any of the events or occurrences alleged in paragraph 37, and

denied that BURKE is in any way responsible or liable for any of the costs, expenses, or losses alleged in paragraph 37.

38. Without knowledge, therefore denied.

**COUNT I – NEGLIGENCE**

39. BURKE hereby adopts by reference its responses to Paragraphs 1 through 37 above as if fully set forth herein.

40. Denied.

41. Denied, including as to all subparts.

42. Denied.

**COUNT II – BREACH OF CONTRACT**

43. BURKE hereby adopts by reference its responses to Paragraphs 1 through 37 above as if fully set forth herein.

44. Admitted that GRE and BURKE entered into a Contract and Supplementary Conditions. Denied that Exhibits A and B contain the entire agreement of the parties.

45. Denied.

46. Denied.

47. Denied, including as to all subparts.

48. Denied.

49. Denied.

**COUNT III – BREACH OF IMPLIED WARRANTY**

50. BURKE hereby adopts by reference its responses to Paragraphs 1 through 37 above as if fully set forth herein.

51. Denied.
52. Without knowledge, therefore denied, including as to all subparts.
53. Denied.
54. Denied.
55. Denied.
56. Denied.

All allegations of the Complaint that are not expressly admitted above are denied.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

GRE's alleged damages, if any, must be reduced for GRE's failure to mitigate its damages, including, without limitation, by failing to notify and/or adequately notify its tenants of the nature and scope of work involved in the subject construction project, failing to provide air conditioning and/or adequate air conditioning for the subject building, delaying completion of the construction project, and failing to maintain or protect, or to timely, properly, or adequately maintain or protect, the property at issue.

#### **SECOND AFFIRMATIVE DEFENSE**

BURKE is entitled to an apportionment of non-economic damages under § 768.81(3), Fla. Stat., with respect to any named party or non-party who is or may be found at least partially at fault for the alleged damages suffered by GRE, if any.

#### **THIRD AFFIRMATIVE DEFENSE**

GRE's alleged injuries and damages, if any, were solely the result of the negligence, acts, omissions, wanton lack of care, misuse or other conduct, wrongdoing, or fault of GRE and/or other persons or parties not named or joined in this action, and not

under the care or control of BURKE, including, without limitation, the installers and contractors employed directly by GRE, Iraj S. Shojaie, AIA, GoodAir, D&D Mobile Welding & Fabrication, Crawford-Tracey Corp., Advance Roofing, Inc., Guernsey Architectural Solutions, Inc., Riteway Systems Inc. d/b/a Riteway Demolition, U.S. Shrink Wrap, Inc., Cesar Soto, P.E., Paramount Consulting Engineers, the structural engineer of record, the air conditioning contractor, and all responsible persons or parties whose specific identities are currently unknown to BURKE at this time, if different than those named and identified. Accordingly, if BURKE is found liable to GRE, such liability should only be for that portion of the damages, if any, due to BURKE's own fault and not due to the fault of others, whether or not named as defendants or parties in this action, over whom BURKE has or had no control nor duty to control. *See* §§ 768.81(1)(c), 768.81(3), Fla. Stat., *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993) and its progeny. BURKE hereby reserves its right to specifically identify, as discovery or further investigation may reveal, any and all other persons and entities that caused or contributed to the alleged defects, deficiencies, and damages giving rise to this action.

#### **FOURTH AFFIRMATIVE DEFENSE**

GRE's alleged injuries and damages, if any, were not proximately caused by any act or omission of BURKE, but rather by GRE itself and/or the persons and entities named and otherwise identified in BURKE's Third Affirmative Defense, above, which are incorporated herein by reference, as if fully set forth herein. Such injuries and damages were caused, in whole or in part, by the negligent or faulty work, design, engineering, supervisory or other work of GRE or others and the failure by GRE to adequately notify its tenants of the nature or scope of the work involved in the subject

construction project, and GRE's failure to maintain or to properly and timely maintain and repair the property at issue.

**FIFTH AFFIRMATIVE DEFENSE**

If any damages are awarded to GRE, BURKE is entitled to a reduction of all amounts payable, paid or available from all collateral sources under § 768.76 and Chapter 627, Fla. Stat., and for any and all amounts obtained by GRE in partial satisfaction of this claim under § 768.042(2), Fla. Stat.

**SIXTH AFFIRMATIVE DEFENSE**

BURKE's liability, if any, is limited to the extent GRE's fault exceeds any percentage of fault attributable to BURKE, and any damages awarded against BURKE shall not be the basis of joint and several liability, but instead shall be limited to whatever percentage of fault, if any, is assigned by the verdict to BURKE pursuant to § 768.81(3), Fla. Stat.

**SEVENTH AFFIRMATIVE DEFENSE**

GRE's alleged damages, if any, were caused by or resulted from intervening and superseding causes and occurrences that were not reasonably foreseeable to BURKE, including, without limitation, Acts of God, forces of nature, excessive driving rains, rains exceeding the average rain expected during the period of construction, tropical storms, and unusual, unprecedented and/or unforeseen meteorological phenomenon, as well as preexisting hidden and unknown penetrations, cracks, intersections and joints improperly sealed during initial construction of the subject building, and other unforeseeable causes and occurrences, which were beyond BURKE's knowledge and control, and for which BURKE was not and is not responsible, and/or the acts and omissions of third parties



over whom BURKE had no control nor duty to control. The acts and omissions included, without limitation, GRE's tenant's continued occupation of space that was being worked on, GRE's failure to provide air conditioning and/or adequate air conditioning, improper design and specifications, and the misusing, altering and failing to maintain, repair or protect or to timely, adequately or properly maintain, repair or protect the subject property.

**EIGHTH AFFIRMATIVE DEFENSE**

GRE is barred from any and all recovery because BURKE's scope of work was inspected and accepted by the authority having jurisdiction, as well as by GRE, GRE's representative, the engineer of record, and Iraj S. Shojaie, the architect for the subject project, without limitation, and the alleged defects and deficiencies, if any, were patent and obvious or would have been obvious, discoverable and discovered upon inspection and with the exercise of due diligence.

**NINTH AFFIRMATIVE DEFENSE**

GRE's damages, if any, are barred as they arose from and were caused by risks and hazards assumed by GRE. GRE did not give its tenants notice of the nature or extent of the work it contracted BURKE to perform, refused to air condition or properly air condition the building, paid subcontractors directly, and issued change orders to subcontractors without BURKE's involvement, and otherwise interfered with the contractual and business relationships between Burke and its subcontractors. These decisions by GRE came with certain risks and hazards, which were obvious and well known to GRE, or should have been obvious and well known to GRE, and those risks and hazards were assumed by GRE, thereby precluding GRE from claiming damages arising

from same.

**TENTH AFFIRMATIVE DEFENSE**

GRE is estopped from asserting its claims against BURKE as GRE accepted the work performed by BURKE and GRE failed to give BURKE timely notice of the alleged defects and deficiencies concerning BURKE's scope of work and thereby injured and prejudiced BURKE by depriving it of the opportunity to timely repair or correct defective, deficient or non-conforming work, if any. GRE is also estopped from asserting its claims against BURKE as GRE made payments and issued change orders directly to subcontractors and thereby injured and prejudiced BURKE by depriving it of the opportunity and ability to timely repair or correct defective, deficient or non-conforming work, if any.

**ELEVENTH AFFIRMATIVE DEFENSE**

GRE's claims are barred and/or any damages it is awarded must be proportionately reduced to the extent that GRE seeks or realized a betterment in the replacement, repair or remediation of any allegedly damaged, defective or deficient work or materials.

**TWELFTH AFFIRMATIVE DEFENSE**

GRE's claims are barred or must be reduced, limited and/or diminished pursuant to the Economic Waste Doctrine.

**THIRTEENTH AFFIRMATIVE DEFENSE**

GRE fails to state a cause of action for breach of implied warranty cognizable under Florida law because GRE failed to assert or show that BURKE delivered a completed good to GRE that was not merchantable or fit for its intended purpose.

Further, any such warranty was expressly modified by the contract between the parties.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Any damages suffered by GRE were the result of the negligence of GRE and/or the various installers, subcontractors, and design and engineering professionals engaged by GRE, who did or may have performed or completed work or services that was defective, deficient, or negligent, and not as a result of any negligence on the part of BURKE. GRE's negligence and fault was the sole proximate cause or a contributing proximate cause of its alleged damages, if any. Any award to GRE should thus be barred or alternatively reduced accordingly in proportion to its negligence and fault, pursuant to the doctrine of comparative negligence.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Any and all alleged defects and deficiencies in BURKE's scope of work were the direct result of improper architectural design and/or engineering of parties other than BURKE and over whom BURKE had no control, nor any duty to control, and for which BURKE cannot be held liable or responsible. *See, e.g., U.S. v. Spearin*, 248 U.S. 132 (1918).

**SIXTEENTH AFFIRMATIVE DEFENSE**

GRE's claim for liquidated damages is barred as §4.3, *General Conditions of the Contract for Construction*, attached as Exhibit A to the Complaint, is unenforceable. The alleged liquidated damages are so disproportionate to actual losses, if any, that enforcement of the liquidated damages provision would be unconscionable. Further, GRE's acts, including, without limitation, GRE's delays, which adversely impacted the critical path, and GRE's refusal to grant reasonable time extensions, make enforcement of

the liquidated damages provision unconscionable.

Moreover, damages due to delay were readily ascertainable at the time of the parties' contract. As such, GRE is not entitled to enforcement of the liquidated damages provision.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

GRE's claims are barred to the extent that the work and materials that BURKE furnished were altered, modified, misused, or otherwise substantially changed by another person or entity after leaving BURKE's care, custody, and control, and to the extent such alteration, modification, misuse, or substantial change caused the damages claimed by GRE. Such misuse, alteration, modification, or substantial change includes, without limitation, the failure to maintain, repair, or protect, or to timely, adequately or properly maintain, repair, or protect, the subject property.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

GRE's claims are barred or must be abated because GRE failed to comply with the provisions of Chapter 558, Fla. Stat.

**NINETEENTH AFFIRMATIVE DEFENSE**

At all times material hereto, BURKE provided work that conformed to the generally accepted standards of workmanship and performance of similar work and met the requirements of BURKE's scope of work for the subject project.

**TWENTIETH AFFIRMATIVE DEFENSE**

GRE waived its claims, including, without limitation, because GRE accepted BURKE's subject work and failed to give BURKE timely notice of the alleged defects and deficiencies.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

GRE's damages were not proximately caused by any act or omission of BURKE. Therefore, GRE's claims against BURKE are barred and fail to state any cause of action against BURKE.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

GRE is barred from recovery, and fails to state any cause of action against BURKE, pursuant to the *Slavin* doctrine, as BURKE completed the subject scope of work, GRE accepted BURKE's work and materials, and the alleged defects and deficiencies were patent, or known or should have been known to GRE at all times relevant. *See Slavin v. Kay*, 108 So. 2d 462, 465 (Fla. 1959); *Plaza v. Fisher Development, Inc.*, 971 So. 2d 918, 924 (Fla. 3d DCA 2007).

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

GRE is barred from any recovery against BURKE because the work performed by BURKE was performed in accordance with the Contract Documents, including, without limitation, the construction plans and specifications for the project, and any defects that may be determined to exist in BURKE's scope of work are due solely to a failure of such Contract Documents.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Any and all alleged defects and deficiencies in BURKE's scope of work are the direct result of improper material specification, design, manufacturer, approval, and inspection, architectural design, and/or engineering of parties other than BURKE and over whom BURKE had no control, nor any duty to control.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Any and all alleged defects and deficiencies in BURKE's scope of work were the result of deficiencies in the work of other trades, engineers, and/or design professionals, upon which BURKE justifiably relied, and are not the result of BURKE's scope of work.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

GRE's damages, if any, are restricted pursuant to the requirements set forth in *Grossman Holdings, Ltd. v. Hourihan*, 414 So. 2d 1037 (Fla. 1982).

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

GRE's damages, if any, are limited pursuant to the terms and conditions and warranty provisions of the contract attached as Exhibits A and B to the Complaint.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

GRE's claims are barred or must be reduced to the extent that GRE seeks recovery for damages that GRE lacks standing and the capacity to sue in this action, including, without limitation, damage allegations concerning individual tenants' property.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

If any damages are awarded to GRE, BURKE is entitled to a setoff for all amounts GRE owes BURKE and for all sums obtained by GRE from collateral sources.

**THIRTIETH AFFIRMATIVE DEFENSE**

GRE's negligence claim is barred by the economic loss rule, which prohibits GRE from asserting its tort claim seeking only alleged economic losses, consisting of damage to or arising from the product (the subject building), including claims for inadequate value or costs of repair and replacement of the allegedly defective product supplied by BURKE and consequent losses, which are covered by the parties' contract. GRE may not

circumvent the parties' contractual relationship and agreement, including, without limitation, GRE's agreement to waive consequential damages, by bringing an action in tort.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

GRE's warranty claim is barred as the contract expressly excluded from BURKE's warranty obligations any remedy for damages or defects caused by abuse, alterations to the Work not executed by BURKE, improper or insufficient maintenance, improper operation, and normal wear and tear and normal usage, and the damages and/or defects claimed by GRE fall within this exclusion. *See §3.5, General Conditions of the Contract for Construction*, attached as Exhibit A to the Complaint.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

GRE's claims are barred as GRE failed to provide BURKE with written notice of the alleged injury and/or damages within 21 days after discovery of same pursuant to §10.2.8, *General Conditions of the Contract for Construction*, attached as Exhibit A to the Complaint.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

GRE's claims are barred as GRE failed to provide written notice to BURKE and the architect within 21 days of the occurrence of the events giving rise to the alleged claims or within 21 days after GRE first recognized the conditions allegedly giving rise to the claims. *See § 15.1.2, General Conditions of the Contract for Construction*, attached as Exhibit A to the Complaint.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

GRE's claims are barred or must be reduced to the extent that GRE seeks

recovery for consequential damages, including, without limitation, for rental expenses, for losses of use, income, profit, financing, business and reputation, as claims for consequential damages were expressly waived by GRE under §15.1.6, *General Conditions of the Contract for Construction*, which is attached as Exhibit A to the Complaint.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

GRE's claims are barred or must be reduced to the extent that GRE seeks recovery for damages covered by property insurance obtained pursuant to the contract or other property insurance applicable to the Work (as that term is defined in the Contract Documents), as such claims were expressly waived by GRE under §§ 11.3.5 and 11.3.7, *General Conditions of the Contract for Construction*, which is attached as Exhibit A to the Complaint.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

GRE's claims are barred or must be reduced to the extent that GRE seeks damages for loss of use of the subject property, including consequential losses however caused, as GRE expressly waived such claims and damages under §11.3.3, *General Conditions of the Contract for Construction*, which is attached as Exhibit A to the Complaint.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

GRE's claims are barred or must be reduced to the extent that GRE seeks recovery of damages to finishes, which were explicitly excluded from the parties' agreement pursuant to §§ 3(c) and (d)(1), *Supplementary Provisions to Standard Form of Agreement between Owner and Contractor*, attached as Exhibit B to the Complaint.



**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

GRE's claims are barred or must be reduced to the extent that GRE seeks recovery for damages due to water and humidity, which were explicitly excluded from the parties' agreement pursuant to §§ 3(j) and (d)(1), *Supplementary Provisions to Standard Form of Agreement between Owner and Contractor*, attached as Exhibit B to the Complaint.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

GRE's warranty claims are barred pursuant to § 9.8.4, *General Conditions of the Contract for Construction*, which is attached as Exhibit A to the Complaint, as no warranty obligations have commenced.

**FORTIETH AFFIRMATIVE DEFENSE**

BURKE was excused from performance by the impossibility of performance. BURKE did not have an absolute duty at any time relevant to protect GRE's tenants, to make the building water-tight, to avoid producing any noise, dust, obstacles or other impediments, or to complete the subject project within a specific time. Rather, the performance of the contract as agreed was made commercially impracticable by unforeseen contingencies. These contingencies included, without limitation, defects and deficiencies in the permitted plans, GRE's tortious interference with the contractual relationships between BURKE and its subcontractors, the architect's failure to timely respond to Requests for Information and otherwise timely provide complete and sufficient information to construct the project, unusual and unprecedented rain events, which exceeded the average rainfall for South Florida's rainy season, delays caused by GRE that exposed the structure to the elements for a prolonged period of time, and

GRE's failure to air condition and/or adequately air condition the building. These contingencies were not events that BURKE reasonably could have foreseen and the risk of them occurring was not explicitly or implicitly assumed by BURKE. BURKE gave reasonable notice to GRE that there would be a delay and potential damages resulting from the contingencies and BURKE performed the contract to the extent that the circumstances permitted.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

BURKE was excused from performance by GRE's prior breach of the contract, including, without limitation, GRE's tortious interference with the business relationship between BURKE and its subcontractors, GRE's failure to pay BURKE for work performed under the contract, GRE's failure to grant reasonable time extensions, GRE's failure to perform its contractual obligations in good faith, and for the reasons set forth in BURKE's Counterclaim below.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

GRE's claims are barred and/or any damages it is awarded must be proportionately reduced to the extent that GRE seeks to recover damages, costs, and/or expenses arising from noise, dust, obstacles and impediments ordinarily, usually, or reasonably associated with the work performed by BURKE, which BURKE had no duty to prevent under § 3(a), *Supplementary Provisions to Standard Form of Agreement between Owner and Contractor*, attached as Exhibit B to the Complaint.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

GRE's claims are barred and/or any damages it is awarded must be proportionately reduced to the extent they are for First Cost Items. *See Sc. Bd v. Pierce*

*Goodwin Alexander & Linville*, 137 So. 3d 1059 (Fla. 4th DCA 2014).

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

GRE's claims are barred as BURKE was ready, willing and able to satisfy the conditions of its agreement with GRE, but GRE prevented BURKE's performance. GRE's acts included, without limitation, tortiously interfering with the business relationship between BURKE and its subcontractors, contracting with an air conditioning contractor that failed to or failed to adequately air condition the building, refusing to grant reasonable time extensions, employing designers, engineers and contractors that provided negligent or faulty work, and delaying completion of the project.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

GRE's claims are barred as BURKE was given no consideration for the obligations that GRE seeks to impose on BURKE.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

GRE's prayer for attorneys' fees in the *ad damnum* clause of Count I of the Complaint, for Negligence, is barred and must be stricken because no statutory, contractual, or other basis for the recovery of attorneys' fees is alleged or exists. *See Hubbel v. Aetna Cas. & Sur. Co.*, 758 So. 2d 94, 97 (Fla. 2000) (holding that, generally, to be recoverable attorneys' fees must be provided for by statute, rule, or contract).

**RESERVATION**

BURKE reserves the right to amend this pleading to assert additional affirmative defenses that may become apparent as the result of discovery, investigation, or otherwise.

**DEMAND FOR ATTORNEY'S FEES & COSTS**

BURKE is entitled to and hereby demands an award of his reasonable attorney's

fees and costs incurred in this proceeding, pursuant to § 23, *Supplementary Provisions to Standard Form of Agreement between Owner and Contractor*, and pursuant to § 57.105(7), Fla. Stat.

WHEREFORE, BURKE respectfully requests this Court enter a judgment in its favor and against GRE, that GRE take nothing by this action, that GRE is denied the right and entitlement to recover attorneys' fees, that BURKE go hence without day, that BURKE be awarded its reasonable attorney's fees and expenses incurred in defending itself against GRE's claims pursuant to § 23, *Supplementary Provisions to Standard Form of Agreement between Owner and Contractor*, and pursuant to § 57.105(7), Fla. Stat., and for any other further relief that this Court deems just and appropriate.

**JURY TRIAL DEMAND**

BURKE requests a trial by jury of all issues so triable as a matter of right.

Respectfully submitted,

**BOGERT & REMBOLD, P.L.**

*Co-Counsel for Burke Construction Group,  
Inc.*

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***COUNTERCLAIM BEGINS ON NEXT PAGE***

**COUNTERCLAIM**

Defendant/Counter-Plaintiff, BURKE CONSTRUCTION GROUP, INC. (“BURKE”) sues Plaintiff/Counter-Defendant, GRE PROPERTIES SHERIDAN HILLS, LLC (“GRE”) and in support thereof states the following:

**NATURE OF THE ACTION**

1. This is an action for breach of contract against GRE related to a construction project owned by GRE commonly known as the “Emerald Hills Executive Plaza” located in Broward County, Florida at 4601 Sheridan Street Hollywood, Florida 33021 (hereinafter the “Project”).

**JURISDICTION AND VENUE**

2. This action is for damages in excess of \$15,000.00 exclusive of interest, costs and attorney’s fees.
3. BURKE is a Florida Corporation with its principal place of business in Broward County, Florida.
4. GRE is a Florida Limited Liability Company with its principal place of business in Broward County, Florida.
5. At all times material to this action, GRE has been the owner of the Project.

**GENERAL ALLEGATIONS**

6. In December of 2013, GRE and BURKE entered into a written agreement inclusive of General Conditions and Supplementary Conditions under which BURKE furnished labor, services, and materials at the Project (hereinafter the parties’ “Contract”).

**Exhibit “A.”**

7. During the course of the Project, BURKE encountered numerous issues that impeded its performance of the work inclusive of plan errors and omissions, unforeseen conditions, owner directed changes, and weather of an extreme nature.

8. BURKE performed all conditions precedent to the bringing of this action, or such conditions have been waived or otherwise excused.

9. BURKE has been forced to retain the undersigned law firm and has agreed and is obligated to pay reasonable attorney's fees for its services.

10. The Contract entitles BURKE to attorney's fees should BURKE be determined the prevailing party in this action.

**COUNT I – BREACH OF CONTRACT AGAINST OWNER**

11. BURKE incorporates and re-alleges paragraphs 1 through 10 above as if set forth fully herein.

12. Under the terms of the Contract, BURKE was entitled to an extension of the Contract Time if the progress of BURKE's work was delayed by an act or neglect of GRE or its architect, or of an employee of either, or by changes ordered in the work, and/or cause(s) beyond BURKE's control. **Exhibit "A."**

13. Under the terms of the Contract, BURKE was entitled to an extension of the Contract Sum if the progress of BURKE's work was delayed by an act or neglect of GRE or its Architect, or of an employee of either, or by changes ordered in the work, and/or cause(s) beyond BURKE's control. **Exhibit "A."**

14. Under the terms of the Contract, BURKE was entitled to seek an extension of the Contract Time due to adverse weather conditions.

15. BURKE made claims for an extension of the Contract Time and an equitable adjustment in the Contract Sum in accordance with the Contract.

16. GRE refused to grant BURKE extensions of the Contract Time or an equitable adjustment to the Contract Sum in breach of GRE's obligations under the Contract.

17. As a result of GRE's breach, BURKE has been damaged due to extended General Conditions and extended Project costs.

**WHEREFORE**, BURKE CONSTRUCTION GROUP, INC. requests that this Court find GRE PROPERTIES SHERIDAN HILLS, LLC liable to BURKE CONSTRUCTION GROUP, INC. for breach of contract, and enter judgment in favor of BURKE CONSTRUCTION GROUP, INC. for damages in excess of fifteen thousand dollars (\$15,000.00) plus applicable interest, costs, and attorney's fees.

**JURY TRIAL DEMAND**

BURKE requests a trial by jury of all issues so triable as a matter of right.

Respectfully submitted,

**ELDER & LEWIS, P.A.**

*Co-Counsel for Burke Construction Group, Inc.*

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished via Electronic Mail through the Florida Court's eFiling Portal to all counsel of record on the attached service list on November 2, 2015.

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# EXHIBIT A

## AIA<sup>®</sup> Document A102<sup>™</sup> - 2007

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

AGREEMENT made as of the 30th day of December in the year 2013  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

GRE Properties Sheridan Hills LLC  
4000 Hollywood Blvd., Suite 530-N  
Hollywood, Florida 33021

and the Contractor:  
(Name, legal status, address and other information)

Burke Construction Group, Inc.  
10145 NW 19<sup>th</sup> street  
Doral, FL 33172

for the following Project:  
(Name, location and detailed description)

**Emerald Hills Executive Plaza Building One**  
Sheridan Street & 46th Avenue, Hollywood, FL  
This project consists of extending the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> floors, 5, 10 and 15 feet respectively on the north building elevation, enclosing the 6<sup>th</sup> floor balcony on the south building elevation, replacing the upper 3<sup>rd</sup> floor roofs with R-20 coal tar pitch roofs, demolition and replacing the roof skylight, parapet walls, removal of all EPIS, metal framing, glass window walls, glass entry doors, HM doors, frames, hardware and metal soffits. Site work will consist of removing the underground fuel tank, installing new fire hydrants and Siamese connections to the north building elevation, relocating the fire line and Siamese connection, installing pavers, planters, curbs, parking spaces, asphalt driveways, ADA ramps and sidewalks on the south and east building elevations. Building construction will consist of new column foundations, expanding existing columns and foundations, carbon fiber reinforcing at existing beams, new steel columns, beams connection plates, perimeter angles, fire proofing, metal deck and lightweight concrete on the north building elevation. New curtain wall support steel, fire stopping, unitized, insulated glass curtain wall and spandrel panel insulation, insulated glass entry doors and hardware, metal framing, metal deck, dens sheathing, 4MM FR Alucobond ACM brushed aluminum metal panels and soffits, with new stucco on elevator equipment room, ground floor parking ceiling/soffit, recycle bins and generator enclosure. Interior demolition with temporary exterior safety and weather protection walls at the building perimeter, plumbing and fire sprinkler systems modifications, removal and replacement of the emergency generator, fire alarm system, light fixtures, outlets, conduit and copper electrical wiring as further defined in the construction documents while providing tenant and pedestrian safety protection through out the construction duration. The HVAC system, equipment, materials and labor will be provided under a separate contract with the Owner and coordinated by the Contractor.

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

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

This document is not intended for use in competitive bidding.

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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The Architect:  
(Name, legal status, address and other information)

Iraj S. Shojaie Architect  
240 Commercial Blvd., Suite 2A  
Lauderdale By The Sea, FL 33308

The Owner and Contractor agree as follows.

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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 RELATIONSHIP OF THE PARTIES
- 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 5 CONTRACT SUM
- 6 CHANGES IN THE WORK
- 7 COSTS TO BE REIMBURSED
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- 10 SUBCONTRACTS AND OTHER AGREEMENTS
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- 15 MISCELLANEOUS PROVISIONS
- 16 ENUMERATION OF CONTRACT DOCUMENTS
- 17 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

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**ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.  
*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

The date of commencement will be the date this Agreement is signed by the Owner and the Contractor which will be fixed in a notice to proceed.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Two Hundred Forty Days (240 ) days from the date of commencement, or as follows:  
*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

Portion of Work  
1<sup>st</sup> Floor Bank of America

Substantial Completion date  
To be completed over a three (3) day weekend

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)*

The Contractor shall pay the Owner as liquidated damages \$1,000 for each day of late completion after adjusted for Owner approved extensions of time. The Owner shall pay the Contractor a bonus of \$1,000 for each day of early completion of the Work.

**ARTICLE 5 CONTRACT SUM**

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

§ 5.1.1 The Contractor's Fee:

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

The Contractor's Fee of five percent (5%) of the cost of the Work is included in the Guaranteed Maximum Price.

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

For changes in the Work, contract deductions will be credited on a direct cost basis and contract additions will be billed on a direct cost basis plus five percent (5%) fee without any additional general conditions, unless the change order extends the time of completion.

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

Subcontractor's overhead will be limited to 10% and Fee limited to 5% of the actual cost of the Work.

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§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed five percent ( 5 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:  
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

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

#### § 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Six Million Five Hundred Eighty Six Thousand Nine Hundred Eighty One Dollars US (\$ 6,586,981.00 ), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.  
(Insert specific provisions if the Contractor is to participate in any savings.)

The Owner and the Contractor will share in any savings equally ( 50-50 ) as a result of contractor negotiations with any vendor, material supplier and/or subcontractor. The Owner will receive his equal share in a credit change order crediting his portion of the funds, the contractor will tract and report monthly on the savings.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See attached Exhibit "A" List of Owner approved Alternates and Subcontractors.

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:  
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
------	-------

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

The Guaranteed Maximum Price is based on providing safety precautions, temporary exterior partition walls and working overtime and weekends at no additional cost to protect the building tenants, visitors, pedestrians and workers from injury, property or personal damage during the construction duration. The Contractor shall coordinate all construction activities with the Owner and Property Manager to advise the building tenants in advance of construction activities in order to minimize any disruptions to their business activities.

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

#### ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA

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Document A201-2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

#### ARTICLE 7 COSTS TO BE REIMBURSED

##### § 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

##### § 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

##### § 7.3 SUBCONTRACT COSTS

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

##### § 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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**§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS**

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 7.6 MISCELLANEOUS COSTS**

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for data processing, directly related to the Work with the Owner's prior approval.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval.

§ 7.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

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§ 7.6.10.

#### § 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 7.7.3

#### § 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

#### ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Cost of repairing or correcting damage or nonconforming Work due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

#### ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

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

#### ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner

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may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

#### ARTICLE 11 ACCOUNTING RECORDS

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

#### ARTICLE 12 PAYMENTS

##### § 12.1 PROGRESS PAYMENTS

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

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

The duties and responsibilities of the Architect under this Article may also be performed by the Owner

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 15th day of the subsequent month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of ten percent ( 10 %). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent ( 10 %) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

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

## § 12.2 FINAL PAYMENT

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of

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Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Final payment will be issued to the Contractor after the Owner's receipt of all warranties, final waivers and release of liens from the Contractor, all subcontractors, material suppliers, vendors and rental companies that provided materials, labor, equipment and services to the Project, all defective or nonconforming Work has been corrected and any unsettled disputes have been resolved.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

#### ARTICLE 13 DISPUTE RESOLUTION

##### § 13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

##### § 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:  
*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- [ X ] Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- [ ] Litigation in a court of competent jurisdiction
- [ ] Other *(Specify)*

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**ARTICLE 14 TERMINATION OR SUSPENSION**

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

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

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

Three Percent % 3% per annum

§ 15.3 The Owner's representative:  
*(Name, address and other information)*

David Loper  
Ganot Capital LLC  
4000 Hollywood Blvd., Suite 530-N  
Hollywood, FL 33021  
PH: 954-985-2400  
Email: davidl@ganotcapital.com

§ 15.4 The Contractor's representative:  
*(Name, address and other information)*

Tony Burke  
Burke Construction Group, Inc.  
10145 NW 19<sup>th</sup> street  
Doral, FL 33172  
PH: 305-468-6604  
Email: tburke@bcgconstruction.net

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

§ 15.6 Other provisions:

- Exhibits "A" List of Owner approved Alternates and Subcontractors
- Exhibit "B" List of Owner provided Items
- Exhibit "C" List of Work excluded by the Contractor
- Exhibit "D" List of Drawings and Specifications
- Exhibit "E" List of Changes to the drawings

**ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102-2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 16.1.4 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*  
Refer to Exhibit "D"

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

§ 16.1.5 The Drawings:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*  
Refer to Exhibit "D"

Number	Title	Date
--------	-------	------

§ 16.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

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

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

1. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

2. Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents)*

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unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Refer to Exhibit "F" Contractors Bid Summary

**ARTICLE 17 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.  
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond	Limit of liability or bond amount (\$0,00)
Florida Workers Compensation	Required by the Contractor and all Subcontractors
General Liability and Property Insurance	Minimum, \$1,000,000 per occurrence combined single limit
Automobile Liability Insurance	Minimum, \$100,000 per occurrence combined single limit
Contractors Protective Liability Insurance "XCU" Policy, Broad Form Property Damage Coverage and Completed Operations, Contractual Liability Coverage and Indemnification Rider	Minimum, \$300,000 per occurrence combined single limit included in Contractors Liability Policy

§ 17.1 Loss Deductible Clause:

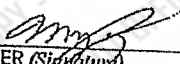
§ 17.2 Payment and Performance Bonds:

Should the Owner require the Contractor to provide payment and performance bonds, the costs for the bonds will be added to the Guaranteed Maximum Price by change order.

§ 17.2.1 the 100% Payment and Performance bonds shall be written on a AIA form by a surety company acceptable to the Owner and authorized to do business in the State of Florida signed by a Florida Licensed resident Agent.


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

GRE PROPERTIES SHERIDAN HILLS LLC

  
OWNER (Signature)

Matan Ben-Aviy Manager  
(Printed name and title)

BURKE CONSTRUCTION GROUP, INC.

  
CONTRACTOR (Signature)

Tony Burke CEO - DAVID MARTINEZ, VP  
(Printed name and title)

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EXHIBIT "A "

LIST OF OWNER APPROVED ALTERNATES AND SUBCONTRACTORS

The following list of Subcontractors and products have been selected and approved by the Owner for elements of work to be incorporated into the Project and Contractor's scope of work.

1. Crawford - Tracey Corporation, 3301 SW 13<sup>th</sup> Drive, Deerfield Beach, FL 33442
  - a. Furnish and install a four sided structurally glazed, impact resistant, laminated, 1- 5/16", insulated, unglazed glass curtain wall system with black aluminum spacers with VUE26-30 with Solar Blue tinting "low e" coating as manufactured by Viracon. Spandrel glass will have the same specifications with a warm grey frit coating located at all floor slab areas. The exposed aluminum finish shall be clear anodized, Class I. The glass at the exterior doors shall be 9/16" impact laminated large missile with VUE26-30 with Solar Blue tinting, "low e" coating provided standard hardware, overhead closers with manual panic devices providing a ten year material and labor Warranty per the attached bid dated October 14, 2013.
  - b. Base Bid: ..... \$1,626,100.00  
Add Alternate: Provide Blue tint glass in lieu of Clear on Clear ..... \$ 31,960.00  
Deduct: Delete frit at North elevation mechanical room floors 3 & 4 ... \$ 880.00  
TOTAL ..... \$1,657,180.00
  
2. Guernsey Architectural Solutions, Inc., 1731 Ranger Avenue, Suite D, Deland, FL 32724
  - a. Furnish and install 3A Composites "Alucobond" 4MM, F.R. ACM metal cladding at all exterior walls, south elevation soffits, all columns, stair wells and roof parapets in natural Brushed 50 Aluminum Finish, with all stiffeners, fasteners, and Dow Corning 795 Caulking for a Wet Seal Attachment System providing a twenty year material and labor Warranty per the attached bid dated November 11, 2013.
  - b. Base Bid: ..... \$ 758,000.00  
Credit for Deletion of ACM Ceiling Panels at 1<sup>st</sup> floor parking areas. .... \$ 105,718.00  
Deduct for revised parapet cap detail deleting ACM at roof edge ..... \$ 26,500.00  
TOTAL ..... \$ 625,782.00
  
3. Advanced Roofing Inc., 1950 NW 22<sup>nd</sup> Street, Fort Lauderdale, FL 33311
  - a. Demolish existing roofs, furnish and install new R-20, Insulated Coal Tar Pitch roofs at third and 6<sup>th</sup> floor roofs, elevator equipment and new 6<sup>th</sup> floor roof addition complete with roof hatch, all flashings and miscellaneous materials as described in the attached Roofing Project Manual & Specifications dated August 28, 2013 providing a twenty year manufacturer's NDL Warranty and two year Contractor's guarantee.
  - b. Base Bid: ..... \$402,019.00  
Add Option to Remove and Replace Skylight ..... \$ 9,800.00  
TOTAL ..... \$411,819.00

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EXHIBIT "B"

LIST OF OWNER PROVIDED ITEMS

The following List of Owner provided Items and Consultant Services will be Incorporated into the Project and coordinated during Implementation of the Work by the Contractor.

1. The HVAC system, equipment, materials, labor, test and balance.
2. Builder's Risk Insurance
3. City of Hollywood G.C. Building Permit or Impact Fees
4. Florida Power & Light, City or County Utility Connection Fees
5. Broward County G.C. Fee for Emergency Generator
6. Threshold Inspection Services by Bliss & Nyltray Engineers
7. Roof Inspection Services by Viridian Systems
8. Curtain Wall Inspection and Water Testing by Paramount Engineering
9. Soils and Concrete Testing by PSI

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EXHIBIT "C"

LIST OF WORK EXCLUDED BY THE CONTRACTOR

The following list of Items have been excluded by the Contractor and not included in the Contract.

1. Concrete and Solls Testing
2. Special Inspector
3. Utility Connection Fees
4. FPL Fees
5. Impact Fees
6. Landscaping and Irrigation System
7. Millwork and Wood Baseboards
8. Ceramic Tiles, Carpet, VCT Flooring and Base, Wood Flooring
9. Toilet Partitons, Accessories, Mirrors Signage, Awnings
10. Security System, Access Cards and Cameras
11. CATV,CCTV,DATA and Phone Systems
12. CAT 6 Cabllng
13. Building Permit Fee
14. Bullder's Risk Insurance
15. Payment and Performance Bonds

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EXHIBIT "D"

LIST of DRAWINGS and SPECIFICATIONS

<u>DRAWING NUMBER</u>	<u>DRAWING TITLE</u>	<u>DATE</u>	<u>REVISION NO.</u>
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EXHIBIT "E"

LIST of CHANGES to the DRAWINGS

The following changes will be made to the drawings and be incorporated into the Work by the Contractor.

1. Delete Icenyene Spray Insulation on Bottom of 6<sup>th</sup> Floor Roof Deck
2. Provide Stucco on Ground Floor Under Building Parking Ceiling In lieu of ACM Panels
3. Alucobond ACM Panels will be Provided In lieu of Alcoa ACM Panels
4. Identify Locations of Carbon Fiber Reinforcing and Changes to Structural Members

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**BURKE**  
Construction Group Inc.

Project: Emerald Hills  
Section: Basis for Contract Sum  
Date: January 20, 2014  
Page: 1 of 1

				Comments
Item	Scope of Work			
1	Base Contract			
	Per David Loper's Detailed Breakdown	\$6,280,062.00		
	Structural Steel for Curtain Wall Allowance	\$ 238,126.00		
	Base Contract Subtotal			Org. Budget \$410K
		\$6,618,188.00		
2	Additional Concrete Columns in lieu of CF	\$ 75,000.00		
3	Carbon Fiber Allowance @ Beams Only			
	Deduct Carbon Fiber Includ. in Base Bid	\$ 139,800.00		
		(\$35,000.00)		
4	Crawford Tracey Corporation			
	Contract Sum - Per Owner			
	Deduct Curtain Wall Sum Included in Base Bid	\$1,657,180.00		
		(\$1,573,000.00)		
6	Guernsey Alucobond Panels			
	Contract Sum - Per Owner			
	Deduct Alucobond Sum Included in Base Bid	\$625,782.00		
		(\$715,000.00)		
6	Advanced Roofing			
	Contract Sum - Per Owner			
	Deduct Roofing Sum Included in Base Bid	\$411,819.00		
		(\$517,788.00)		
	Contract Sum		\$6,586,981.00	

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Owner: GE Ganot Capital, LLC  
 4000 Hollywood Blvd. Suite 530-N  
 Hollywood, FL 33021

PROJECT COST SUMMARY



Project: Emerald Hills Executive Plaza One  
 Location: 4601 Sheridan Street, Hollywood, Florida

Bid Date: October 8th, 2013  
 January 7, 2013

Item	Description of Work	Sheet Amount	Comments
1	General Conditions 0.123%		
2	Surveying	\$216,342	Supervision, Management, Temp facilities and protection of existing conditions
3	Temp Construction Fencing	Incl	Excl'd w/ General Conditions
4	Dumpsters - Trash Pulls	\$4,000	Temp Fencing to Secure Active Working Area
5	Final Cleaning BUILDING	\$6,600	General Trash Removal beyond demo
6	Final Cleaning Glass	\$13,774	Clearing Up
7	Temp Labor	\$27,600	Glass Cleaning
8	Hoisting - Crane	\$9,000	
		\$40,000	
<b>Division 1</b>			
Testing & Fees			
9	Concrete Testing		
10	Soils Testing	Excl'd	
11	Special Inspector	Excl'd	By Owner
12	Utility Connection Fees	Excl'd	By Owner
13	FPL Fees	Excl'd	By Owner
14	Impact Fees	Excl'd	By Owner
<b>Division 2</b>			
Site preparation, Earthwork and Utilities			
15	Demolition		
16	Site and Earthwork	\$152,400	demolition as per plans including Glazing and EFIS system.
17	Site concrete	\$119,408	Asphalt pavements, Striping, bumper, curbs, water knee as per plans
18	Site amenities	Incl above	Concrete curbs and Pavers
19	Entry Fencing and Gates	Incl above	Parking Bumpers, signage and striping as per plans.
20	Landscaping and sodding	\$4,258	Fencing at new Generator pad
21	Irrigation system	Excl'd	No plans or information regarding this item
<b>Division 3 and 4</b>			
Concrete Structures			
22	Concrete structure, foundation & Tilt up		
23	Termite Treatment	\$311,730	Concrete foundations reinforcements, Recycling Bin and HC Barps as per plans.
		Incl above	Termite Treatment Under foundation work
<b>Division 5</b>			
Misc Metals and Structural Steel			
24	Structural Steel for Extended structures		
25	Misc. Metals	\$487,414	Structural Steel and Decking as per plans for extended structures
26	Allowance for Curtainwall Steel	\$27,600	Railings, Recycling Bin gates, Bollards
27	Additional Misc. Metals	\$238,126	Allowance for the reinforcing structural steel required for Glazing not shown or designed.
		Incl above	Additional steel angles and braces for new exterior framed walls
<b>Division 6</b>			
Rough and Finish Carpentry			
28	Misc. carpentry labor and clean up		
29	Misc. carpentry equipment, lumber and materials	\$19,440	Misc. labor during construction, wood basting, etc...
30	Millwork	\$10,000	Misc. Amber, rentals and materials for dry clean up of all areas
31	Wood Baseboards	NIC	Existing to remain
		NIC	Existing to remain
<b>Division 7</b>			
Roofing and Roof Insulation			
32	Gutters, Collectors and Downspouts	\$517,788	Build up roof system w/ LL Wt. Insulation!
33	Caulking and Sealants	Incl. above	Furnish and install overflow scuppers, collectors and downspouts as per plans.
34	Insulation under roof area structure	Incl. above	Caulking, Tilt up joint sealant, Fire stoppings & Fire Proofing structure.
35	Waterproofing	\$23,276	5 1/2" thick Kynrene Spray under existing roof concrete deck as shown on plans
36	Fire Stopping & Fireproofing of Steel at 2nd floor	Incl. above	Fire stop at all penetrations and Fire proofing the steel structure under expanded area
		\$70,380	
<b>Division 8</b>			
Doors and Frames			
72	Doors and Frames	\$10,783	All new Hollow doors and frames per door schedule
73	Finish Hardware	Incl above	Per door schedule
74	Storefronts and windows	\$1,573,000	Storefronts, windows and Curtain wall system as per plans.
75	Alcoa Panels wall system	\$715,000	Alcoa Panels exterior all system as per plans.
76	Installation of doors, frames and hardware	Incl above	All doors, frames and hardware as required.

1/28  
 DM

Owner: GE Ganot Capital, LLC  
 4000 Hollywood Blvd, Suite 530-N  
 Hollywood, FL 33021

PROJECT COST SUMMARY



Project: Emerald Hills Executive Plaza One  
 Location: 4601 Sheridan Street; Hollywood, Florida

Bid Date: October 8th, 2013  
 January 7, 2013

Item	Description of Work	Shifashi Amount	Comments
<b>Division 9</b>			
77	Drywall, Framing and Insulation		
78	Stucco & EIFS Systems	\$480,066	
79	Temporary Exterior Waterproof wall	\$1,400	All drywall, framing, insulation including Batt insulation per plans
80	Ceramic Tiles	\$185,000	Provides complete dryvit system with mesh installed as per plans
81	Carpets	NIC	Temporary wall around entire building during construction phase & prior to Curbside
82	VCT Flooring and Base	NIC	Existing to remain
83	Wood Flooring	NIC	Existing to remain
84	Painting	NIC	Existing to remain
		\$22,000	Misc. Painting, Bellards, Dumpsters, Ramp
<b>Division 10</b>			
85	Toilet Partitions		
86	Toilet Accessories	NIC	
87	Mirrors	NIC	Existing to remain
88	Fire Extinguishers	NIC	Existing to remain
89	Interior Identification	\$1,255	Existing to remain
90	Exterior lettering and signage	NIC	23 ea. New Fire Extinguishers as per plans
91	Awnings	NIC	Existing to remain
		NIC	Existing to remain
<b>Division 13</b>			
92	Removal of Underground Fuel Tank	\$16,900	Remove Day tank & 800 gallon underground tank
<b>Division 14</b>			
93	Elevator	EXISTING	Existing to remain- No modifications included
<b>Division 15</b>			
94	Plumbing modifications		
95	Fire Sprinkler System modifications	\$81,500	Complete Plumbing modifications as per P1 thru P5 and specifications
96	HVAC modifications	\$357,000	Fire Sprinkler System modifications including Fire Pump as per plans F-1 thru F-6
		\$358,000	Complete HVAC system as per M1 thru M5 and specifications
<b>Division 16</b>			
97	Electrical		
98	Copper wiring in conduit	\$298,600	Complete Electrical work as per plans E-1 thru E-10 and FA-1 thru FA-4 - Bid documents
99	Fire Alarm System	Incl w/ Elect.	Included above
100	Light fixtures, outlets, & fixtures	Incl w/ Elect.	Included above
101	Emergency Generator	Incl w/ Elect.	Included above
<b>Division 17</b>			
102	Security System - Access Cards + Cameras	By owner	
103	CATV / CCTV / DATA / PHONE /	By owner	NIC
104	CAT 6 Cabling	By owner	NIC
			NIC
	<b>Subtotal</b>	<b>\$6,150,315</b>	
105	Permit Allowance		
106	General Liability Insurance	By owner	
107	Builder's risk Insurance	\$43,474	NIC
108	Bond Premium	TBD	
109	Contractor's Markup 5%	NIC	
		\$324,399	
<b>SUMMARY OF PROJECT COST</b>		<b>\$6,518,188</b>	
Cost per Square Foot		\$85.57	
Total Square Feet on Project		76,174 SQ. FT.	

AZB  
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EMERALD HILLS OFFICE PLAZA - EXT  
 4601 SHERIDAN STREI  
 BID SUM

DIVISION	CONSTRUCTION DURATION:	DESCRIPTION OF WORK	9 months BURKE CONST.
01-000		Project General Conditions:	
01-100		Project Requirements / General Trades:	\$216,342.00 ✓
02-100		Exterior Demolition:	\$104,711.00 ✓
		EFIS, metal framing & soffits	\$152,400.00 ✓
		glass, glazing, alum, struct. steel	Above
		temp. safety partition walls	Above
02-200		Interior Demolition:	\$185,000.00 ✓
		5th & 6th floors, ceilings & partition walls	Above
		1st, 2nd, 3rd & 4th floors 5' at perimeter	Above
02-300		Site Demolition:	Above
		landscaping, planters & paving	Above
		U/G fuel tank removal	Not Included
			\$15,900.00 ✓
02-400		Site Earthwork, Utilities & Paving:	\$119,108.00 ✓
		earthwork, backfill, paving, curbs	Above
		water main and fire hydrants	Above
		waste & storm water lines	Above
		landscaping, irrigation & sod (Allow.)	Not Included
		gen.encl./recycle bin fence, gates	\$4,258.00 ✓
03-000		Concrete:	\$311,130.00 ✓
		site sidewalk, ADA ramp, curbs	Above
		column fdn's., rebar & dowels	Above
		lightweight concrete at decks	Above
04-000		Masonry:	In Concrete
		walls, stairwells, trash/recycle encl.	Above
		set & grout door frames	Above
04-100		Carbon Fiber Reinforcing:	In Concrete
		conc. columns north bldg. elev.	Above
		conc. beams 4th floor to roof	Above

MZB  
 JM



05-000	Structural & Misc. Steel, Metal Deck:	
05-001	Structural Steel:	
	columns, beams, plates, angles, embeds	\$487,414.00 ✓
	slab imaging and rigging	Above
05-002	Str. Steel for Curtain Wall: (Allow.)	Not Included
05-003	Metal Decking:	\$410,000.00 ✓
	at elevated decks	
	at parapet framing	Above
	over light gauge framing	Above
05-004	exterior light gauge metal framing	Above
	exterior light gauge metal framing design	Above
05-004	Misc. Metals:	Not Included
	bollards, hand rail, kickers, gates	\$27,567.00 ✓
		Above
06-000	Wood: (rough carpentry - M & L)	\$29,440.00 ✓
07-000	Thermal and Moisture Protection:	
	fire proofing at new structural steel	\$517,788.00 ✓
	fire proofing at slab edge	\$70,350.00 ✓
	fire barrier caulking	Above
	upper and lower roofing	Above
	roof insulation (Icynene)	Above
	skylight	\$24,275.00 ✓
	roof access hatch	Not Included
		Not Included
08-000	Doors, Frames & Hardware:	
08-100	hollow metal doors & frames:	
08-200	wood doors & frames	\$18,183.00 ✓
08-300	finish hardware:	Above
08-400	entrance & curtain wall system	Above
		\$1,573,000.00 ✓
09-000	Finishes:	
09-200	stucco at roof tower & recycling bin	
09-220	office drywall repair & patching	\$1,400.00 ✓
09-250	drywall partitions with insulation	Below
09-260	shaft walls for outside air & wet column:	\$488,066.00 ✓
		Above

M.P.  
J.M.

09-500	ACM fire rated panels and soffits:	\$715,000.00 ✓
09-560	dens shield sheathing at ACM	Above
09-900	painting drywall partitions & CMU walls	\$22,000.00 ✓
10-000	Specialties:	
10-430	fire extinguishers and cabinets	\$4,255.00 ✓
14-000	Conveying Systems:	
14-240	elevator cab protection	
14-500	exterior chute for const. debris	Not Included In Demo.
15-000	Mechanical Systems:	
15-100	fire protection system:	
15-300	6" fire protection line	\$85,700.00 ✓
	sprinklers at addition, valves boxes	Above
15-340	new fire pump	Above
15-440	shell plumbing	Above
	tie in condenser lines & wet columns	\$81,500.00 ✓
15-500	HVAC, controls, test & balance:	Above
	(4) DalkIn DPS010A outside air units	\$358,900.00 ✓
Eq. Only	(168 tons) Dalken VRV condenser units	Above Above
16-000	Electrical:	
16-100	electrical site & shell	\$298,500.00 ✓
16-150	electrical interlors	Above
16-200	emergency generator, tank, ATS, fuel	Above
16-300	fire alarm system	Above
16-600	lightning protection system:	Above
		Not Included
20-200	G. C. Fee	924,388.00 ✓
20-300	G. C. General Liability Insurance	\$324,405.00 ✓
20-400	G. C. Contingency	\$43,470.00 ✓
20-500	G.C. Payment & Performance Bonds	Not Included
	BID SUBTOTAL:	Not Included
		\$6,690,062.00

123  
DM

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**General Conditions of the Contract for Construction**

for the following PROJECT:

*(Name and location or address)*

EMERALD HILLS EXECUTIVE PLAZA BUILDING ONE - ADDITION and  
RENOVATION  
EMERALD HILLS EXECUTIVE PLAZA BUILDING ONE  
4601 SHERIDAN STREET  
HOLLYWOOD, FL 33021

THE OWNER:

*(Name, legal status and address)*

GRE Properties Sheridan Hills LLC  
4000 Hollywood Blvd., Suite 530-N  
Hollywood, FL 33021

THE ARCHITECT:

*(Name, legal status and address)*

Iraj S. Shojaie Architect  
240 Commercial Blvd., Suite 2A  
Lauderdale By The Sea, FL 33308

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

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

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

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 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 to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

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

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### § 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.

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. 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, Architect and the Architect's consultants.

### § 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 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 reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

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portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 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.

§ 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 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 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.

### § 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 and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. 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, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## 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 Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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**§ 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 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 starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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 and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the 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.

**§ 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 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 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.

§ 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.

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§ 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.

### § 3.5 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 Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

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

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 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.

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**§ 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 through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect 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.

**§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, 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 after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The 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 Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 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 Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 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 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 Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the 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 Architect's approval thereof.

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

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

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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.

§ 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.

### § 3.16 ACCESS TO WORK

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

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

### § 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, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), 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 that would otherwise exist as to a party or person described in this Section 3.18.

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§ 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.

#### 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, Contractor and Architect. Consent shall not be unreasonably withheld.

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

##### § 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

##### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. 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 Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or 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.

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**§ 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 for each principal portion of the Work. The 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 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**

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.

**§ 5.4 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 shall be equitably adjusted for increases in cost resulting from the suspension.

§ 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

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Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

#### 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 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.

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

##### § 6.3 OWNER'S RIGHT TO CLEAN UP

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

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## 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, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 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 Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

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

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 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 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 the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 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 promptly or disagrees with the method for adjustment in the Contract Sum, the 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

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for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 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 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 Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has 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 shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

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

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

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

#### § 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, 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.

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§ 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 Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect 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, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; 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 may determine.

§ 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

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, 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 Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

#### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect 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 Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or

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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.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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.

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 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.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. 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.

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

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, 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 or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, 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, 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 Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 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 Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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 and (5) if required by the Owner, 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 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, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. 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 Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special 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.

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

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

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, 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 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 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.

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#### § 10.4 EMERGENCIES

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

#### ARTICLE 11 INSURANCE AND BONDS

##### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor 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 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 Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 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 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.

##### § 11.2 OWNER'S LIABILITY INSURANCE

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

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§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 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 deductibles, the Owner shall pay costs not covered because of such 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.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; 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 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

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property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver 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, 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.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares 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.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 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.

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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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, 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 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 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 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. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 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 not 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.

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### § 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 except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party 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

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.

### § 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 by law.

§ 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.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 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 Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, 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

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such failure including those of repeated procedures and compensation for the 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 Architect.

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

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

#### § 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

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

### 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 Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor 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 and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 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.

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§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, 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 costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive 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, 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, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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## 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 and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. 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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 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. 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.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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§ 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 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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SUPPLEMENTARY PROVISIONS TO STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
(AIA DOCUMENT A102)

The following Supplementary Provisions add to, delete from, modify, and change the terms and conditions of the Standard Form of Agreement Between Owner and Contractor dated December 2013 ("Agreement") between GRE PROPERTIES SHERIDAN HILLS, LLC, a Florida limited liability company ("Owner"), and BURKE CONSTRUCTION GROUP, INC., a Florida corporation, CGC A38309 ("Contractor"). Where any article or paragraph of the Agreement is in conflict with these Supplementary Provisions, the Supplementary Provisions will control to the extent of such conflict.

1. DEFINITIONS.

"Architect" means Iraj S. Shojae, or such individual architects or architectural firms retained by the Owner to prepare the Plans and Specifications for the Project or provide construction administration.

"Commencement Date" means the date of commencement of the Work, such date to be not later than three (3) days after issuance of the Notice to Proceed with Construction.

"Completion Date" means the date on which the Project is to be Substantially Completed as set forth in Section 4.3 of the Agreement.

"Contract Documents" means the Agreement, these Supplementary Conditions, the General Conditions, the Supplementary General Conditions, the Plans and Specifications, and Change Orders, Construction Change Directives, Exhibits thereto, addenda, and modifications.

"Construction Period" means the period of time beginning on the Commencement Date and ending on the Completion Date.

"Contract Sum" means the Guaranteed Maximum Price.

"Contractor's Fee" means the fee to be paid by the Owner to the Contractor as provided in Section 5.1.1 of the Agreement for arranging, managing, overseeing, coordinating, performing, and administering the total construction of the Project, which fee is included in the Contract Sum and which includes all compensation to be paid to the Contractor for all services and Work performed under the Contract Documents, and which Contractor's Fee is fixed under the terms of the Contract Documents.

"Effective Date" means the date on which the Agreement becomes effective, which shall be deemed to be the latter the Agreement is signed by both parties to the Agreement.

"Exhibits" means those agreements, diagrams, drawings, schedules, specifications, instruments, forms of instruments, and other documents attached hereto on the date hereof or added to the Agreement, and designated as exhibits or schedules to the Agreement or hereto, which by their reference are hereby incorporated in and made a part of the Agreement.

"Final Acceptance" means acceptance of the Work as evidenced by a written confirmation executed by the Owner.

"Final Completion" or "Finally Completed" means the final completion of the construction and equipping of the Project, the issuance of, at minimum, a final certificate of occupancy completion therefor by the applicable governmental authority permitting full beneficial occupancy of the Project by the Owner, and certification by the Architect that the Work is finally complete in accordance with the Contract Documents so the Owner can occupy or utilize the Project for the use for which it is intended, with only Punchlist Items remaining.

"Final Inspection" means the inspection of the Project made by the Owner prior to Final Acceptance and which is a condition of Final Payment, as more specifically provided in Paragraph 12(a) hereof.

"Final Payment" means the payment of all of the Work, less and except the Punchlist Fund, in accordance with the terms of the Agreement and hereof.

"Force Majeure" means those events constituting excuse from timely performance by a party hereto of any duty or obligation hereunder to which it is subject; as such events are described in the Supplementary General Conditions.

"General Conditions Costs" means the items of cost and expenses set forth in Subparagraphs 7.2.2, 7.2.3, 7.2.4, 7.5.1, 7.5.2, 7.5.4, 7.5.5, 7.6.1, and 7.6.6 of the Agreement.

"Industry Standards" means the standards for fabrication, manufacture, installation, testing, performance, and safety applicable to each and every component of the Work promulgated by the industry associations related to the various components and elements of the Work.

Owner Initials: *GRS*

Contractor Initials: *BWG*

"Notice to Proceed with Construction" means the written notice given by the Owner to the Contractor to the Contractor to commence construction of the Project.

"Owner's Representative" is defined below.

"Permits" means all permits, certificates, licenses, development orders, or any other approvals required by the City or other applicable governmental authority having jurisdiction in such matters acting in its governmental and regulatory capacity required to be obtained, issued, granted, or received necessary for the performance of the Work and the Completion of the Project or any particular phase thereof.

"Plans and Specifications" means the drawings and specifications for the Project prepared by the Architect with the assistance of the Contractor, and accepted by the Owner, as more particularly described in the Agreement.

"Project" means, collectively, the Additions and Renovations to Emerald Hills Executive Plaza Building 1, 4601 Sheridan Street, Hollywood, Florida 33021.

"Project Schedule" means the schedule of times and events for the design, permitting, commencement, construction, and Completion of the Project.

"Project Site" means the real property described in Paragraph 3(a) hereof.

"Punchlist" means the list of minor corrections to the Work approved pursuant to Paragraph 9 hereof.

"Punchlist Fund" means the funds retained as security for the correction and completion of the Punchlist pursuant to and as defined in Paragraph 9 hereof.

"Subcontractor" means any person, firm, or corporation, other than employees of the Contractor or another Subcontractor, to furnish (or who actually furnishes) labor, or labor and materials, or labor and equipment or labor, materials, and equipment at the Project Site, licensed by the State of Florida or other applicable governmental authority, if applicable. The term "Subcontractor" is referred to as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

"Sub-subcontractor" is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work. 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.

"Surety" means any person, firm or corporation that has executed as surety the P&P Bonds, securing payment for the Work and the performance required of the Contractor.

"Termination Date" means the date on which this Agreement is terminated as the result of an event of default or as otherwise provided pursuant to the terms of the Contract Documents.

2. **CONFLICT BETWEEN CONTRACT DOCUMENTS.** In resolving inconsistencies among two or more sections of the Contract Documents, precedent will be given in the following order:

- a. All Addenda, Modifications and Change Orders
- b. These Supplementary Provisions
- c. The Agreement
- d. The Supplementary General Conditions attached to and made a part of the Contract Documents, if any.
- e. The General Conditions attached to and made a part of the Contract Documents.
- f. Specifications
- g. Plans

3. **NATURE OF PROJECT.**

Owner Initials: MEB  
Contractor Initials: JMA

a. The Contractor acknowledges that the Work includes new construction to the existing Emerald Hills Executive Plaza Building One ("Building") located within the office center commonly known as Emerald Hills Executive Plaza ("Project Site"). The Contractor acknowledges that the Building is occupied by tenants therein, who will continue in occupancy during the progress of the Work and that the Project Site is also utilized by the condominium office building located to the west of the Building, the unit owners thereof, and by employees and visitors of tenants and unit owners both for driving, parking and pedestrian traffic ("Continuing Project Use"). The Project Site is subject to the rules and regulations ("Association Rules") of the Emerald Hills Executive Plaza Master Association, Inc. ("Association"), a copy of which as applicable to the construction of the Work are attached hereto as Supplementary Provisions Exhibit "A". The Contractor further acknowledges and agrees that the Contractor, Subcontractors and all Sub-subcontractors must provide for the uninterrupted Continuing Project Use (including without limitation, preventing undo noise, dust, obstacles or impediments), must comply with the Association Rules and shall provide all required documentation and notices to the Association in the performance of the Work at the Project Site.

b. During the Work, Contractor and its Subcontractors, Sub-subcontractors, suppliers and employees shall use commercially reasonable efforts not to unreasonably disturb the business operations of other occupants of the Building and the Project Site or any Continuing Project Use. *and common areas*

c. Any damage to the existing finishes of the Building or any portion of the Project Site *and common areas* including but not limited to paving, curbing or landscaping shall be repaired and replaced by Contractor, at its expense, and all such work shall be done to the Owner's or the Association's reasonable satisfaction, as applicable. Contractor shall indemnify and hold harmless the Owner, the Association, their agents and employees from and against any and all costs, expenses, damage, loss, or liability, including, but not limited to, reasonable attorneys' fees and costs, which arise out of, are occasioned by, or are in any way attributable to the Work in the Building or the Project Site by Contractor, unless caused by the gross negligence or willful misconduct of the Owner, the Association, or their agents and employees. To the extent, and only the extent, that the obligation of Contractor under the preceding provision is to indemnify, hold harmless and to defend any party indemnified by Contractor from liability to the extent caused by such parties' own acts or omissions, such portion of the indemnity is limited to the greater of (i) \$1,000,000 or (ii) the amount of insurance available to and required of Contractor with respect to Contractor's indemnity obligation. Contractor expressly agrees this indemnification fully complies with Florida Statute §725.06 for the specific purpose of indemnifying Owner and other parties named above. The Contractor further agrees that this indemnification that bears a reasonable commercial relationship to the Work and is deemed part of the Project Specifications. *MP*

d. The Contractor further acknowledges, agrees, warrants and represents that it:

(1) ~~is thoroughly familiar with the Building and the Project Site. Contractor acknowledges that it has made such inquiries and performed such investigations as to familiarize itself with the current condition of the Building and the Project Site, and has identified all deficiencies, defects and non-conformities with or in the Building and the Project Site, including but not limited to all non-conformities with local, state and federal building codes, laws, ordinances, and regulations that may adversely impact the Work, has performed such tests as Contractor deems necessary, and that the cost to correct all deficiencies, defects and non-conformities is included in the Contract Sum;~~

(2) will establish an on-site construction office to handle all day-to-day matters concerning the Work and the Project, work completed, inspection records, suppliers' records, bids and plans. The Owner shall have access at all times to the construction office; will provide daily full-time on-site supervision for all Work; will provide daily coordination with the Owner and, as necessary, with the Association; will develop materials procurement, handling, disposition and return procedures; and

(3) will ensure that all Work is performed in conformance with applicable local, state, and federal codes, ordinances, laws and regulations.

e. Contractor shall confine operations at the Project Site to areas permitted by applicable laws, permits, the Association Rules and the Contract Documents and shall not unreasonably encumber the Project Site with any materials or equipment.

f. Contractor shall provide proper and safe access to and egress from any occupied areas in the Building and the Project Site at all times. The delivery, unloading, staging and storage of material and equipment, and parking by Contractor, any Subcontractor or their employees shall be only in areas approved by Owner and Association. Such areas will accommodate only limited amounts of material and equipment. Contractor shall be responsible for coordinating the arrival of material and equipment, with Subcontractors, Owner and Association, in order to prevent any accumulation outside designated areas. The movement of material, equipment and personnel shall be restricted to those areas and routes within the Project Site as designated. Any damage resulting from such movement which was caused by the acts or omissions of Contractor or the Subcontractors shall be repaired by Contractor to the reasonable satisfaction of Owner and Association.

g. Contractor shall furnish to Owner or to such person as Owner may direct, any Project Record Documents (as defined below) or revisions or supplements thereto that are required under the Association Rules or otherwise requested by Association, and shall otherwise assist and cooperate with Owner, upon Owner's request, in connection with Owner's obligations under the Association Rules pertaining to the Project. Said assistance and cooperation shall include responding promptly to any inquiries by the Association regarding the Project or Contractor, which responses shall be delivered first to Owner and Owner's Representative for its review and approval, and attending meetings with the Association or its managing agent or their respective representatives. Contractor shall also coordinate with the Association or its managing agent, the Architect, Owner's Representative and the Subcontractors responsible for installing operations systems and equipment with respect to  
Owner Initials: *MES*  
Contractor Initials: *DMA*

the integration of the same with the Building's operations systems and equipment and the utilization by Contractor or such Subcontractors of space in the Building outside the perimeter of the Project Site in connection with such installation. Contractor shall also coordinate with the Association or its managing agent, as required by the Association Rules or as otherwise may be requested by Owner or advisable given the circumstances, with respect to the use by Contractor or any Subcontractors of the Building's operations systems and equipment, or water or utilities, in connection with the Project.

h. Contractor shall prepare, or cause to have prepared, minutes of each job meeting and deliver the minutes to Owner at or before the next job meeting. A weekly progress report ("Progress Report") shall be prepared by Contractor, detailing the events of each particular job meeting to include identifying the status of the Project Schedule, documenting events causing delays or which require resequencing or rescheduling any portion of the Work, and documenting the discussions and decisions made at the job meeting. The Progress Report shall identify party or parties responsible for following up on any particular delay item, job problem or approval. Subsequent Progress Reports shall identify the status of open items identified in previous Progress Reports. Contractor shall prepare and furnish to Owner a monthly recap of all costs and expenses for the Work for that month ("Monthly Cost Recap"). Contractor, in conjunction with the Project team, shall establish, implement and coordinate procedures for processing requests for information, shop drawings, material and equipment samples, submittals, schedule adjustments, change orders, substitutes, and payment requests.

i. Contractor shall assist Owner in coordinating occupancy and temporary relocation schedules and phased move logistics.

~~j. Contractor shall establish and implement procedures for protection of all components of materials to be incorporated into the Work from water and humidity, whether in transit from suppliers, stored on the Project Site or incorporated into the Work. All completed Work shall be protected from water and humidity and any materials or components of the Work that have been exposed to water or humidity shall promptly be removed from the Work and possible contamination resulting therefrom, remediated in accordance with applicable, recognized procedures and guidelines. Contractor shall establish and implement procedures, approved in writing by the Owner pursuant to the recommendations of Owner's consultants, for protection of all components of materials to be incorporated into the Work from water and fungal contamination whether in transit from suppliers, stored on the Project Site or incorporated into the Work. Materials or components of the Work that have been exposed to water or fungal contamination shall promptly be removed from the Work and possible contamination resulting therefrom, remediated in accordance with applicable, recognized procedures and guidelines. In the event remedial measures are necessary, the Owner may engage an independent water intrusion and/or damage expert to provide recommendations such that the remediation shall be conducted pursuant to the most stringent guidelines produced by the New York City Department of Health and Mental Hygiene, the Environmental Protection Agency, and/or the Occupational Safety and Health Administration (the "Guidelines"), to inspect the remediation on recognized milestones, and to issue to Owner upon completion of the remediation a clearance report in accordance with recognized industry standards. The Contractor shall comply with all recommendations of such expert. No procedures or chemicals shall be used in connection with any treatment of water damage or fungal contamination which may present a health risk to workers on the Project or occupants of the Property.~~

k. Contractor shall establish and implement a program for the protection of the Project, the Project Site and stored materials from damage resulting from adverse weather conditions, including tropical storms and hurricanes. Contractor shall secure all on-site materials from such adverse weather condition promptly upon the issuance of a tropical storm or hurricane warning or as necessary to protect the Project and adjacent properties. The actual cost of such security shall be reimbursed by the Owner as part of the following Application for Payment with appropriate supporting documentation.

l. Contractor shall not accept knowingly for its own account any discounts or contributions, or deal with (or recommend that the Owner deal with) any firm in which Contractor has any financial or other interest, or undertake any activity or employment which would or could create a conflict of interest or compromise the Contractor's professional judgment or prevent the Contractor from serving the best interests of the Owner. It shall be deemed a conflict of interest and a material breach of the terms of this Agreement, for Contractor to employ at the Project or accept bids from Subcontractors employing, with respect to the Project, any relatives (including in-laws) of any of the officers, directors or supervisors of the Contractor without the prior written consent of the Owner. Any breach hereunder shall entitle the Owner to (i) terminate this Agreement upon seven (7) calendar days' prior notice as a termination for cause pursuant to the terms of the Agreement or (ii) in the Owner's sole discretion, reduce the Cost of the Work by the difference between the amount of such Subcontract and the amount of a subcontract for the same portion of the Work as performed pursuant to an arms-length market rate subcontract.

m. The Contractor shall implement a program to prohibit the use of illegal drugs and the use of alcohol at the Project by Contractor's employees, Subcontractor's employees, and all others engaged in performance of the Work at the Project Site. The Contractor shall not permit any portion of the Work to be performed by any employee or others engaged in the performance of the Work while under the influence of illegal drugs or under the influence of alcohol. Further, the Contractor shall not permit any employee using prescription medication to perform any task that may present a danger to the employee or others due to the use of such medication.

4. **NOTICE OF COMMENCEMENT.** The Contractor shall not commence any portion of the Work until a notice of commencement has been recorded and a certified copy thereof has been posted on the Project Site. The Contractor shall ensure that the building permit and notice of commencement are properly posted on the Project Site throughout the progress of the Work. To the extent the Contractor has performed any portion of the Work before the recording and posting of a notice of commencement, the Contractor shall deliver an affidavit and

Owner Initials: MLB  
Contractor Initials: MAA

waiver and release of lien to the extent of Work performed, and shall obtain waivers of lien from all subcontractors, sub-subcontractors and suppliers to the extent they also performed such work.

5. **OWNER'S REPRESENTATIVE.** The Owner may, in Owner's sole discretion, engage an "Owner's Representative" to act on Owner's behalf in administering performance of the Work by the Contractor. Except with respect to duties that are required by law to be performed by a Florida licensed architect or engineer, rights, authority and duties of the "Architect" set forth in the Contract Documents will be performed by the Owner's Representative and the Contractor shall respond to notices, inquiries, demands and other actions by the Owner's Representative to the same extent such rights are granted to the Architect in the Contract Documents.

6. **MODIFICATIONS TO COST OF WORK [ARTICLE 7].**

a. **Subparagraph 7.1.3** of the Agreement is added as follows:

In no event shall the General Conditions Costs exceed a total of \$ 216,342.00 for the Project. The General Conditions Costs are included in the Guaranteed Maximum Price.

b. **Subparagraph 7.2.4** of the Agreement is modified to add the following:

401K contributions, pension fund contributions, relocation reimbursements, accrued vacation or sick days shall not be included as a Cost to be reimbursed hereunder. Further, in no event shall such benefits to be reimbursed exceed fifty percent of the underlying wage cost, except to the extent that the Contractor's actual labor burden costs exceed the total labor burden of 18% of wages.

c. **Subparagraphs 5.1.4 and 7.5.2** of the Agreement are modified to add the following:

In no event shall rental costs or Contractor's attributable equipment costs exceed the current rental cost in the vicinity of the Project.

d. **Subparagraph 7.5.5** of the Agreement is modified to add the following:

All travel expenses must be approved in advance by the Owner. No reimbursement shall be made for local travel. Any authorized travel by air shall be at coach rates.

e. **Subparagraph 7.6.8** of the Agreement is deleted.

7. **APPLICATIONS FOR PAYMENT.**

a. Applications for Payment shall be as required pursuant to the General Conditions and the Supplementary General Conditions together with the supporting documentation required by the Contract Documents. The Application for Payment may include requests for payment on account of adjustment in the Contract Sum only when a Change Order has been approved by the Owner, in accordance with the terms of the Contract. The Application for Payment may not include requests for payments of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

b. The Application for Payment shall provide that ten percent (10%) of each Application for Payment shall be retained by Owner. Retainage shall be held until the Substantial Completion of the entire Project.

8. **PAYMENTS.**

a. **Subparagraph 12.1.2** of the Agreement is modified as follows:

Contractor will bill Owner monthly (with copies provided to the Architect and Owner's Representative), on or about the 25th of the month, for the Cost of the Work Incurred for that month, Architect and Owner's Representative will review and make recommendations to the Owner as to payment within ~~ten (10)~~ seven (7) days after submission of the requisition. The Owner will pay the Contractor for the proper Cost of the Work Incurred and recommended by the Architect and Owner's Representative, ~~ten (10)~~ five (5) days after receipt of the Architect and Owner's Representative's written recommendation, subject to the terms and conditions set forth herein and subject to submission of reasonable supporting documents evidencing the Cost of the Work Incurred during such month for all items included therein. The Contractor shall promptly pay each Subcontractor the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors and suppliers in similar manner. The Owner will pay the Contractor in Miami-Dade County, and the Contractor will pay all Subcontractors, Sub-subcontractors and suppliers in Miami-Dade County. The Contractor shall include appropriate flow-down provisions will be used to insure

Owner Initials:

Contractor Initials:

MGO  
JMA

all payments are made in Miami-Dade County, and that venue on claims related to the work or the Contract will lie exclusively in Miami-Dade County, Florida.

b. Subparagraphs 12.1.6 and 12.1.7 of the Agreement are deleted and replaced with the following:

12.1.6 Each Application for Payment shall detail the Cost of the Work Incurred and paid by the Contractor during the period covered by the Application for Payment together with the applicable portion of Contractor's Fee. Each Application for Payment shall reflect all Change Orders and Construction Change Directives for which Work was performed during such period.

12.1.7 Subject to other requirements, provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. The actual Cost of the Work Incurred for Work Completed and in place, as permitted to be reimbursed pursuant to Article 7 of this Agreement as modified and which is satisfactorily documented as required by the Contract Documents less retainage of ten percent (10%) from the amount of each Cost.
2. Add the portion of the Contractor's Fee applicable to the cost of the Work to be paid under the current Application for Payment at the rate set forth in Subparagraph 5.1.1 of this Agreement, less retainage of ten percent (10%) to be held by the Owner until the Work is complete as determined by the Architect and Owner's Representative.
3. Subtract the aggregate of previous payments made by the Owner.
4. Subtract the shortfall, if any, of sums not supported by the documentation for the current or previous Applications for Payment, or resulting from errors in previous Applications for Payment discovered by Owner or Architect and Owner's Representative; and
5. Subtract amounts, if any, for which the Architect and Owner's Representative has withheld from, or nullified in, a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

c. The Owner shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

d. Issuance of a Certificate for Payment, the making of a progress payment, or the partial or entire use or occupancy of the Project by the Owner prior to the Work being fully performed or paid for shall not constitute acceptance or a waiver by the Owner of any defect, non-conformity or claim, or the right to demand strict compliance with the Contract Documents.

e. Simultaneous with, and as a condition of, any progress payment and final payment to Contractor, and in addition to other conditions and requirements to payments to the Contractor set forth in the Contract Documents, Contractor shall deliver to Owner (i) executed and notarized waivers and releases of lien of Contractor on a form approved in advance by Owner for all Work through the period covered by the current Application for Payment from itself and (ii) for all Work through the period covered by the prior Application for Payment from all Subcontractors, Sub-subcontractors and suppliers to have been paid from the progress payment. In no event will any payment be made until all such waivers and other required documentation are submitted to Owner such being deemed a requirement for any Application for Payment to be proper and complete. If any Subcontractor, Sub-subcontractor or supplier records a lien against the Building or the Project Site for Work paid for by Owner, no payment will be due Contractor until such lien is released of record or transferred to statutory bond or an executed satisfaction of the lien in recordable form is delivered to Owner. Contractor shall deliver as a condition of Final Payment: (x) a contractor's final affidavit, (y) Contractor's conditional final waiver and release, and (z) conditional final waivers and releases of lien from all Subcontractors, Sub-subcontractors and suppliers. Upon the final payments (checks) clearing the bank the conditional final waivers will contain language that automatically convert them from a conditional release to a final release without any further requirements from the Owner or Contractor.

f. In the event that Contractor has failed to timely pay any Subcontractor, Sub-subcontractor or supplier in accordance with the applicable Subcontract or purchase order, Owner reserves the right to issue joint checks payable to Contractor and any Subcontractor, Sub-subcontractor or supplier, or to deliver to Contractor a check payable to any Subcontractor, Sub-subcontractor or supplier, which Subcontractor, Sub-subcontractor or supplier identified on an Application for Payment as being owed money by Contractor, and to require each such Subcontractor, Sub-subcontractor or supplier receiving payment to deliver a waiver and release of lien for all Work through the period covered by the current Application for Payment simultaneously with the receipt of payment. Waivers and releases of lien shall be on a form approved in writing in advance by Owner.

#### 9. SUBSTANTIAL COMPLETION.

a. For the purposes of the Contract Documents, and in addition to any other conditions to Substantial Completion set forth in the Contract Documents, the term "Substantially Complete" or "Substantial Completion" means the point in completion of all of the Work such that:

Owner Initials: MEB  
Contractor Initials: [Signature]

(1) All of the Work has been completed in a good and workmanlike manner and shall be in conformity with the Contract Documents, applicable building codes and laws; and in accordance with Association Rules, such that the Owner can occupy and utilize the Project Site for all of its intended purposes;

(2) The Contractor has delivered to the Owner a certificate of completion use and/or occupancy has been issued by the appropriate governmental authority and other evidence satisfactory to the Owner and Association that Contractor has obtained the governmental approvals necessary to permit occupancy by the Owner without restriction;

(3) An AIA form Certificate of Substantial Completion has been issued by Architect;

(4) The Contractor has delivered to the Owner a notarized affidavit from Contractor in accordance with F.S. §713.06.d. certifying that all amounts due for the Work have been paid;

(5) The Contractor has delivered to the Owner original final releases and waivers of lien from any Subcontractor, Sub-subcontractor or supplier that has delivered a Notice to Owner pursuant to Florida law;

(6) The Contractor has delivered to the Owner as-built drawings of the Work and Project Site, with a list and description of all work performed by the Contractor, Subcontractors, Sub-subcontractors and suppliers; and

(7) The Contractor has delivered to the Owner originals of all warranties and operating manuals for any systems or equipment included in the Contract Documents.

b. When the Contractor considers that the Work is Substantially Complete, the Contractor shall, in writing, request a Substantial Completion Inspection and the Owner's Representative and the Owner will inspect the Work to determine if it is ready for inspection. If the Owner's Representative and Owner both determine that, in their respective opinions, the Work has reached Substantial Completion and is ready for inspection, the Owner shall provide written notice to the Contractor. The Owner, its Owner's Representative, engineers and other consultants, and the Contractor shall participate in a walk-through to inspect the Work. At the conclusion of the Substantial Completion Inspection, the Work will be determined to be as follows:

(1) Finally Complete: If it is determined that the Work has achieved Final Completion, final payment shall be made in accordance with Paragraph 12 hereof, subject to the other requirements and conditions thereto set forth in the Contract Documents;

(2) Substantially Complete: If it is determined that the Work has achieved Substantial Completion, this is the date for contract purposes as evidenced by the issuance of a final or temporary certificate of completion occupancy by the City of Hollywood Miami, and the Contractor will prepare a "Punchlist" which will incorporate all Punchlists prepared by participants in the Substantial Completion Inspection and submit, within five (5) days after the walk-through, the same to Owner and Owner's Representative for their written acknowledgement or for incorporation of additional items not included in the Punchlist by Contractor. The Contractor shall complete all items shown by the Punchlist ("Punchlist Items") within thirty (30) days of its receipt and provide written notice to the Owner that the Work is ready for final inspection and acceptance by the Owner and Owner's Representative;

(3) Punchlist: If the Punchlist is not completed and the Work accepted within thirty (30) days of its receipt from the Owner, the remaining Work may be, at Owner's option, accomplished by the Owner, by its own forces or by others, at Contractor's expense. The Contractor acknowledges and agrees that the cost of such completion will be at a premium and in excess of costs the Contractor would have incurred to have the Project completed as part of the Project under the Contract Documents, and no claim shall accrue to the Contractor therefore.

(4) Not Substantially Complete. If the Owner's Representative and Owner determine that the Work has not achieved Substantial Completion, the Owner will notify the Contractor in writing of the deficiencies within fifteen (15) days of the Substantial Completion Inspection.

c. Contractor agrees that with respect to any Application for Payment, Contractor will comply with all reasonable requests of Owner so that such payments will be deemed proper payments under the Florida Construction Lien Act so that no person or entity entitled to a lien under law will be entitled to a construction lien or a claim against the Project Site or the Building. In accordance with F.S. §713.10, Contractor expressly agrees and acknowledges that no interest of Owner or the Association in the Project Site (other than the Building itself) shall be subject to any lien for improvements made by the Contractor, any Subcontractor, Sub-subcontractor or supplier, and Association shall not be liable for any lien for any improvements made by the Contractor, any Subcontractor, Sub-subcontractor or supplier, such liability being expressly prohibited by the terms of the Association Rules, and hereby waived and released by the Contractor. The Contractor shall include this provision in all Subcontracts, purchase orders and require that each Subcontractor include this provision in all sub-subcontracts and purchase orders.

d. Notwithstanding any provisions of the Agreement to the contrary, the Owner shall retain from the Final Payment in order to ensure the completion of Punchlist Items, a sum ("Punchlist Fund") equal to one and one half (1.5) times the cost that a third party contractor would likely charge to complete the Punchlist Items, as such costs are confirmed by the Owner's Representative. The Punchlist Fund

Owner Initials: *MLB*  
Contractor Initials: *DJA*



shall be held by the Owner until the Punchlist Items have been satisfactorily completed and accepted by the Owner and Owner's Representative in writing. The Owner agrees not to utilize the Punchlist Fund to have the Punchlist Items completed by other than the Contractor until either the time period provided in the Contract Documents for completion of the Punchlist Items has expired or the Contractor shall have earlier breached or defaults thereunder.

**10. WEATHER CONDITIONS.** If abnormal 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. The term "abnormal adverse weather," as used herein, shall mean that the actual number of days of inclement weather during the period in which the Work shall have been performed by Contractor exceeded the normal number of days of adverse weather for such period as determined by employing a ten year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the vicinity of the project. If only a portion of a work day is impacted by abnormal adverse weather, the Contractor may only submit a claim for the actual duration of such delay. Such claims must be submitted in writing within seventy-two (72) hours of the weather event. With regards to weather pursuant to OSHA regulations the Contractor is prohibited from flying Glass Panels, Alucobond Panels and steel in wind conditions that exceed 20 mph, which may have an impact on the schedule.

**11. OTHER CLAIMS.** Notwithstanding anything in the Contract Documents to the contrary, the Contractor shall have no claim for additional compensation or damages due to any delay in the Contractor's Work with the exception of extended general conditions for each day of delay. In the event of a delay not due to the fault of the Contractor or any Subcontractor, such event being beyond the control of the Contractor, the Contractor may seek Owner's approval of an extension of the Contract Time by (a) delivering written notice of the delay within seventy-two (72) hours seven (7) days of the time that Contractor became aware of the event, stating the specific causes of the delay and the anticipated time of delay, (b) demonstrating that the Contractor or Subcontractor could not have reasonably avoided the event causing the delay, and (c) demonstrates that Contractor has used all reasonable means to minimize the impact of the delay. Unless Contractor fully and completely complies with this requirement, the Contractor shall not be entitled to any extension of the Contract Time.

**12. FINAL COMPLETION AND FINAL PAYMENT.**

a. Upon receipt of written notice that the Work is ready for final inspection and acceptance or at the completion of the thirty (30)-day Punchlist period, whichever is earliest, and upon receipt of a final Application for Payment, the Owner, its Owner's Representative, engineers and other consultants, the Owner and the Contractor shall participate in a walk-through to inspect the Work. At the conclusion of the final inspection ("Final Inspection"), the Work shall be determined to be as follows:

(1) Finally Complete: If it is determined that the Work has achieved Final Completion, Final Payment shall be as set forth below;

(2) Not Finally Complete: If it is determined that the Work has not achieved Final Completion, the Owner shall prepare a Final Completion Punchlist and Final Completion shall be achieved by the Owner as set forth above.

b. If after the preparation of an initial Final Inspection Punchlist additional legitimate Punchlist items are identified, the Owner may, at its option, address the additional Punchlist items as items under the warranty.

c. After all Final Inspection Punchlist Items have been completed, the Owner's Representative will recommend to the Owner acceptance of the Project and make recommendations regarding the Contractor's final pay request. In addition to the requirements of the General Conditions and Supplementary General Conditions, the Owner shall have no obligation to accept the Work until the Owner's Representative and Owner determine that the Project is Finally Complete including the proper and complete submittal of all warranties, manuals, and other closeout documents, and no Work remains to be performed.

d. The Contractor may apply for "Final Payment" by submitting its Final Application for Payment which shall be accompanied by:

(1) the Contractor's Final Affidavit that payroll, bills for materials and equipment and other indebtedness connected with the Work have been paid or otherwise satisfied;

(2) a certificate evidencing that all insurance required by the Contract Documents is to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;

(3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;

Owner Initials: *MZB*  
Contractor Initials: *DW*

- (4) RFI (Request For Information) logs, RCO's (Request For Change Orders), RCO backup documentation, and RCO logs (if any), manpower strength reports (if any), and progress meeting notes;
- (5) other data required by the Owner and/or the Owner's Representative establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, claims, security interest or other encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by the Owner; and
- (6) final as-built drawings showing all field and other changes.

The documents described in Paragraphs 12(d) (5) and (6) hereof are referred to herein as the "Project Record Documents".

e. Acceptance of Final Payment by the Contractor, a Subcontractor, Sub-subcontractor or supplier shall constitute a waiver of all Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application of Payment. Such waivers shall be in addition to any other waiver described in the Contract Documents.

f. So long as the Contractor has achieved Final Completion as and when required by the Contract Documents, to the extent that the Costs are less than the Guaranteed Maximum Price (excluding reductions in Guaranteed Maximum Price due to Change Orders or Construction Change Directives), the difference between the Guaranteed Maximum Price and Costs shall be shared ("Savings") ~~seventy percent~~ <sup>70%</sup> to the Owner and thirty percent (30%) to the Contractor at Final Payment. Savings shall be determined as follows: ~~seventy percent~~ <sup>70%</sup>

*50% MLB*  
*DM*

- (i) Within thirty (30) days after Final Completion of the Project and acceptance of the Work by the Owner, Architect and Owner's Representative, at such time as the Contractor has submitted sufficient evidence of the Costs of the Work to the Owner, Architect and Owner's Representative, the total Costs of the Work and the Contractor's Fee (collectively, the "Project Costs") shall be approved by the Owner.
- (ii) The approved Project Costs shall be subtracted from the Guaranteed Maximum Price, with the difference constituting the Savings to be distributed as provided above.

**13. LIQUIDATED DAMAGES FOR LATE COMPLETION/BONUS FOR EARLY COMPLETION.**

a. Inasmuch as failure to complete the Project, and all portions thereof, within the time fixed in the Agreement will result in substantial injury to the Owner, and as damages arising from such failure are not reasonably ascertainable at this time and cannot be calculated with any degree of certainty, it is hereby agreed that if the Project is not Completed on or before the Completion Date in accordance with the provisions of the Contract Documents and the Completion Schedule, the Contractor shall pay to Owner as liquidated damages for such delay, and not as a penalty, the sum of \$1,000.00 per day beginning twenty (20) days after the Completion Date until the Project has been Completed.

b. This provision of liquidated damages for delay shall be the sole and exclusive damages for delays, but shall in no manner affect the Owner's right to terminate the Agreement as provided in the General Conditions or elsewhere in the Contract Documents, including the right to damages for reasons other than for delay, or rights Owner may have pursuant to law, or pursuant to any indemnity contained in this Agreement. The Owner's exercise of the right to terminate this Agreement shall not release the Contractor from Contractor's obligation to pay said liquidated damages in the amounts set out in the Agreement.

c. The Owner may, at Owner's option, either charge Contractor directly for the liquidated damages accrued, may reduce the Contract Sum accordingly, and/or may deduct the liquidated damages from the Retainage held by the Owner and from the Final Payment, as the case may be, or any other funds held by Owner to be paid to Contractor or such portion of the liquidated damages as the said Retainage and the Final Payment shall cover. The Contractor shall pay any amounts not covered by funds held by the Owner to the Owner upon demand for the same.

d. If the Project is Completed on or before the Completion Date in accordance with the provisions of the Contract Documents and the Completion Schedule, the Owner shall pay the Contractor an early completion bonus ("Bonus") for the period that the Project is Completed prior to the Completion Date equal to the sum of \$1,000.00 per day but in no event shall such sum be paid for more than thirty (30) days of early Completion. The Bonus shall be paid by the Owner at the time final payment is due and payable pursuant to the terms of the Contract Documents.

**14. SUBCONTRACTORS.**

a. The Contractor agrees that all contracts it enters into with Subcontractors will be on the approved Subcontract Form, and there will be no material changes in any Subcontract Form without Owner's prior written consent. All Subcontracts shall include the provisions set forth as follows:

Owner Initials: *MLB*  
Contractor Initials: *DM*

WARRANTY.

Subcontractor warrants that all materials and equipment furnished under the Subcontract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with these Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If, within one (1) year after the date of Final Completion of the Project, which is the subject matter of this Contract, or within such longer period of time that the warranty of the subcontractor may specify, or within such longer period of time as may prescribed by law, by the contract between the Owner and the Contractor any of the Work to be performed by the Subcontractor is found to be defective or not in accordance with the Contract Documents, Subcontractor shall correct it promptly after receipt of written notice to do so. This obligation shall survive the termination of the Subcontract. The warranty and obligation of the Subcontractor hereunder shall inure to the benefit of any succeeding owner of the Project or portion thereof.

b. All Subcontracts shall include a waiver of any claims for additional sums except for Construction Change Directives in the same manner as set forth in the Contract Documents.

c. Prior to the execution of this Agreement, the Contractor has submitted to Owner, for Owner's approval, a certified list of all Subcontractors with which Contractor has contracted, or intends to contract with, to do portions of the Work.

d. Contractor shall advise on and make recommendation as to the organization and appropriate division of the Drawings and Specifications in order to (i) eliminate areas of conflict and duplication in the work to be performed by the various Subcontractors, and (ii) minimize the likelihood of jurisdictional disputes.

e. Additionally, prior to and as a condition of Final Payment, Contractor shall deliver to Owner an affidavit certifying to the complete list of all Subcontractors, Sub-subcontractors and suppliers who performed any portion of the Work.

15. **SEQUENCING OF THE WORK.** The Contractor acknowledges and agrees, to the best of their ability and practical, that the existing operations of the Building, the Association, and the tenants of the Building will and must continue in operation without interruption during the course of construction and that the Contractor agrees to the best of their ability to must schedule and stage its construction of the Work so as to avoid any interruption to such operations as reasonable.

16. **CHANGES IN THE WORK.**

a. The Owner may, in the Owner's discretion, direct the Contractor to make changes in the scope of the Work. If the changes in the Work result in either an increase or decrease in the cost of the Work, the Contract Sum will be adjusted in accordance with the terms hereof and with Article 7 of the General Conditions as amended by the Supplementary General Conditions.

b. Notwithstanding any contrary provision of the Contract Documents, the Contract Sum may only be adjusted with the Owner's prior written approval; and, any changes in the Work must have the prior written approval of Owner. In addition, the Contractor, Subcontractors, Sub-subcontractors or suppliers shall not be entitled to additional compensation or reimbursement for any of the following:

(1) Changes in the Work made necessary in whole or part as a result of (i) an error, inconsistency, or omission not reported to the Architect and the Owner by the Contractor pursuant to the General Conditions; (ii) correction of any defective or non-conforming Work; or (iii) Owner's exercise of any right or remedy under the Contract Documents resulting from the failure of the Contractor; or consultant employed by the Contractor for the Project; Subcontractor, Sub-subcontractor or supplier, or anyone directly or indirectly employed by any of them to perform their respective duties under the Contract Documents.

(2) Any costs and expenses incurred by Contractor in connection with any Subcontract not approved by Owner pursuant to the Contract Documents.

c. If any approved change order affects the amount of any Contract with any Subcontractor, Sub-subcontractor or supplier of Contractor, the change order shall indicate the name of the subcontractor, sub-subcontractor or supplier, the Contract Sum prior to the change order, the amount of the change order and the new Contract Sum.

d. All changes in the Work initiated by Owner, other than changes in Work described in Paragraphs 16(b)(1) and (2) above, shall be performed at the cost of labor and materials as provided in the Supplementary General Conditions.

e. If the Owner reduces the Scope of the Work to be performed by the Contractor, the Contract Sum will be appropriately reduced by change order.

f. No change order shall be effective unless executed in writing by or on behalf of the Owner. The Contractor shall not commence any change in the Work until Contractor has received a properly executed change order, except for changes in the Work not involving

Owner Initials:

Contractor Initials:

1128  
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an increase in the Contract Sum or which are not material. The Contractor acknowledges that it shall have no claim for additional costs or for an increase in the Contract Sum for changes in the Work commenced without a properly executed change order.

g. If any approved change order results in an increase in the Contract Sum, no payment will be due for the increase until the change in the Work represented by the change order is actually performed. In no event will any payment be due for the increase until the progress payment following completion of the change in the Work represented by the change order is actually performed.

17. **CONSTRUCTION LAYOUT.** The Contractor shall provide all construction layout, chalking and dimensional confirmation. The Owner or any other party designated by Owner, including without limitation, Owner's engineer, shall have the right to inspect the Project to verify that adequate controls are maintained by the Contractor.

18. **VALUE ENGINEERING.** The Contractor will devote its best efforts toward: (i) maintaining the cost level of the Project at the lowest reasonable point consistent with good construction practices and consistent with the quality of the Project; (ii) carrying out Owner's intent and direction of the Contract Documents; and (iii) ensuring the most rapid and efficient construction and completion of the Project. Contractor will bring to the Owner's attention any reasonable possibilities for savings in time and cost and in providing value engineering benefits that may present themselves during the course of Contractor's performance under this Agreement and will confer with Owner, Architect and Owner's Representative periodically in order to determine whether there are any areas whereby design change or otherwise, Cost of the Work and/or time for Substantial Completion may be reduced.

19. **WARRANTY.** The Contractor's warranty obligations pursuant to the Contract Documents, and each Subcontractor, Sub-subcontractor or supplier's warranty, shall inure to the benefit of Owner, to the extent such Work involves other portions of the Project Site, the Association, and their respective successors and assigns. Prior to, and as a condition of Final Payment, Contractor shall provide Owner with a written warranty containing all of the applicable provisions of the Contract Documents relating to such warranty, and which shall set forth the commencement date of the warranty (the date of Substantial Completion) as certified by the Owner's Representative. Also prior to, and as a condition of Final Payment, Contractor shall deliver and assign to Owner all warranties and guaranties received from all subcontractors, sub-subcontractors and suppliers, but no such warranties or guaranties shall relieve Contractor of its warranties or guaranties pursuant to the Contract Documents. Each Subcontractor, Sub-subcontractor and supplier's agreement shall provide for a warranty consistent with the terms of the Contract Documents, and that same will inure to the benefit of Owner.

20. **JOBSITE MEETINGS.** The Contractor shall arrange for weekly (or at such other intervals as Owner may designate) jobsite meetings between the Owner, Owner's Representative (if requested by the Owner) and any appropriate subcontractors, sub-subcontractors, and suppliers at the mutual convenience of the parties for the purpose of inspecting and reviewing the progress of the Work. The Contractor shall prepare an agenda for each meeting and from the notes of each meeting prepare detailed minutes of the meeting and deliver copies of the same to the Owner, Owner's Representative, subcontractors, sub-subcontractors and suppliers (if appropriate), for review and approval within three (3) working days after meeting. At each weekly meeting, the Contractor shall provide to Owner and Owner's Representative its manpower strength reports for that week.

21. **INCIDENTAL WORK.** The Intent of the Agreement is to include all items necessary for the proper execution and completion of the Work by the Contractor, including all labor and materials, services, equipment, implements, machinery, tools, storage, apparatus and means of transportation necessary for the proper execution of the Work. The Specifications are complementary and what is required by one shall be as binding as if required by all. Incidental work to complete the Project and Work that may be reasonable inferable from the Plans and Specifications from the Contract Documents, and which is necessary for the completion, function or use of the Work, and the various elements and components thereof, shall be considered as included in the Work and included in the Contract Sum whether or not such incidental work or inferable Work is specifically noted or described in the Contract Documents.

22. **INTEGRATION.** The Contract Documents represent the entire Integrated Agreement between the Contractor and Owner and supersedes all prior negotiations, representations or agreements, either written or oral. The failure of the Contractor to inspect the Contract Documents, or the failure to obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention, or claim that might have been based on such reading inspection or advice. The Contract Documents may be amended or modified only by written instrument signed by both Owner and Contractor.

23. **ATTORNEY FEES.**

a. In the event of any dispute hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and expenses, whether incurred in litigation, through all trial and appellate levels.

b. Provided the Contractor has been paid, if any Subcontractor, Sub-Subcontractor, supplier, lienors, or any third party should file an action against Owner arising from the prosecution of the Work or Contractor's performance of the Work, the Contractor shall defend the Owner in such action, and shall indemnify the Owner from any and all claims, damages, and liabilities that may arise therefrom, whether or not caused in part by the actions or omissions of Owner except for the percentage of said damages and liabilities finally determined to be attributable to the Owner.

Owner Initials:

Contractor Initials:

AKB  
JMA

24. **STRUCTURAL WORK.** Following the completion of any structural component of the Work and prior to same being covered, Contractor shall give Owner and Owner's Representative at least two (2) business days' notice for the inspection of same.

25. **GOVERNING LAW.** This Contract shall be governed, interpreted and enforced by the laws of the State of Florida and venue in any action to enforce the Contract Documents shall be set in Broward County, Florida.

26. **COUNTERPARTS.** This Agreement may be executed in counterparts by the parties hereto and each shall be considered an original insofar as the parties hereto are concerned, but together said counterparts shall comprise only one Agreement.

27. **TIME OF ESSENCE.** Time shall be of the essence in this Contract.

28. **DRAFTING.** The language of this Agreement is the result of discussion and negotiation between the parties, each of which has read and understands each provision of this Agreement, and interpretation or construction of this Agreement shall not be affected by any determination as to who was the draftsman of all or any part of this Agreement.

29. **SEVERABILITY.** In the event any term of this Contract should be determined by any court to be invalid, such provision shall be construed as deleted and the remainder of this Contract shall be construed to be in full force and effect.

30. **NO WAIVER.** No waiver or modification of any provision of the Contract Documents will be effective unless it is in writing and signed by the party against whom it is asserted. Any such waiver or modification will only be applicable to the specific instance to which it relates and will not be considered to be a continuing or future waiver.

31. **NOTICES.** All notices required pursuant to the terms of the Contract Documents shall be sent to the addresses shown on the first page of the Agreement by certified mail (return receipt requested), hand delivery, or overnight express courier and shall be considered validly delivered on actual receipt. Addresses may be changed by notice in accordance with this procedure.

32. **SURVIVAL OF INDEMNITIES.** All indemnification provisions set forth in this Agreement, or in the Contract Documents, shall survive termination of this Agreement and shall survive Final Payment hereunder.

33. **EQUAL EMPLOYMENT OPPORTUNITY.** In the construction of the Project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex or national origin, and they shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, age, disability, or national origin. Such action shall include, without limitation, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

34. **NO LIABILITY FOR APPROVALS AND INSPECTIONS.** Except as may be otherwise expressly provided herein, no approval to be made by the Owner under the Contract Documents or any inspection of the Work, the Project site or the Project by the Owner, shall render the Owner liable for their failure to discover any defects or nonconformance with the Contract Documents, or a violation of or noncompliance with any federal, state or local statute, regulation, ordinance or code.

35. **MISCELLANEOUS.**

a. **Subparagraph 14.2** of the Agreement is modified to add the following:

If the Owner terminates this Contract for cause, the Contractor shall not be entitled to any further compensation hereunder until all of Owner's claims, damages, and expenses have been determined by Owner and paid.

36. **NO THIRD PARTY BENEFICIARIES.** Nothing in this Agreement is intended to create or shall create a contractual relationship between any third party and the Owner or the Owner's Representative.

**CONTRACTOR:**

**BURKE CONSTRUCTION GROUP, INC.,** a Florida corporation

By: 

Name: David Mactinez

Title: VP

CGC A38309

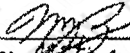
Dated: 12/30/13

Owner Initials: GM

Contractor Initials: DM

OWNER:

GRE PROPERTIES SHERIDAN HILLS, LLC, a Florida limited liability company

By:   
Name: Melissa Bear Avick  
Title: Manager  
Dated: 1/23/2014

Owner Initials: MA  
Contractor Initials: JA

SUPPLEMENTARY PROVISIONS EXHIBIT "A"

**ASSOCIATION RULES AND REGULATIONS**

Owner Initials: MZ  
Contractor Initials: MA