

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Oleander Homes

The Project site is located at northeastern corner of Broadway Avenue and 51st Street in Galveston Texas, and is approximately 11 acres. The Project consists of 375 apartment units in a mix of one, two and three bedroom units.

THE OWNER:

(Name, legal status and address)

[TBD]
c/o McCormack Baron
McCormack Baron Salazar Development, Inc.
720 Olive Street, Suite 2500
St. Louis, Missouri 63101
Telephone: 314-621-3400
Facsimile: 314-421-3289

THE ARCHITECT:

(Name, legal status and address)

[REDACTED]

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ADDITIONS AND DELETIONS:
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The “**Contract Documents**” consist of the Standard Form of Agreement between Owner and Contractor, AIA Document A102-2017, as modified by the parties (the “**Agreement**”), these General Conditions (as defined in Article 1 of the Agreement) the Drawings, the Specifications, Addenda, other documents listed in the Agreement (including without limitation, all exhibits listed in Article 16 therein), and Modifications issued after execution of the Contract, all of which form and are referred to in each document as the “**Contract**,” and are as fully a part of the Contract as if attached to the Agreement or repeated therein. If anything in the other Contract Documents, other than a Modification, is inconsistent with the Agreement, the Agreement shall govern. 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 (and approved by Owner pursuant to Section 7.4 below). Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents, including, without limitation, bidding requirements, advertisements or invitations to bid, instructions to bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor’s bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto with respect to the matters set forth in the Contract Documents 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.

§ 1.1.2.1 The term “Contract,” as used herein and in all the Contract Documents is inclusive of all the Contract Documents identified in Section 1.1.1, above. Terms defined herein and in the other Contract Documents are used in each consistently with the definitions set forth in such documents. All changes, deletions, markings or additions to the Agreement and General Conditions have been intentionally made by the parties to reflect the correct understanding of the parties with respect to the provisions of this Contract, and all provisions modified or altered by such changes, deletions, markings or additions shall be fully binding on the parties as so modified and altered. In the event of any conflict or inconsistency among the terms of any of the Contract Documents, the terms of the first-referenced Contract Document shall prevail to the extent of the inconsistency, in the same order as they are listed in Section 1.1.1, above, and in the event of “other documents” listed in Section 1.1.1 above, in the order so listed, except: (1) that a Modification shall take precedence over that portion of any other Contract Document which it modifies; (2) a change, addition, or deletion from the AIA form documents included in this Contract shall take precedence over any conflicting or inconsistent language in such form; (3) in the event of duplications or conflicts among the Contract Documents relating to the quality of the Work to be performed, the most complete and detailed method of the Work and the highest quality materials and equipment (as determined by Architect), as among the various duplications or conflicts, shall be construed as the requirements, as long as generally consistent with the other Contract Documents and resolved in accordance with Section 3.2.2 below; and (4) with respect to conflicts or inconsistencies between the Specifications and the Drawings relating to the extent of the work to be performed, all work necessary for the execution of the Work (whether shown on the Drawings and not described in the Specifications, or described in the Specifications and not shown on the Drawings) and any work which is obviously necessary to complete the Work within the limits established by the Contract Documents shall be considered as part of the Contract, and shall be executed by Contractor in the same manner and with the same character and quality of material as other portions of the Work without any increase in the GMP or extension of the Contract Time. A duplication of work is not intended by the Contract Documents and any duplication specified shall not become a basis for extra cost to Owner.

§ 1.1.2.2 The Contractor is independently responsible for obtaining, reviewing and coordinating the provisions of all of the Contract Documents, whether or not such documents have been delivered to the Contractor in connection with the request for bid, have been individually signed by the Contractor and Owner or have been physically attached to the Agreement or the General Conditions. In addition, the Contractor is responsible for reviewing all reports, investigations, test data and other documents relating to the Work and the Project Site that have been provided to the Contractor. The failure to review or obtain any such document shall not relieve or excuse the Contractor from compliance with its terms or the terms of any Contract Document. By execution of the Contract, Contractor represents

that it has read and understands all of the Contract Documents and that it can and will comply with all of the provisions therein.

§ 1.1.2.3 The Contractor's proposals and bid submittals in connection with the Project (including, without limitation, any invitations, instructions to bidders issued by the Owner, as well as any communications relating thereto), if any, are not part of the Contract and shall not be the basis for any claim by Contractor. All are superseded by the provisions of the Contract Documents.

§ 1.1.2.4 The Contractor acknowledges that the Owner has or may enter into agreements with one or more lenders in connection with the Project (collectively, "**Lender**"), and that in connection with such agreements and financing, certain changes may be requested by the Lender to this Contract, including the addition of provisions relating to certifications and reports from the Contractor to the Lender. The Contractor agrees that it shall comply with any reasonable modification, request or requirement of the Lender (including, but not limited to, reasonable requests for documentation and certifications), provided such modification, requirement or request does not substantially, materially or unreasonably alter a material or financial term of this Contract (and subject to Contractor's prior review and approval of such modification or request, which shall not be unreasonably withheld).

§ 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.

§ 1.1.3.1 The Contractor shall provide, and as used in the Contract Documents the Work shall include, all labor, supervision, materials, fixtures, special facilities, built-ins, equipment, tools, supplies, taxes, permits (including, without limitation, occupancy permits, unless precluded by the Drawings and Specifications), building and other permit related inspections, and other property and services necessary to timely and properly produce all work and completed construction required or reasonably inferable from the Contract Documents and all work, services and materials necessary to produce fully connected, complete, operational and functional Project for the Owner as contemplated by the Contract Documents. In determining what is reasonably inferable from the Contract Documents, all such documents shall be construed together, and shall not be read by separate trade areas or design divisions, and shall be read as intending fully connected, complete, operational and functional systems and finishes. In this regard, Contractor acknowledges and agrees that prior to the date the Contract was executed, Contractor had various meetings with the Architect and the Owner to: (a) review the Drawings and Specifications, as then prepared by the Architect; (b) discuss the scope of the Work required for the Project; (c) identify and resolve issues and questions regarding the scope of Work for the Project; (d) clarify the intended nature and character of, the scope of Work for the Project; (e) further develop, describe, delineate and specify the Work; (f) prepare cost estimates and take-offs and assess the cost of performing and constructing the Work as set forth in the Drawings and Specifications, as then prepared by the Architect; (g) identify and evaluate value engineering suggestions and alternatives; and (h) ultimately agree upon the GMP based upon Contractor's participation in such meetings and discussions. Accordingly, Contractor agrees that the GMP includes contingencies to account for the further refinement or description of the Work consistent with (i) the Contract Documents in existence as of the date of the Agreement, and reasonably inferable therefrom, plus written specifications, directions and clarifications, and/or (ii) the discussions, meetings, consultations and reviews described in this Section (including, without limitation, items, equipment, materials, finishes, requirements and other work or services identified to Contractor as being part of the Work in such meetings, discussions, consultations and reviews) and that, therefore, Contractor shall not be entitled to any increase in the GMP or extension of the Contract Time with respect to any such further refinement or description of the Work.

§ 1.1.3.2 The Contractor acknowledges that it may be responsible, through the retention of certain design/build subcontractors who shall be under contract with the Contractor, for the final design and engineering of certain elements of the Work, including, but not limited to: **TBD** (which work is referred to herein as the "**Design/Build Work**"); provided, however, that Owner and Contractor acknowledge and agree that: (i) Prime Subcontractor, through the Master Subcontract and pursuant to its terms, will be responsible for the performance of all such Design/Build Work through direct contracts with design/build subcontractors; and (ii) Contractor (meaning, for purposes of this clause (ii), the Galveston Housing Authority) will not contract directly with any design/build subcontractors performing the Design/Build Work. Contractor further acknowledges that the Design/Build Work is set forth in the Contract Documents only in outline form. Contractor agrees, however, that with respect to the Design/Build Work, Prime Subcontractor shall provide, through design/build subcontractors retained by Prime Subcontractor pursuant to the Master Subcontract, all work or services (of either an engineering or construction nature) necessary to provide the

Owner with full, complete and operational systems, in compliance with all applicable codes and industry standards, whether or not all such work is currently itemized in the Contract Documents in full and exact detail. The Contractor further agrees that the later refinement or description of the Design/Build Work, whether by oral instruction or the issuance of further plans, specifications, directions or clarifications, shall not entitle the Contractor to any compensation in addition to the GMP unless such later description involves work of a materially different nature, character, scope or cost (other than refinement) than that set forth in the Contract Documents in existence as of the date of the Agreement. The Contractor agrees that the Design/Build Work shall comply with applicable Laws (as defined in the Agreement), and with the requirements and design concepts established in the Contract Documents. Any completed or installed Design/Build Work, which does not so comply, shall be corrected, modified, repaired or replaced promptly and at no cost to the Owner. Owner agrees that by providing or furnishing Design/Build Work, the Contractor is not holding itself out as an architect or engineer, nor practicing either of those professions. Contractor is merely furnishing the services of others to the Owner through subcontractors, who are licensed or authorized architects and engineers, as applicable, and Owner shall not refuse to pay any portion of the Contract Sum on the basis that Contractor is not a licensed or authorized architect or engineer. Contractor acknowledges and agrees that it must require Prime Subcontractor to require all subcontractors performing Design/Build Work to carry professional errors and omissions insurance coverage in amounts reasonably approved in writing by Owner and shall furnish evidence of the same to Owner prior to the commencement of each such subcontractor's work on the Project. Contractor expressly acknowledges and agrees that all drawings, plans, specifications, renderings, models, special art work and other work provided as part of the Contractor's or its Subcontractors' services in connection with the Design/Build Work required pursuant to this Agreement, (collectively referred to herein as the "**Design-Build Drawings**") shall be the sole property of the Owner, whether the Project is executed or not, and shall not be used by any person other than the Owner on projects other than this Project. Contractor acknowledges and agrees that the Master Subcontract shall incorporate the provisions of this Section and shall require Prime Subcontractor to incorporate the provisions of this Section in all contracts for the services of subcontractors performing Design-Build Work. Owner agrees that Contractor may retain the original set of the Design-Build Drawings for record. Contractor agrees that the Owner shall have the right to use the Design-Build Drawings and the ideas and designs contained therein for the completion and construction of the Project, Owner's occupancy, use, maintenance and repair of the Project, and for additions, alterations or future construction to the Project, without paying Contractor (or its subcontractors) any compensation other than the amounts payable to Contractor pursuant to this Contract for services actually provided to Owner, or in the event of termination such amounts as are required by this Contract as a result of such termination. If requested, upon payment of undisputed fees and expenses due and owing Contractor in accordance with this Contract, Contractor, within seven (7) days after the date of termination, shall deliver to Owner a complete set of all Design-Build Drawings and specifications prepared for the Project by Contractor and its subcontractors prior to the date of termination.

§ 1.1.3.3 Contractor expressly acknowledges and agrees that during the prosecution of its Work under the Contract Documents, third party contractors, including, without limitation, separate contractor(s) under contract with Owner or Owner's affiliates for certain public improvements work (the "**Public Improvements Contractor**"), will also be performing certain other work on or near the site of the Project (the "**Project Site**") where the Contractor performs its Work under this Contract (collectively, the "**Simultaneous Work**") and that Contractor will or may also be performing, under a separate contract or contracts (collectively, the "**Separate Contracts**"), certain other work as may be agreed upon by the parties, on or near the Project Site and related to this Project and/or other phases of the overall Oleander Homes development (all of the foregoing work is collectively referred to herein as the "**Contractor's Separate Work**"). Contractor acknowledges and agrees that it shall be responsible for sequencing its Work under this Contract with the requirements of the Separate Contracts, including the ability to commence and achieve Substantial Completion and Final Completion required hereunder in accordance with the requirements of this Contract. In this regard, Contractor acknowledges and agrees that the schedule for performing Work hereunder is sufficient to allow Contractor to timely discharge Contractor's obligations under the Separate Contracts (if any) and vice-versa. Contractor further agrees to maintain close communication, and shall coordinate its activities and work sequence, with the contractors performing the Simultaneous Work, and Contractor shall coordinate its Work hereunder with all of the Contractor's Separate Work, so as not to adversely impact the Simultaneous Work or the Contractor's Separate Work or preclude any such work from being performed pursuant to the obligations of the contract documents relating thereto, or to adversely impact Contractor's Work under these Contract Documents. In addition, Contractor agrees that it shall hold and participate in weekly meetings with the Public Improvements Contractor to, among other things, coordinate the Simultaneous Work and site logistics. Contractor further acknowledges and agrees that it has included in the GMP all costs necessary to reasonably coordinate and sequence its Work, while the Simultaneous Work is being performed on or adjacent to the Project Site, and with the Contractor's Separate Work. With respect to Simultaneous Work and the Contractor's Separate Work, the Contractor agrees that such work shall not constitute an Excused Delay (as that term is defined in Section 15.1.5.3) and the Contractor shall not be entitled to any extension in the Contract Time, or

additional compensation or any increase in the GMP, arising from or relating in any way to the Simultaneous Work or the Contractor's Separate Work, including, but not limited to, claims alleging that such Simultaneous Work or Contractor's Separate Work delayed, impeded or accelerated the Contractor's Work hereunder, adversely impacted the anticipated sequence of the Work hereunder, or caused the Contractor or its Subcontractors to sustain any labor inefficiencies, all of which such claims, or any other claims relating in any way to the Simultaneous Work or the Contractor's Separate Work, are hereby expressly waived.

§ 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. Drawings are intended to show general arrangement, design and extent of the Work and are partly diagrammatic. As such, they are not intended to be scaled for measurements or to serve as Shop Drawings, the responsibility for preparation of which shall be entirely the Contractor's. Large scale Drawings shall take precedence over small scale Drawings and figures, dimensions and noted materials shall take precedence over graphic representations. Architectural Drawings shall take precedence in regard to dimensions when in conflict with mechanical/electrical or structural Drawings except for the size of the structural members. Before beginning any Work involving dimensions that depend upon or are affected by existing conditions, the existing conditions shall be verified and shall take precedence over the Drawings with regard to dimensions.

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Intentionally Deleted.

§ 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.

§ 1.2.1.1 Intentionally Deleted.

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

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

§ 1.2.4 The Contractor agrees that the later refinement, development or description of any Work set forth in or reasonably inferable from the Contract Documents whether by oral instruction, written specifications, directions or clarifications, shall entitle the Contractor to compensation in addition to the GMP, only if: (i) such later description involves work of a materially different nature, character, scope or cost (other than refinement) than that set forth in or reasonably inferable from the Contract Documents in existence as of the date of the Contract, and (ii) Owner has authorized the Contractor to proceed with such work in advance and in writing in a signed Change Order or CCD. To the extent the Contractor believes that such later description of the Work satisfies item (i) in the previous sentence,

but Owner disagrees, Owner may issue a CCD upon which Contractor shall execute the Work and may submit a Claim in accordance with the applicable provisions of the Contract Documents.

§ 1.2.5 The Contractor shall be solely responsible for assigning or dividing the Work among Subcontractors as necessary to accomplish the proper and timely completion of all Work, and shall require all Subcontractors to agree, in writing, to the Project Schedule. The failure of the Contract Documents to identify the trade or type of Subcontractor responsible for each or any element of the Work or to assign or divide the Work to or among different Subcontractors shall not entitle the Contractor to any additional compensation from the Owner.

§ 1.2.6 The Contractor acknowledges and agrees that the Architect's drawings are diagrammatic. Any variations required for conformance to the intent of the diagrammatic drawings shall be made without additional cost and without an extension in the Contract Time. Where there are intersections involving various ducts, piping and equipment, particular consideration shall be given to clearances required for future maintenance and service. Where tight conditions or interferences develop, the Contractor shall confer with the Subcontractors whose work is affected to reach an acceptable solution. The suggested solution shall be submitted to the Architect and Owner for review and approval. The Contractor is deemed to have taken into consideration that minor interferences will occur and it shall be understood that extras for necessary minor variations will not be considered. The Contractor and all Subcontractors shall verify measurements at the Project Site.

§ 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 Instruments of Service, including the Drawings and Specifications, and other documents prepared by the Architect through which the Work to be executed by the Contractor is described shall not be used by any person other than the Owner on projects other than the Project unless expressly authorized in writing by both Owner and Architect. The Contractor may retain one Contract record set. All copies of such Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Owner and Architect on request, or upon completion of the Work. The Instruments of Service prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are granted a limited license to use and reproduce the applicable portions of 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 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.

§ 1.5.3 As used herein the term "**Proprietary Information**" shall mean all information which the Contractor acquires from the Owner, or arises out of the Work on the Project and concerns the present and future plans of the Owner, or pertains to the operations of the Owner's business, or to the use of the Project (Proprietary Information shall not include information that is or becomes part of the public domain except if through a disclosure in violation of this Contract.) The Contractor represents to the Owner that it has and employs policies and procedures, including, but not limited to, notices to its Subcontractors and their respective employees, designed to protect Proprietary Information and to prevent its unauthorized publication and disclosure. The Contractor agrees that the Owner's Proprietary Information shall be subject to such policies and procedures. Specifically, and in addition, the Contractor agrees that it will take reasonable measures to prevent disclosure of such Proprietary Information to any third person and will not use any Proprietary Information other than on the Owner's behalf, except as the Owner may otherwise authorize in writing. The Contractor also agrees to take all reasonable precautions to safeguard any documents which the Owner may supply to it hereunder which contain Proprietary Information. The Contractor may make copies of such documents to the extent and only to the extent necessary for the performance of its obligations hereunder. The Contractor agrees, upon completion of the Project, to return to the Owner or destroy all documents containing

Proprietary Information. All public relations matters arising out of or in connection with the Project shall be the responsibility of and be handled by the Owner. The Contractor shall not make any announcement or publication in connection with the Project without the Owner's prior written approval. The Contractor shall have the right to include representations of the Project among the Contractor's promotional and professional materials, only with the prior written approval of the Owner. Project signs visible from off the Project Site and displayed for the purposes of advertising participation on the Project may only be erected if approved in advance by the Owner in writing.

§ 1.6 Transmission of Data in Digital Form

§ 1.6.1 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.

§ 1.6.2 Intentionally Deleted

§ 1.7 Intentionally Deleted.

§ 1.8 Intentionally Deleted.

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.

§ 2.1.1.1 The Contractor acknowledges that, in addition to the Architect, the Owner may utilize its own personnel and may retain certain consultants to assist the Owner with respect to various aspects of the Project, including monitoring of the Contractor's Work. In this regard, it is expressly understood that such oversight services (or any other consulting services performed by Owner's other consultants) shall not relieve, reduce or diminish Contractor's obligations hereunder, nor in any way constitute a waiver or acceptance by Owner with respect to the same. Any consultants retained by the Owner are solely advisors to the Owner and shall not have authority to act as a representative or agent of Owner or to act on behalf of the Owner in connection with the Project or the Contract unless specifically so indicated to the Contractor by the Owner in writing. The Contractor agrees to cooperate with, and make the Work accessible for review and observation by, the Owner's personnel and any consultants hired by Owner.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen (15) 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 Project Site, and the Owner's interest therein.

§ 2.2 Intentionally Deleted.

§ 2.2.1 Intentionally Deleted.

§ 2.2.2 Intentionally Deleted.

§ 2.2.3 Intentionally Deleted.

§ 2.2.4 Intentionally Deleted.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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: (i) the Owner fails to make payments to the Contractor as the Contract Documents require; (ii) a change in the Work materially changes the GMP; or (iii) 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 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.

§ 2.3.2 See Section 4.1.

§ 2.3.3 Intentionally Deleted.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the Project Site, and a legal description of the Project Site that are to be identified in the Contract Documents. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner, as provided in the Contract, but shall perform reasonable due diligence and exercise proper precautions relating to the safe performance of the Work and any other verification required by the Contract Documents, including, without limitation Section 3.2.1 below.

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. All other copies of the Drawings and Specifications or other Contract Documents shall be at Contractor's sole cost and expense, which may be included as a Cost of the Work.

§ 2.3.7 The Instruments of Service, including, but not limited to, the Drawings and Specifications for the Project, and any surveys, soils and analyses, environmental testing and other information provided by the Owner to the Contractor concerning the existing conditions at the Project Site, will not be, or have not been, performed or developed by the Owner, but instead by independent contractors retained by the Owner. The Contractor may reasonably rely on such information; however, the Owner does not warrant or guarantee, and shall not be responsible for or liable for, the correctness, accuracy or completeness of any such information or any conclusions drawn therefrom by the Contractor. In the event the Contractor asserts a claim based on allegations that information provided by the Owner to the Contractor regarding existing conditions at the Project Site are inaccurate, the Contractor's sole and exclusive rights and remedies against the Owner arising out of or relating to any incorrect, inaccurate or incomplete drawings and specifications, or other information relating to the Project Site, shall be an increase in the GMP, and/or an extension of the Contract Time, to the extent (if any) permitted by the Contract Documents. However, nothing in the Contract Documents shall be deemed to prohibit Contractor's rights, if any, directly against any of Owner's independent contractors (not including Owner Representative), arising out of any incorrect, inaccurate or incomplete drawings, specifications or other information prepared by them. The Owner shall reasonably cooperate with the Contractor in connection with its prosecution of claims directly against Owner's independent contractors (not including Owner Representative) relating to any incorrect, inaccurate or incomplete drawings, specifications or other information prepared by them unless Owner believes such claims lack merit. Any and all legal fees and costs incurred in connection with the prosecution of such claims shall be the sole responsibility of Contractor.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor fails to promptly correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or 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.

§ 2.4.2 The Owner, with or without cause, and in its sole and absolute discretion, may order the Contractor at any time, to stop the work upon written notice, signed by Owner or by an agent specifically empowered by the Owner, including the Owner Representative, subject to the provisions contained in Section 14.3 of these General Conditions.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects or fails to continuously and diligently carry out the Work in accordance with the Contract Documents, including, without limitation, the Project Schedule and fails within a ten (10) -day period after

receipt of written notice from the Owner to commence and continue correction of any such default, failure or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies (either with the Owner's own forces or by hiring another contractor to perform the Work that the Contractor is failing or neglecting to carry out). In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor for the 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 and for attorneys' fees. 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 its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 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 Project 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. The Contractor shall be responsible to examine carefully all of the Contract Documents and all reports, investigations, test data and other documents relating to the Work and the Project Site prepared by the Architect, the Owner or by the Owner's separate consultants, and provided to the Contractor, and will apprise itself with all other conditions relevant to the performance of the Work which are capable of ascertainment through a thorough investigation of the Project Site. The Contractor shall make its own evaluation and analysis of the information relating to the Project Site and the Work during the pre-construction phase ("**Pre-Construction Phase**") and shall clarify and resolve all questions or uncertainties relating to same. The Contractor shall not be entitled to any increase in compensation above the GMP as a result of any condition at the Project Site which should have been reasonably detected or anticipated by the Contractor as provided herein, and the Contractor shall perform all work required by or as a result of such condition, regardless of cost or expense, at the Contractor's own risk, cost and expense.

§ 3.2.2 During the construction of the Project, the Contractor shall review and compare the various current Contract Documents and any changes or addenda thereto relating to each distinct aspect of the Work. If from the review and comparison of the Contract Documents issued to the Contractor prior to proceeding with the affected Work, Contractor becomes aware of a conflict, inconsistency or ambiguity in the instructions applicable to such Work, the Contractor shall promptly report such inconsistency, conflict or ambiguity to Owner and shall secure written instructions from Owner prior to proceeding with the Work affected by or involving such inconsistency, conflict or ambiguity. If the Contractor proceeds with such Work without first giving Owner notice thereof and being ordered to proceed therewith by Owner, or if, in connection with the construction the Contractor proceeds with Work that it actually knows, or should know, contains or involves an inconsistency, conflict or ambiguity or that violates an applicable Laws without first giving Owner notice thereof and being ordered to proceed therewith by Owner, the Contractor (without any increase in the GMP) shall be responsible to the Owner for any delay therewith and for all costs, damages or losses suffered by the Owner as a result of any Work so performed by the Contractor.

§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to Owner and Architect, but 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. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable Laws, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

§ 3.2.4 By executing the Agreement, the Contractor represents that it has visited the Project Site, has carefully examined all of the Contract Documents upon which the GMP is based, has reviewed all information, data and documents regarding the conditions at the Project Site made available to the Contractor by the Owner prior to the execution of the Contract, or of which the Contractor otherwise was, or should have been, aware, and has acquainted itself with all other conditions relevant to the Work. Based on the foregoing, the Contractor shall not be entitled to any increase in the GMP or to any extension in the dates for Substantial Completion or Final Completion because of, and assumes full and complete responsibility for, all risk (including, without limitation, risk of loss) in connection with the Work caused by, any obstructions, difficulties or conditions at the Project Site disclosed by the information made available to the Contractor by the Owner prior to the execution of the Contract, or of which the Contractor otherwise was, or should have been, aware, and/or disclosed by a reasonably prudent visit to and visual examination of the Project Site prior to the execution of the Contract. The Contractor agrees that, in the event an obstruction, difficulty or condition is encountered at the Project Site, which the Contractor contends was unforeseen and unanticipatable, the Contractor shall promptly notify Owner of such condition, and in no event later than three (3) days after its discovery, and thereafter shall meet with Owner and Architect to discuss recommendations and alternatives for responding to the condition and minimizing its impact on the GMP and/or dates for Substantial Completion or Final Completion. The Contractor shall perform no Work involving or affected by such condition until after notifying Owner and receiving specific directions from Owner as to the performance of such Work. The failure of the Contractor to notify Owner of any such condition within three (3) days of its discovery as required by this Section shall constitute a waiver by the Contractor of any claim for an increase in the GMP and/or extension of the dates for Substantial Completion or Final Completion as a result of such condition and shall mean that the Contractor shall perform all Work involving or affected by any such condition without any increase in the GMP or extension of the dates for Substantial Completion or Final Completion. If an obstruction, difficulty or condition is one which was not disclosed to the Contractor as set forth above, then the Contractor (provided notice has been timely given as required by this Section) shall be entitled, as its sole and complete remedy, to an increase in compensation calculated pursuant to Section 15.1.5 herein, together with an extension of the dates for Substantial Completion or Final Completion measured by the number of days or portions thereof, if any, that the Substantial Completion or Final Completion of the Work is actually delayed as a direct result of the existence of the obstruction, difficulty or condition.

§ 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 in accordance with the Contract Documents. 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 and Owner which are acceptable to the Contractor. The Contractor acknowledges and agrees that neither the Owner or the Architect nor any consultant hired by the Owner, are under any obligation to inspect the Work or discover defects or deficiencies in the Work. The inspection, observation or acceptance of the Work by the Owner or the Architect or any consultants retained by Owner shall not in any way constitute an acceptance of defective or improper Work (unless specifically so stated by Owner in writing) and shall not make the Owner or Architect or such consultants responsible for means, methods, sequences or techniques used to perform the Work, which items shall remain the sole responsibility of the Contractor. Similarly, the failure of the Owner or the Architect or any such consultants to discover or give notice of any defects, deficiencies or other problems in the Work shall not constitute a waiver or acceptance thereof and shall not in any way affect, or reduce the Contractor's responsibilities to perform the Work consistent with the terms of the Contract Documents.

§ 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, under the direction of, or on behalf of, the Contractor or any of its Subcontractors.

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

§ 3.3.4 The Contractor shall perform the Work in a skillful and competent manner in accordance with applicable standards of the construction industry and the Contract Documents. The Contractor shall be responsible to the Owner

for errors or omissions in construction and failure to perform this Contract. All Work shall be performed only by appropriately skilled personnel in sufficient numbers, trained and experienced, and familiar with the materials and methods indicated or specified, and familiar with the manufacturer's recommended method of installation and all applicable codes, ordinances and industry standards applicable to the construction of the Work.

§ 3.3.5 Beginning with the commencement of the Work, the Contractor shall hold weekly progress meetings at the Project Site, or at such other time and place as is acceptable to Owner. At such meetings, the progress of the Work shall be reported in detail with reference to the Project Schedule, and all problems or other issues relating to the Work shall be discussed and resolved. Each Subcontractor then performing work on the Project shall have a competent representative available upon Owner's request at each weekly meeting to report on the condition of his work and to receive information regarding the performance of future work by the Subcontractor. The Contractor shall provide Owner and Architect with at least three (3) days prior notice of any meeting held pursuant to this Section and shall allow Owner and the Architect to attend and participate in each such meeting. The Contractor shall keep minutes of each meeting held pursuant to this Section and shall circulate the minutes of each meeting to Owner, Architect and all Subcontractors (and other persons as may be appropriate) no later than five (5) working days after the meeting is concluded.

§ 3.3.6 Contractor acknowledges and agrees that the Project is adjacent to occupied sites and that, accordingly, in connection with performing the Work, Contractor and the Subcontractors will use only those routes prescribed by Owner for the Work (including, without limitation, for Contractor's and Subcontractors' trucks and other equipment, their personnel and for access to the Project Site generally) and/or as otherwise permitted or required by the Contract Documents, and that Work will be done only during approved construction hours, which may be extended by approval of Owner. Contractor and the Subcontractors will at all times cause the roads near the Project Site to be free of construction dirt, trash, debris, or other materials to the extent the Work causes any of the foregoing items to be present on such roads or on the site adjacent to the Project Site.

§ 3.4 Labor and Materials

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

§ 3.4.2 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. Contractor agrees that it shall comply, in all respects, with all rules, regulations and other requirements established by Owner with respect to the Project Site. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit smoking inside any structures at the Project Site at any time.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. 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 or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All manufactured articles, materials, and equipment shall be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by the Contractor as directed by the manufacturer unless otherwise specified. In addition to the warranties provided for in Section 3.5.1 of these General Conditions, the Contractor represents and warrants to Owner that all Work, materials and equipment furnished under this Contract shall conform to the Contract Documents and will be free from faults and defects in workmanship or materials. All Work not conforming to these standards shall be considered defective. Further, the Contractor agrees that all guarantees or warranties of equipment

or materials furnished to the Contractor or Subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of, and are hereby assigned to, the Owner.

§ 3.5.3 Subsequent to Substantial Completion of the entire Work or any applicable designated portion thereof, and prior to the Owner's initial occupancy and use of the Project, the Contractor shall schedule and conduct with the Owner a complete review and operational demonstration of all equipment and mechanical and electrical systems installed by the Contractor on the Project and shall also review the operation and maintenance of such systems with the Owner's maintenance personnel. This review and demonstration shall be scheduled and coordinated with the Owner to coincide with the Owner's first full use of each piece of equipment or each system involved. Prior to this review and demonstration, and until Owner notifies the Contractor otherwise, the Contractor shall be responsible for the maintenance and operation of the systems, and the Owner shall not be deemed to have accepted the Work for the purposes of the Contractor's warranties and exclusions thereof in Section 3.5.1. Subsequent to this review, the Contractor, at no cost to the Owner, shall promptly make all adjustments or corrections and shall balance all systems in order to make all equipment and systems perform as required by the Contract Documents. If necessary or requested by the Owner, the Contractor shall require the Subcontractor, supplier or materialman responsible for any such equipment or system to participate in the review and/or perform any required adjustments, corrections or balancing.

§ 3.5.4 All warranties provided in the Contract and all provisions for correction of Work in Article 12 shall include Work of Subcontractors. Limitations on warranties and limitations on the Contractor's obligation to correct Work shall not apply to latent defects in the Work nor to any specific warranties contained in or required by any of the Contract Documents. Failure of manufacturers to guarantee products will not relieve the Contractor of its obligations under this Contract. The Contractor shall not be required to warrant a product that the manufacturer will not warrant due to its application as specified in the Contract Documents, provided the Contractor gives Owner prompt written notice of such fact upon learning of the manufacturer's position (in which event the Contractor should not proceed with the application directed by the Contract Documents until receiving further direction from Owner and Architect). Subcontractors shall warrant their work to the Owner and Contractor. The Contractor shall be responsible for any costs or expenses arising in connection with or as a result of any defective and/or nonconforming Work, including the fees for any additional professional services of the Architect necessitated thereby. Notwithstanding anything to the contrary herein, Contractor shall have no liability for the failure of any product or equipment specified by the Owner unless such failure is the result of the Contractor's defective and/or non-conforming Work.

§ 3.5.5 The warranties provided in Section 3.5 of these General Conditions are not limited by the provisions of Section 12.2.2 of these General Conditions. In addition, all warranties provided in Section 3.5.1 of these General Conditions or elsewhere in the Contract Documents shall survive any termination of this Contract by the Owner with or without cause.

§ 3.5.6 In addition to all of Contractor's warranties and obligations to correct defective Work provided by law or as set forth in any of the Contract Documents, the Contractor agrees, upon notice from the Owner, to pay for and, if requested, correct, repair, restore and cure any damage or injury, whenever the same shall occur, resulting from any defects, errors, omissions or failure in workmanship or material, and to defend, indemnify and hold the Owner Indemnitees harmless of, from and against any and all claims, losses, costs, damages and expenses, including attorneys' fees, suffered by the Owner as a result of such damage or injury, whenever such damage or injury shall occur. This defense, indemnification and hold harmless obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 3.5.7 The commencement in terms of the guarantees and warranties required by the Contract Documents shall not, in any manner, be affected by any delay in the commencement, progress or completion of the Work, regardless of the cause therefor.

§ 3.5.8 Notwithstanding anything to the contrary contained herein with respect to warranties, it is understood and agreed that foregoing warranties shall not affect, limit or impair the Owner's rights against the Contractor with regard to latent defects in the Work which do not appear within the applicable warranty period and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by the Owner within such warranty period. The Contractor shall promptly correct and cure any such latent defects which are reported to the Contractor by the Owner in writing.

§ 3.5.9 Contractor agrees that all warranties hereunder shall be deemed to run to the benefit of, and may be assigned to, the successors in interest to Owner and/or any tenant of Owner.

§ 3.6 Taxes

The Contractor and each Subcontractor 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 and shall pay all taxes measured by the wages of its employees and any business privilege taxes. Notwithstanding the foregoing, it is acknowledged and agreed that the parties intend for the transactions contemplated by this Contract (including, without limitation, all transactions whereby any Work is provided by Subcontractors in connection herewith) to be exempt from the obligation to pay such sales, consumer, use and similar taxes, and, in recognition of such exemptions, the parties agree that Contractor shall not charge Owner any such taxes for any otherwise taxable items that Contractor or any Subcontractor provides directly or indirectly to Owner. In the event Contractor receives notice that any governing authority challenges or questions the tax exempt status of the transactions undertaken pursuant to the Contract, Contractor shall immediately notify Owner and further agrees to cooperate with Owner as it may reasonably request from time to time in order to protect and preserve the tax exempt status of the transactions that are the subject of this Contract. The Contractor shall defend, indemnify and hold the Owner Indemnitees harmless (including, but not limited to, the payment of attorneys' fees), from all such taxes that are not paid by Contractor. This indemnification, hold harmless and defense obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Contractor shall pay for, and secure, all required building and other permits and/or licenses (whether federal, state, local or otherwise) required in connection with the performance of the Work, including applying, securing and paying for all required governmental inspections, testing, approvals required with respect to such permits and licenses and any other governmental fees and licenses.

§ 3.7.1.1 In addition to its obligations under Section 3.7.1 above, Contractor shall obtain and pay for all state and local use fees and permits, all utility connection and tap fees, traffic control, mechanical, plumbing, electrical, sprinkler, erosion control and all other fees, licenses and inspections necessary for the proper execution and completion of the Work.

§ 3.7.1.2 The Contractor shall be responsible to prepare the Project Site and coordinate with all utilities, public and private, as though such utilities were a Subcontractor of Contractor, for installation of utilities and related services at the Project Site. Contractor shall provide to Owner copies of any and all correspondence to or from the utilities. In addition, within thirty (30) days of commencement of construction on the Project, the Contractor shall provide Owner written notice of any fees, deposits or letters of credit which the Owner is required to pay or deposit with a utility in connection with the provision of services to the Project Site.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable Laws, including, without limitation, lawful orders of public authorities and public and private utilities.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable Laws, including, without limitation, lawful orders of public authorities and public and private utilities, 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 Project Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents and which were not, and could not have been, discovered following the examination and review set forth in Section 3.2, 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 three (3) calendar days after first observance of the conditions Owner, in consultation with Architect, shall determine whether an increase in the Contractor's cost or time required for, performance of any part of the Work is warranted and shall within a reasonable amount of time issue a CCD to address these issues.

§ 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 GMP and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the GMP 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 Project Site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the Project Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the GMP 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 prior to the start of construction and subject to the approval and agreement of Owner, designate one (1) individual to serve as its "**Project Superintendent**." The Project Superintendent so designated shall be principally responsible for coordinating the Work on the Project and shall be present on the Project Site as appropriate during each day when the Work is being performed in order to ensure the timely and proper performance of such Work. If the Project Superintendent is not physically present on the Project Site for any extended period, he shall be available by telephone and paging device to respond to emergencies, problems and questions as they arise. The Project Superintendent shall communicate with the Contractor, Owner, the Architect, and all other persons involved with the Project as necessary to accomplish the timely and proper completion of all Work on the Project. The Project Superintendent shall represent the Contractor, and communications given to the Project Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 Intentionally Deleted.

§ 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 Project Superintendent without the Owner's consent, and no new person may be designated as Project Superintendent without the prior approval and agreement of Owner, except in the event that the person designated as Project Superintendent is no longer employed by Contractor, in which event the new person designated as the replacement Project Superintendent shall be subject to Owner's approval.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, within seven (7) days of the first scheduled draw, shall prepare and submit for Owner's and Architect's information and approval, a Contractor's construction schedule for the Work (the "**Project Schedule**"). An initial Project Schedule is attached to the Agreement as **Exhibit E**. The Project Schedule shall not exceed the time limits set forth in the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, including, without limitation, in connection with any separate contractors pursuant to Section 6.1.3 below, 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 as required to complete the Work within the Contract Time and as otherwise required by the Contract Documents.

§ 3.10.1.1 The Contractor shall, on each business day, prepare a daily force and activity report on a form approved by Owner which Contractor shall make available for Owner's review, copying and inspection at all reasonable times.

§ 3.10.2 The Contractor shall prepare and submit a submittal schedule for the Architect's and Owner's approval, promptly after execution of the Contract, and thereafter as necessary to maintain a current submittal schedule. The

submittal schedule shall (1) be coordinated with the Project Schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in the GMP 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 Project Schedule and as required to complete the Work within the Contract Time and as required by the Contract Documents. The Project Schedule shall be maintained and updated monthly (or more frequently if Owner determines that it is necessary) in such form (*e.g.*, bar chart, CPM) and shall contain such information as Owner and Architect request. In addition, if requested by Owner or Architect, the Contractor shall provide such additional information (such as daily force and activity reports, material purchase and delivery status reports and reports of progress against schedule milestones) as Owner or Architect deem necessary to monitor the status of the Work and respond to any delays thereto.

§ 3.11 Documents and Samples at the Project Site

The Contractor shall maintain at the Project Site for Owner, one (1) copy of the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one (1) copy of the 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. In addition, Contractor shall deliver all submittals to Owner electronically. At the conclusion of the Work on the Project, these marked drawings shall be given to the Architect and may be used by the Architect in connection with Architect's review and approval of the as-built drawings, delivered by Contractor showing all construction work performed on the Project as set in place during construction and revised to show the foregoing information and all changes made during construction from the original drawings. The Contractor shall be responsible and liable to the Owner for accurately and completely recording all the information required by this section on the marked set of drawings and shall, at no cost to the Owner, review the as-built drawings with the Architect to verify that this information has been accurately incorporated in the as-built drawings.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, with a copy to Owner, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and Owner 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. The Architect shall have no obligation to review any submittal from the Contractor unless the actions required by this Section 3.12.5 and Section 3.12.6 have been taken and the submittals have been reviewed and marked by the Contractor to indicate field conditions, proposed deviations from the Contract Documents and any other matters affecting design intent. The Contractor shall be responsible to the Owner for all costs and delays caused by the Contractor's failure to comply with the provisions of this Section 3.12.5 and of Section 3.12.6 below.

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation in writing 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 Except as set forth in Section 1.1.3.2, the Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 To the extent the Work requires that professional services are to be provided, Contractor represents that it or its Subcontractors can provide such services in conformance with 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 and accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall provide temporary weather tight enclosures for all exterior openings, as soon as walls and roof are built and to the extent necessary to protect the Work from weather conditions and to allow the Work to be performed within the Contract Time and the Substantial Completion Dates for the Work or any applicable designated portion thereof, or Final Completion.

§ 3.12.10.2 Intentionally Deleted.

§ 3.13 Use of the Project Site

§ 3.13.1 The Contractor shall confine operations at the Project Site to areas permitted by applicable Laws and the Contract Documents and shall not unreasonably encumber the Project Site with materials or equipment.

§ 3.13.2 The Contractor shall be solely responsible for all material or equipment stored by it or by any Subcontractors on the Project Site. Beginning with the commencement of construction and continuing through Final Completion of the Project, the Contractor shall be responsible for the security of the Project Site, including all tools, materials, equipment and completed Work on the Project Site. The Contractor, without any increase in the GMP, shall take such actions as may be necessary to maintain such security, including, but not limited to the erection of temporary security fencing around the Project Site. The Contractor shall properly safeguard and store any combustible material necessary

to the Work so as to protect against the possibility of fire or other damage. The Contractor shall be solely responsible for all damage, cost or expense caused by the use or storage of combustible materials at the Project Site, except and only to the extent that such damages, costs or expenses are actually paid by applicable insurance. The Contractor shall provide temporary weather tight enclosures for all exterior openings, as soon as walls and roof are built and to the extent necessary to protect the Work from weather conditions and to allow the Work to be performed within the Contract Time and required dates for Substantial Completion of the entire Work or any applicable designated portion thereof, or Final Completion.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, and patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, 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. 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 and rubbish caused by operations under the Contract. For the Work to be considered Substantially Complete, the Project Site must be left "broom clean," and all the Project interiors must be thoroughly cleaned and vacuumed, all boxes, crates, etc. shall be hauled off of and away from the Project Site at the Contractor's expense, the Contractor shall thoroughly wash and clean all glass, replace broken glass, clean hardware, remove paint stains, spots, smears, marks and dirt from all surfaces, clean fixtures, wash tile floor and all exposed concrete and vacuum all carpeted areas so as to present clean work to the Owner for acceptance. Prior to completion of the Work, the Contractor shall remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project Site. In addition, Contractor shall at all times keep the Project Site and adjacent rights of way clean and free of debris or blowing trash, cut and trim all grass and weeds, remove ice and snow as necessary to maintain a neat, clean and safe Project Site and adjacent rights of way. To the extent the Specifications require more stringent requirements with regard to cleaning, the Specifications shall control.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so after eight (8) hours prior notice to the Contractor (and without regard to the time for notice set forth in Section 2.5 of these General Conditions) and the cost thereof shall be charged to the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Owner Representative, Owner's consultants, Owner's lenders and Architect access to the Work in preparation and progress wherever located. The Contractor shall make personal safety equipment available to any such persons accessing the Project Site. All such persons shall strictly abide by all safety requirements of Contractor.

§ 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 defend, indemnify and hold harmless the Owner Indemnitees, including, but not limited to, payment of attorneys' fees 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 patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect and Owner. This defense, indemnification and hold harmless obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Owner Representative, Owner's lenders, investors, and mortgagees, the Galveston Housing Authority ("GHA"), the City of Galveston, Texas (the "City"), the U.S. Department of Housing and Urban Development ("HUD"), [TBD],

McCormack Baron Salazar, Inc., McCormack Baron Management, Inc., the Owner's consultants, the Architect, the Architect's consultants, and their respective general and limited partners, members, officers, directors, shareholders and affiliated companies, (including parent and subsidiary companies), agents, employees, representatives, successors and assigns (collectively "**Owner Indemnitees**") from and against claims, damages, losses, and expenses, including, but not limited to, attorneys' fees, allegedly arising out of or resulting from the performance of the Work to the extent caused by the negligent acts or omissions, breaches of contract (including, without limitation, breaches of warranty), intentional misconduct, or statutory violations (including, but not limited to, claims based upon improper employment practices) 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. The Contractor agrees to defend and save the Owner Indemnitees harmless from and against from all lawsuits, demands, claims or actions asserted against the Owner Indemnitees, or any of them, to the extent they involve or assert claims, matters or allegations that, if successful, would require the Contractor or any applicable policy of insurance to indemnify the Owner Indemnitees, or any of them. This defense, indemnification, and hold harmless obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 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 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. The term "**Architect**" means the Architect or the Architect's authorized representative.

§ 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.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect or designate such other individual or entity, including the Owner or its or their personnel, whose status under the Contract Documents shall be that of the former Architect. Owner agrees that it shall at all times have an architect retained and available to assist with interpretation of the Contract Documents and to make design decisions and to determine the date(s) of completion. If the Architect is terminated, it shall be replaced with another licensed 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 a representative of Owner during construction until the date the Architect issues the final Certificate for Payment and with Owner's direction, from time to time during the later of the one (1) year period after the date of Final Completion of the Work or by the terms of any other applicable warranty from time to time during the one year period for correction of the Work described in Article 12. 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 Project 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 and to make such other assessments as Owner may request. 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, because 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 Project 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) deviations from the Contract

Documents; (2) deviations from the most recent Project Schedule; and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

Throughout the Project, Owner (at its discretion) shall have the right to communicate directly with the Contractor, without involving the Architect, provided however that all communications involving design issues shall include the Architect (by direct participation or copy). In all events, all written communications between the Architect and the Contractor shall be provided contemporaneously to the Owner. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 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 and Owner each has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect (with Owner's written consent) or Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner 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 or Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Contractor is responsible to coordinate scheduling of close-up inspections with the Architect.

§ 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 and Owner or, in the absence of an approved submittal schedule, with reasonable promptness and, in any case, such actions shall be taken within the time periods required under the Contract Documents 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, unless otherwise specifically stated by the Architect, or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval or acceptance of an assembly of which the item is a component.

§ 4.2.8 If requested by Owner, 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 and Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion. The Architect will 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 Project Site. The duties, responsibilities and limitations of authority of the Project representatives shall be as set forth in the Agreement between the Owner and Architect.

§ 4.2.11 Upon written consent of the Owner, claims, disputes and other matters in question between the Contractor and the Owner relating to the execution of the Work or the interpretation of the Contract Documents may be referred initially to the Architect for decision. Disputes regarding the Architect's decisions on matters rendered pursuant to

this Section shall be subject to further resolution as set forth in Article 15 of these General Conditions and the Contract Documents.

§ 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 shall be the representative of the Owner and shall have authority to act on behalf of the Owner only to the extent specifically so provided in this Contract. The Architect shall not be a general agent of the Owner and shall have no authority to act on behalf of the Owner, except as provided in this Contract or otherwise agreed in writing by the Owner. Specifically, the Architect has no authority to increase the GMP, extend the Contract Time or change the scope of the Work (except and only for minor changes pursuant to Section 7.4). Such actions can only be directed by Owner in a Change Order or CCD.

§ 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 "*Subcontractor*" or "*subcontractor*" shall mean any person or entity who has a contract with the Contractor to perform a portion of the Work (including materialmen and suppliers) and all other persons or entities who provide materials, labor or services to or for the Project through or under the supervision of Contractor or its Subcontractors. The term "Subcontractor" or "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or the subcontractors of a separate contractor.

§ 5.1.2 A "*Sub-subcontractor*" is a person or entity (whether such person or entity is a sub-subcontractor, materialman or supplier) who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Project Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Owner through the Architect the names of persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Architect may reply within fourteen (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 or Owner requires additional time for review. Failure of the Architect or Owner to reply within the fourteen (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 Subcontractor to whom the Owner has no objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the GMP 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 GMP or extension of the 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, Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from all Subcontractors necessary for completion of the Work, including, without limitation, suppliers of materials or equipment fabricated especially for the Work, and shall deliver such bids to the Architect and Owner. 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.

§ 5.2.6 When a specific bidder (i) is recommended to Owner by the Contractor; (ii) is qualified to perform that portion of the Work; and (iii) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but 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 Owner by the Contractor and the amount of the subcontract or other agreement signed with the person or entity designated by Owner.

§ 5.2.7 Subcontracts or other agreements shall conform to the applicable payment provisions of this Contract, and shall not be awarded on the basis of cost plus a fee without the prior written consent of 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.

§ 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, but not limited to, the responsibility for safety of the Subcontractor's Work and the responsibility to strictly adhere to the Project Schedule), which the Contractor, by the Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall 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 In the event this Contract is terminated by the Owner for any of the reasons set forth in Section 14.2.1 or 14.4.1, the Owner shall have the right (without any responsibility so to do) to assume the rights and responsibilities of the Contractor under all or some subcontracts, materials or rental agreements, and/or any other commitments which the Owner in its sole discretion, chooses to assume. While this provision shall constitute a present assignment of Contractor's rights with respect to any and all such subcontracts, agreements and commitments which Owner so chooses to assume, the Contractor, upon request from the Owner, shall promptly execute and deliver to the Owner written assignments of such subcontracts, agreements and commitments which the Owner in its sole discretion so chooses to take by assignment. Additionally all such subcontracts, agreements and other commitments with Subcontractors shall provide for this assignment.

§ 5.4.2 No provision of this Contract, nor of any Contract between the Contractor and Subcontractor of any tier, shall be construed as an agreement between the Owner and Subcontractor. No Subcontractor of any tier shall have the benefits of any rights, remedies or redress against the Owner pursuant to the Contract Documents. The Contractor, as between Owner and Contractor, shall be fully responsible to the Owner for the acts and omissions of a Subcontractor at any tier or the employees of any of them.

§ 5.4.3 Intentionally Deleted.

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 Project Site.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the Project 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 Project Schedule directed after such joint review. The Project Schedule, as so revised (and approved by Owner), shall then constitute the Project Schedule to be used by the Contractor and the Owner until subsequently revised. The parties agree, however, that such revisions shall not cause the Contract Time to be extended, except and solely to the extent allowed by, and pursuant to, the applicable provisions of the Contract Documents.

§ 6.1.4 Intentionally Deleted.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable and equal 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 Owner and 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 to so 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.

§ 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.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractor as provided in Section 10.2.5. Should the Contractor damage the work or property of another separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor. If such other contractor initiates a claim by suit or otherwise against the Owner on account of damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceeding at Contractor's expense, and if any judgment or award against the Owner arises from damage caused by the Contractor or anyone for whom Contractor is responsible, the Contractor shall pay or satisfy it, and shall reimburse the Owner for all attorneys' fees and other costs incurred in connection with such claim or suit.

§ 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 in accordance with Section 3.15 of these General Conditions, the Owner may clean up and the Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by the prior written consent of Owner pursuant to a valid 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. The Contractor shall not be authorized to change the scope of the Work in a manner that will result in an increase in the GMP or extension of the Contract Time for alleged extra work, overtime, or changes in the Work of any kind unless such work is approved, in writing, by Owner prior to the commencement of such work. The Architect shall not be deemed an agent of the Owner for these purposes.

§ 7.1.2 A Change Order shall be based upon a written agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires written issuance by the Owner and may or may not be agreed to by the Contractor.

§ 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. In the event Owner or Contractor requests a change in the Work, the Contractor shall promptly submit to the Owner an itemized breakdown of quantities and prices with respect to work included in the change, and as otherwise provided by Section 7.3.7.1 below, to be used by the Owner in checking the value of such 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 GMP; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Any adjustment to the GMP resulting from a change in the Work performed pursuant to a valid Change Order or CCD shall be determined in accordance with one or more of the methods listed in Section 7.3.3 or pursuant to the provisions of Section 7.3.7.1 below.

§ 7.2.3 The Contractor agrees that the amount to be paid to the Contractor as set forth in a Change Order, and the amount to be paid to the Contractor pursuant to the provisions of Section 7.3.7.1 (whether the Change Order arises from, or as the result of the CCD, a Claim or any other reason entitling the Contractor to such payment pursuant to the provisions of this Contract), shall constitute full compensation to the Contractor for all work required in connection with the Change Order, CCD, or Claim and full compensation for all acceleration, delay, loss of efficiency, inconvenience, increased supervision or other claims, costs, expenses or damages which have been, or may be, incurred by the Contractor as a result of the issuance or occurrence of the Change Order, CCD and/or the performance of the Work required or other costs incurred in connection with the Change Order, CCD or Claim.

§ 7.2.4 The Contractor shall permit, and shall require all Subcontractors to permit, the Owner to inspect, copy and audit its books with respect to all time and materials work or work performed pursuant to Section 7.3.7.1 or reimbursed on the basis of the Cost of the Work, or other cost-reimbursable basis. In this regard, the Contractor shall produce, and shall require Subcontractors to produce, such data as the Owner may request for the purpose of determining the correctness and allowability of the costs of all or any part of such work. The Contractor shall keep, and shall require all Subcontractors to keep such full and detailed accounts as may be necessary to reflect its operations with respect to such costs and extras, and the system adopted shall be such as is satisfactory to Owner. The Contractor acknowledges and agrees that information obtained by the Owner pursuant to any such audit may be given to the Owner’s Lender, HUD, and other entities providing funding to the Project in order to obtain and justify such funding.

§ 7.2.5 In connection with each Change Order, Contractor shall submit to Architect and Owner, a concise summary of the Change in Work contemplated thereby, together with an accounting showing in detail the changes in the Cost of the Work as a result thereof.

§ 7.3 Construction Change Directives

§ 7.3.1 A “*Construction Change Directive*” or “*CCD*” is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the GMP 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 GMP and Contract Time being adjusted as set forth in the Contract Documents.

§ 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 GMP, or the Contractor is entitled to any adjustment in the GMP resulting from a change in the Work performed pursuant to a Change Order, the adjustment shall be determined in accordance with one or more of the following methods:

- .1 Lump Sum Proposal: Upon Owner's request, the Contractor will, with reasonable promptness after such request, transmit to Owner a lump sum proposal detailing the proposed adjustments to the GMP in connection with any change in the Work requested by Owner. The proposal shall be itemized and segregated by labor and material (including consumables such as utilities and items required to be furnished pursuant to union contracts) for the various components of the changes in the Work and no aggregate figures for labor or material will be accepted. The Contractor shall furnish, with Contractor's lump sum proposal, supporting data consisting of Subcontractor, Sub-subcontractor and vendor executed proposals. Only labor, materials, utilities, supervision and supplies directly attributable to the change in the Work shall be included in the proposal.
- .2 Unit Price: Upon Owner's request, the Contractor will, with reasonable promptness after such request, transmit to Owner a unit price proposal detailing the proposed adjustments to the GMP in connection with any change in the Work requested by Owner. The unit price proposal shall include the written proposal of Subcontractors itemizing the quantities of each item of Work for which there is an applicable unit price contained in the Contract Documents. The quantities must be itemized in relation to each specific item of the change in the Work. The unit prices will be applied to net increase in quantities of the same item. The unit prices will also be applied to net decreases in quantities of the same item; provided, however, Subcontractors shall be entitled to reasonable administrative expenses (including any restocking charges which may be payable by such Subcontractors to suppliers) in processing any such deductions from the Work to the extent that the net decrease in quantities of the same item exceeds fifteen percent (15%) of the original quantity of such item.
- .3 Time and Material: Owner will consider a time and material basis proposal for changes in the Work only if the Contractor provides Owner with a maximum price for the performance of such Work including a reasonable fee (not exceeding the percentages in Section 7.3.7.1 below) for general conditions, overhead and profit. The Contractor will submit to Owner daily time and material tickets for all changes in the Work, including changes in the Work performed by Subcontractors. These tickets will include the identification number assigned to the Work, the location and description of the Work, the classification of labor employed including applicable trade Subcontractor, workers' names and social security numbers, the materials used, the equipment rented (not small tools) and any other information requested by Owner.
- .4 Fees (overhead and profit) and project specific general conditions on adjustments to the GMP provided by Sections (.1), or (.3) of this Section 7.3.3 shall be subject to the Cap on the Contractor's Markup and limited as follows: (i) for the Contractor, whether for Work by Contractor's own forces or subcontracted, five percent (5%); and; (ii) for Subcontractors, including the fees or lower tier Subcontractors, and whether by their own forces or by others, ten percent (10%) in total. Neither the Contractor nor any Subcontractor shall be entitled to any fees for overhead, profit and project specific general conditions on adjustments to the GMP made under clause (.2) of this Section 7.3.3.3.

§ 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 Intentionally Deleted.

§ 7.3.6 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 GMP or Contract Time.

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

§ 7.3.7.1 Except as otherwise provided in the Agreement, if Owner directs, or if the Contractor notifies Owner and Architect that it disagrees with the method for adjustment in the GMP, the method of adjustment shall be determined on the basis of the reasonable, actual and verifiable Cost of the Work attributable to the Change Order, plus a reasonable allowance for overhead, profit and project specific general conditions not exceeding the percentages set forth in Section 7.3.3.4 and subject to the Cap on the Contractor's Markup. The Contractor shall keep and present, in such form as the Architect or Owner may prescribe (and as otherwise required in the Contract Documents) an itemized and full accounting together with supporting data. Costs for the purposes of this Section 7.3.7.1 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 GMP shall be the estimated cost as confirmed by the Architect or any previous schedule of value line item value for such Work, plus a credit for overhead and profit at the rates set forth in Section 7.3.3.4 and 7.3.7 above. 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 or decrease, 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 related to the CCD 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 such costs shall adjust the GMP 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 GMP 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 an adjustment in the GMP or an 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 The "Contract Time" is defined in Section 4.2 of the Agreement.

§ 8.1.2 The "date of commencement" of the Work is defined in Section 4.1 of the Agreement.

§ 8.1.2.1 In addition to achieving Substantial Completion of the entire Work by the Substantial Completion Date set forth and established in the Agreement, the Contractor shall achieve Substantial Completion of each Phase of the Work by the applicable Phase Substantial Completion Date for such Phase as set forth in Section 4.3.2 of the Agreement and Final Completion by the Final Completion Date set forth in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date that the Architect certifies and the Owner confirms that the entire Work, or any applicable designated portion thereof, is Substantially Complete, as defined in Section 9.8. The date of Final Completion is the date that the Architect certifies and the Owner confirms that the Work is Finally Complete, as defined in Section 9.10.1.1.

§ 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 Project Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner, or commence operations on the Project Site prior to the date of Commencement of the Work as set forth in the Agreement. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion of the entire Work and any applicable designated portion thereof by the applicable Substantial Completion Dates and Final Completion by the Final Completion Date as required by the Contract.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 See Section 15.1.6 below.

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

§ 8.3.3 Intentionally Deleted.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents, subject to the GMP.

§ 9.1.2 The Contractor specifically acknowledges and agrees that it shall receive no compensation, and the Cost of the Work shall not include, any costs incurred by the Contractor in repairing or correcting, or supervising the repair or correction of defective or non-conforming Work, performed or supplied by any Subcontractor, material supplier, or any other person or entity employed by the Contractor, under contract with the Contractor, or performing Work on the Project on behalf of or under the supervision of the Contractor, regardless of whether or not such defective or non-conforming Work resulted from the fault or neglect of the Contractor or the Contractor’s personnel and that the Contractor’s sole remedy with respect to the recovery of such costs shall be whatever remedies are contained in the Contractor’s subcontract agreements with its Subcontractors, suppliers and other persons or entities providing Work on the Project.

§ 9.2 Schedule of Values

A copy of the schedule of values allocating the entire GMP to the various portions of the Work is attached to the Agreement as Exhibit A. This schedule of values shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least five (5) days before the date established for submission of Contractor’s Application for Payment, Contractor shall submit to Architect and Owner a “pencil copy” of its Application for Payment for Architect and Owner’s review and comment. On the same day of each month, which day shall be established by Owner in its discretion, the Contractor shall submit to the Architect and Owner 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, and shall reflect retainage as 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 With respect to all Work performed, retainage of ten percent (10%) shall be held and shall be reduced and/or released solely in accordance with Texas law. No portion of the retainage shall in any event be released prior to the date of Substantial Completion of the entire Work. Final release of retainage shall not be made until the time all punch list items have been completed and/or corrected and other conditions to Final Payment, including Final Completion, as set forth in the Contract Documents have been met.

§ 9.3.1.3 The Contractor hereby agrees and is required to make payment, no later than seven (7) days after the receipt of payment from the Owner, to each Subcontractor of all amounts identified in each application for payment as intended for said Subcontractor. If Contractor does not intend to pay a Subcontractor for Work performed by such entity for the Project, Contractor shall so notify Owner in writing and explain the reason for the Contractor's decision not to make such payment. Owner shall thereafter withhold from Contractor the amounts so noted until Contractor represents that such payment will be made to the applicable Subcontractor, materialman or supplier. Contractor shall defend, indemnify and hold harmless the Owner Indemnitees from and against any costs, damages or expenses (including, without limitation, attorneys' fees) incurred by Owner as a result of claims made by any Subcontractor who has performed Work for the Project but who Contractor decides not to pay for such Work. Each Application for Payment submitted by Contractor shall be accompanied by all items required under Article 12 of the Agreement. The defense, indemnity and hold harmless obligations of Contractor hereunder shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 9.3.1.4 Contractor shall promptly discharge, cause to be discharged, or make adequate provision for discharge of any and all mechanic's and materialman's liens filed by any third party in connection with the Work, provided Owner has paid amounts due Contractor, subject to Owner's rights under the Agreement, in connection with the Work that is the subject of any such lien. All costs and expenses associated with any mechanic's or materialman's lien for which Contractor is responsible pursuant to this Section and which is filed or threatened to be filed shall be borne by Contractor alone. Contractor hereby defends, indemnifies and holds the Owner Indemnitees and the title insurance company providing title insurance for the property comprising the Project Site ("**Title Insurer**"), harmless from and against any loss or damage (including, without limitation, attorneys' fees and court costs) caused by the filing of any such mechanic's or materialman's lien. In addition, in such event, Contractor shall promptly take such actions as may be requested by the Title Insurer for the Owner or any mortgagee or lender to the Project in order for such Title Insurer, within ten (10) days after the date such lien is filed, to issue and deliver to Owner and any mortgagee, an Owner's and mortgagee's title policy, insuring against such lien or to issue and deliver endorsements to existing policies, insuring against such lien. These actions shall include, but not be limited to, providing a lien and indemnity bond, in a form satisfactory to Owner, should the person or entity filing the mechanic's or materialman's lien at issue fail to remove such lien or record in exchange for a release of lien bond (which lien and indemnity bond shall be in a penal sum of not less than one hundred fifty percent (150%) of any such lien claim or a greater amount as required by law, and issued by a surety listed as acceptable in the then current Department of Treasury Listing of Approved Sureties Circular 570 and acceptable to the Title Insurer, naming the Title Insurer as an obligee, and which will fully protect the Title Insurer against all costs and expenses associated with the such lien claim). This provision shall survive termination of the Contract. Once the Contractor has removed of record any mechanic's or materialman's lien for which the Contractor is responsible pursuant to this Section or with respect to such lien has provided a bond acceptable to Owner, then the Owner shall release all sums being held on account of such lien as part of the payments made in response to the next succeeding payment application submitted by the Owner.

§ 9.3.1.5 Contractor hereby authorizes and consents to direct communications, at any time and in any fashion, between Owner and any Subcontractors on the Project regarding the Work performed on the Project and the status of payments to said persons or entities for said Work.

§ 9.3.1.6 Contractor acknowledges that Owner and Contractor are, or shall be, bound by and subject to the terms of a certain master disbursing agreement among Owner and Owner's lenders, investors and/or mortgagees to the Project (the "**Disbursing Agreement**"), the terms of which are, or shall be, incorporated herein by reference and shall govern payments for the Work hereunder and Contractor agrees that the terms governing payments for the Work hereunder shall be in compliance with, and will be deemed modified to conform to, the terms and conditions of the Disbursing Agreement, including, without limitation, the provisions of this Article 9 and Article 12 of the Agreement.

§ 9.3.2 Payment for materials and equipment stored on or off the Project Site shall be conditioned upon Owner's prior written approval and compliance by the Contractor with procedures satisfactory to the Owner and Owner's lenders 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 Project Site, for such materials and equipment

stored off the Project Site. Damage to material or equipment stored on or off-site shall not entitle the Contractor to any increase in the GMP. Payments for materials and equipment stored on-site shall not exceed ten percent (10%) of the value of Work in place as of the date of the relevant Application for Payment. Only invoice price, less delivery charges or other related handling costs, will be paid for stored materials (whether storage is on-site or off-site).

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction of the Project or upon the receipt of payment therefor, whichever occurs first. 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 be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors 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 (7) 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 and Owner determine is properly due or notify the Contractor in writing of the 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 in writing to Owner. 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 or Owner may elect not to make payment and/or withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner'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, Architect and Owner 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, such Certificate for Payment to be subject to Owner's approval. The Architect or Owner may also elect not to make payment and 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 and Owner's lenders is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unearned balance of the GMP;
- .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 amount of the Contract Sum earned by the Contractor (subject to any withholding for other causes under the Contract Documents) is not adequate to cover liquidated damages for the anticipated delay;
- .7 Contractor's negligence or failure to perform is obligations under the Contract Documents;
- .8 erroneous estimates by the Contractor of the value of the Work performed;

- .9 failure of the Contractor to provide record documents in accordance with the requirements of the Contract Documents or failure to keep record documents up to date on a monthly basis;
- .10 Contractor's failure to provide materials and Subcontractor lists prior to its initial schedule for the Work;
- .11 Contractor's failure to provide and update the Project Schedule regarding the progress of the Work; or
- .12 Contractor's failure to provide and update such other items as may be required under the Contract Documents, including, without limitation, payee lists, SBE/MBE/WBE compliance reports and certified payroll reports.

§ 9.5.2 When the above reasons for withholding payment or certification are removed, payment or certification will be made for amounts previously withheld as part of the next regularly scheduled Application for Payment.

§ 9.5.3 Intentionally Deleted.

§ 9.5.4 Notwithstanding the Architect's issuance of a Certificate of Payment and notwithstanding the provisions of Section 9.5.1 and of any other provision, the Owner shall have the right to withhold from payments due to the Contractor such sums as may be necessary to protect the Owner against any loss or damage which may result from negligence or unsatisfactory Work by the Contractor, failure by the Contractor to perform his obligations, including failure to maintain progress of the Work in accordance with the Project Schedule and/or the Contract Time, or claims against the Contractor or the Owner relating to the Contractor's performance or Work. In addition, the Owner may withhold payments from the Contractor for damages by the Contractor to others not adjusted, failure of the Contractor to make proper payments to his material suppliers and Subcontractors and where there is reasonable evidence indicating a probable filing of any claim against the Owner or the Contractor in connection with the Work or the Project. In addition, 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 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 its next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner, unless it exercises its rights pursuant to Section 9.5 above, shall process and shall make payment, to the extent, in the manner and within the time provided in the Contract Documents, and shall so notify the Architect unless Owner elects not to do so pursuant to Section 9.5.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven (7) 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 or Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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

§ 9.6.5 The Contractor's payments to supplier Subcontractors 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 which is 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 GMP, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors who performed Work and/or furnished materials, under contract with the

Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 If Contractor fails to make timely payment to its Subcontractors for Work performed on the Project in accordance with Subcontracts for such Work, it shall protect Owner, and any other person or entity the Owner may direct, against any and all liens filed by such Subcontractors, in a manner subject to the satisfaction of Owner.

§ 9.6.9 Contractor acknowledges that Owner may require the use of construction payment management software (e.g., LCPTracker™) for certified payroll reporting and agrees that, if Owner requires the use of such a system, Contractor's receipt of any payments for Work hereunder shall be expressly contingent upon Contractor's use thereof. Contractor further agrees that it shall incorporate this provision into all subcontracts with its Subcontractors and suppliers, and shall require its Subcontractors to incorporate this provision into all contracts with Sub-subcontractors and suppliers of any tier.

§ 9.7 Failure of Payment

Subject to Section 9.4.1 above, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified in the applicable Certificate for Payment, unless such failure is due to a reason enumerated in Section 9.5.1, then the Contractor may, upon seven (7) 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 GMP shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 As used in the Contract Documents, the terms "**Substantial Completion**," "**Substantially Complete**" and/or the "**Date of Substantial Completion**" (whether capitalized or lower case), shall mean the date upon which all of the following shall have occurred: (1) the Work (or any applicable designated portion thereof) has been fully completed in accordance with the Contract Documents and applicable Laws, except and only for minor items that will not unreasonably affect the use, occupancy and operation of the Work, and any designated portion thereof, as intended, and the Work is sufficiently complete (with the above noted exceptions only) to enable the Owner to occupy and use the Work, or any designated portion thereof (and all aspects and elements thereof) as intended without unreasonable disruption or interference caused by the need to complete any of the Work then remaining to be completed (in this regard, the Contractor specifically acknowledges and agrees that Substantial Completion shall require the full completion of all interior unit punch list items); (2) the punch list items are sufficiently few and of a nature that would not interfere with Owner's ability to fully occupy and use the Work for the purposes for which it is intended to the extent required by the Contract Documents; (3) the Contractor has procured and delivered to the Owner (and the Architect has so certified) all certificates, consents, approvals and permits with respect to the Contractor's Work required under applicable Laws for occupancy and/or use of the Work or any applicable designated portion thereof, or required by the Project's lenders, investors or mortgagees, including, but not limited to, the issuance by the City of a permission to occupy the units comprising the entire Work (or any applicable designated portion thereof). In this regard, Contractor acknowledges that permission and/or consent to use and/or occupy the Work for its intended purpose from HUD, GHA, the City, and/or other applicable governmental authorities and the Project's lenders, investors and/or mortgagees requires that Substantial Completion shall require the completion of such Work sufficiently to obtain the required permission and/or consent to so use and/or occupy the Work; (4) the Architect issues and signs a Certificate of Substantial Completion, AIA Document G704, 2017 Edition, certifying in writing that the entire Work (or any applicable designated portion thereof) is Substantially Complete as required by the provisions of this Section above, and further certifies that Contractor has procured and delivered to Owner all certificates, permits, approvals and consents with respect to the Contractor's Work required under applicable Laws for occupancy and use of the Project, and that such Work is sufficiently compliant with the Contract Documents and applicable Laws, to allow Owner to fully occupy and utilize the Work for its intended use (and all aspects and elements thereof) to the extent required by the Contract Documents, which certification is accepted in writing by Owner (such acceptance not to be unreasonably withheld, conditioned nor delayed); (5) the Contractor has complied with the terms and conditions of Section 9.8.2 of the General Conditions; (6) all mechanical, electrical and life safety support systems comprising the Work (or any applicable designated portion thereof) are functioning as required by the Contract Documents; (7) the Contractor has complied with the terms and conditions of Section 3.15.1 of the General Conditions; (8) Contractor

has delivered all unit chattel lists to Owner and Architect; (9) Contractor has submitted to Owner and Architect for review and approval a draft of an updated ALTA as-built and foundations survey of the Project Site prepared by Owner's surveyor, as hired by Contractor, meeting ALTA/ACSM Minimum Standard Detail Requirements for an urban land survey, including all Table A-Optional Survey Responsibilities and Specifications; (10) Contractor has delivered to Owner a written authorization from the surety issuing payment and performance bonds required hereunder, if any, consenting to release of retention in accordance with the Contract Documents; and (11) the Contractor has satisfied all other conditions or requirements with respect to Substantial Completion established in the Contract Documents. The Contractor acknowledges and agrees that Substantial Completion as defined herein requires a significant level of completion beyond that normally associated with "substantial completion" in the ordinary construction industry sense, the Substantial Completion is intended herein to mean near total completion of the Work sufficient to allow a clean and full turnover of the entire Work (or any applicable designated portion thereof) to the Owner and its use and occupancy at that time as intended, and that Substantial Completion as defined herein requires that the Work be "substantially complete" in the ordinary, construction industry sense substantially earlier than the dates established herein for Substantial Completion.

§ 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 and Owner 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.

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

§ 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 11.2.2.5 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.

§ 9.9.1.1 The Architect will make one reinspection after the final inspection when requested in writing by the Contractor, and if complete, the Architect will so certify to the Owner. When additional reinspections are required and requested in writing by the Contractor, the Architect will make the inspection. The Contractor shall reimburse the Architect for all time and expenses incurred in the additional reinspections. Final Payment will not be approved until all incomplete and defective Work is properly completed. Where the words "complete" or "completed" are used, it shall mean that all areas are finished, all materials and equipment are put in place, site work finished, all corrections

and adjustments to the Work have been made, the tests made, brochures and reports filed, and all similar information as requested by Owner, or required by the Contract Documents, have been provided.

§ 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 occupied or used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon in writing by Owner, 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 has reached Final Completion, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the 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 all conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to Final Payment have been fulfilled.

§ 9.10.1.1 In addition to other requirements imposed by the Contract Documents, "**Final Completion**" of the Work shall require and the Work shall be "**Finally Complete**" when the following requirements have been met: (1) the proper and full completion of the entire Work in accordance with the Contract Documents, including, but not limited to, satisfactory operation of all equipment and systems, completion or correction of all punch list items, delivery of all maintenance and operations manuals, chattel lists, and all warranties and guarantees (and assignments thereof), issuance of all required approvals and certificates by any authorities with jurisdiction over the Project without condition (including final and unconditional certificates of occupancy), removal of all rubbish, tools, scaffoldings and surplus materials from the Project Site and correction of all property damage that is the responsibility of the Contractor pursuant to the Contract Documents; (2) the completion of all exterior punch list items (except and only to the extent otherwise agreed by Owner in writing); (3) submission and approval of the Contractor's final requisition and all required construction cost audits and confirmations; (4) a final, updated and recertified ALTA as-built and foundations survey of the Project Site prepared and stamped by Owner's surveyor, as hired by Contractor, meeting ALTA/ACSM Minimum Standard Detail Requirements for an urban land survey, including all Table A - Optional Survey Responsibilities and Specifications; (5) delivery of as-built drawings and specifications; (6) submission of a conditional final lien and claim waiver by the Contractor discharging and waiving all claims and lien rights which the Contractor may have in connection with the Work or the Project and conditioned only upon receipt of Final Payment, in the applicable form attached to the Agreement as **Exhibit F**; (7) submission of conditional final lien and claim waivers by each Subcontractor discharging and waiving all claims and lien rights which each Subcontractor may have in connection with the Work or the Project and covering the amount requested by Contractor on behalf of the Subcontractor in the Final Payment request and conditioned only upon on receipt of such amount by the Subcontractors, in the applicable form attached hereto as **Exhibit F**; (8) submission of unconditional final lien and claim waivers signed by each Subcontractor who has been paid all amounts due related to the Work prior to Final Payment, in the form attached to the Agreement as **Exhibit F**, or, if acceptable to the Owner in its sole discretion, a bond or other security, in such form as is directed by Owner, protecting the Owner and the Owner's property from assertion of any such liens that are not waived; and (9) delivery of all of the information, documents and certifications required by the Contract Documents, the Owner, the Owner's lenders, investors or mortgagees, HUD, GHA, the City or any other governmental authority with jurisdiction over the Project in order to allow the Owner to proceed to final loan closing, including, but not limited to, an accounting and certification of: (i) all costs incurred by Contractor in the execution of the Work; (ii) all charges or costs included in the Contractor's applications for payment with respect to the Project; and (iii) the Contractor's Markup, which accounting and certification shall be prepared in accordance with generally accepted accounting principles, by a licensed, independent, third-party accountant and shall identify and verify all costs and charges included in Contractor's payment applications and shall be accompanied by such detail and supporting documentation as required by the Contract Documents, the Owner, the Owner's lenders, investors, mortgagees, HUD, GHA, the City or any governmental authority with jurisdiction over the Project. In addition, as a condition to Final Payment for the Work, the Contractor shall deliver to the Owner three (3) clean, complete and readable copies of all guarantees and warranties on equipment and materials furnished by all manufacturers and suppliers to the Contractor and all Subcontractors, together with duly executed instruments properly assigning the guarantees and warranties to the Owner, and shall also deliver to the Owner three (3) clean,

complete and readable copies of all related manufacturer's instructions, related maintenance manuals, replacement list, detailed drawings and any technical requirements necessary to operate and maintain such equipment and materials or needed to maintain the effectiveness of any such warranties. In addition, notwithstanding anything to the contrary in the Contract Documents, in no event will final payment be made prior to thirty-one (31) days after the latest to occur of (i) "completion" of the Work, as defined in and required by Section 53.106 of the Texas Property Code, or (ii) the date of completion as set forth in the filing with the county clerk of the county where the Project site/land is located of an Affidavit and Certificate of Completion (the "**Affidavit of Completion**"), executed by Owner, the Contractor, and Architect (if and to the extent required by any lenders to the Project), in the form of **Exhibit D** to the Agreement (or a certificate or affidavit in such other form which complies with Section 53.106 of the Texas Property Code and is otherwise acceptable to such lenders), or (iii) the date the Contractor has otherwise fully and completely satisfied the requirements of Section 53.106 of the Texas Property Code, to the extent applicable to Contractor, including, without limitation, providing, and/or assisting Owner with providing, a copy of any such affidavit to all parties, and within the time periods, required by such Section 53.106.

§ 9.10.2 Neither Final Payment nor any remaining retained amount shall become due until the Contractor submits to the Architect and Owner (and such payment shall be referred to as "**Final Payment**"): (1) a final accounting for the Cost of the Work and a final Application for Payment, each approved by Owner; (2) 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 or will be paid within seven (7) days after Contractor receives Final Payment; (3) a certificate evidencing that insurance required by the Contract Documents (a) will remain in force after Final Payment, (b) is currently in effect and (c) will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (4) 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; (5) consent of surety, if any, to Final Payment; and (6) 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, subject to written approval by Owner, 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 attorneys' fees. Within seven (7) days of Contractor's receipt of Final Payment, Contractor shall submit to Owner the an unconditional final lien and claim waiver by Contractor covering all amounts paid to Contractor under the Contract, in the applicable form attached to the Agreement as **Exhibit F** and unconditional final lien and claim waivers by each Subcontractor who performed Work on the Project and covering all amounts paid to each Subcontractor in connection with the Project (excluding those Subcontractors who submitted such waivers pursuant to subparagraph (7) of Section 9.10.1.1 above), in the applicable form attached hereto as **Exhibit F**.

§ 9.10.3 If, after Substantial Completion of the entire Work, Final Completion thereof is delayed sixty (60) days or more 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, provided the conditions to Final Payment relating to such Work are first satisfied. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of Final Payment shall not constitute a waiver of Claims by the Owner.

§ 9.10.5 Acceptance of Final Payment by the Contractor or any Subcontractor (including, without limitation any 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. In addition, and without limiting the foregoing, Contractor shall

initiate, maintain, implement and supervise all safety precautions, measures, rules, procedures and programs required by the Contract Documents. Contractor shall also require the Subcontractors and their employees, agents and others for whom they are responsible to comply with all of the foregoing precautions, measures, rules, procedures and programs.

§ 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, bodily harm, death, 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 Project Site, under care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the Project 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;
- .4 the Contractor shall comply with all provisions and requirements of the Occupational Safety and Health Act of 1970 and/or the Construction Safety Act of 1969 (whichever is applicable) and with all applicable Laws of any public authority having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and;
- .5 Contractor shall erect and maintain, as required by existing law safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable Laws bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions, applicable Laws and performance of the Contract, reasonable safeguards for safety and protection, including fencing as well as posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall post at the Project Site a 24-hour monitored emergency phone number.

§ 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, at no additional cost to Owner, all damage and loss (other than damage or loss reimbursed under property insurance required by the Contract Documents, if any) 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 3.1.8.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the Project 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 Project 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 the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable and proper precautions will be inadequate to prevent foreseeable bodily injury or death to persons property damage resulting from a hazardous material or substance, including, but not limited to, asbestos or polychlorinated biphenyl (PCB) or any other material or substances that the Contractor knows requires special handling or treatment, encountered on the Project 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 and shall not thereafter resume Work in the affected area until the condition has been rendered harmless.

§ 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 GMP shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, which adjustments shall be made pursuant to Article 7 above.

§ 10.3.3 Intentionally Deleted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the Project 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. Contractor shall supply Owner, upon request, documentation that all materials brought to the Project Site are free and clear of environmental contamination.

§ 10.3.5 The Contractor shall defend, indemnify and hold the Owner Indemnitees harmless for the cost and expense the Owner incurs (1) for remediation of any hazardous materials or substances the Contractor brings to the Project 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. This indemnification obligation of Contractor includes, without limitation, the payment of attorneys' fees, and shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 10.3.6 Intentionally Deleted.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and acceptable to Owner, such insurance, in the amounts indicated in the Contract Documents as will protect the Contractor and Owner 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. All coverages 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.

§ 11.1.2.1 The liability insurance required by this Article 11 shall include all major divisions of coverage and be on a comprehensive basis including: (i) Premises Operations (including XC/U as applicable); (ii) Products and Completed Operations; (iii) Personal Injury Liability; (iv) Owned, leased, non-owned and hired motor vehicles automobile liability; (v) Umbrella Excess Liability; and (vi) Contractor's Pollutant/Environmental Liability. If Contractor cannot procure underground liability (XC/U) coverage, such coverage shall be procured and maintained by each Subcontractor responsible for structural support, structural rehabilitation and/or concrete work, and such coverage shall be in the limits required below, shall protect the interests of the Owner and the Owner's lenders in the Project and shall remain in effect through the duration of the applicable statute of repose. All insurance required by this Contract (whether procured by the Contractor or its Subcontractors), except Worker's Compensation, shall name all Owner Indemnitees, as defined in Section 3.18.1 above, as additional insureds (the "*Additional Insureds*").

§ 11.1.2.2 The coverages and limits of the Contractor's insurance required pursuant to Section 11.1 shall be not less than the following:

(A) WORKMEN'S COMPENSATION:

Applicable Federal, State Employer's Liability:	Statutory
Each Accident:	\$1,000,000 each accident
Bodily Injury:	\$1,000,000 policy limit
Bodily Injury by disease:	\$1,000,000 each employee

If the Project is located in a monopolistic state, then Employer's Liability requirement shall be met by use of Stop-Gap liability coverage under the General Liability or other states Worker's Compensation policy.

(B) COMMERCIAL GENERAL LIABILITY: Insurance to protect against claims for bodily injury and property damage arising out of premises operations (including explosion, collapse and underground), products, and completed operations; and advertising and personal injury liability. Completed Operations shall be maintained for the duration of the applicable statute of repose following Project completion.

Each Occurrence	\$2,000,000
General Aggregate	\$5,000,000
Personal Liability (bodily injury), each occurrence	\$2,000,000
Personal & Advertising Injury	\$2,000,000
Fire Damage	\$ 50,000
Medical Expense	\$ 5,000
Products/Completed Operations aggregate	\$5,000,000

(C) COMMERCIAL AUTOMOBILE LIABILITY:

Owned, Leased, Non-Owned and Hired Combined Single Limit (Property damage and contractual liability)	\$2,000,000 per occurrence
Personal Liability (Bodily Injury)	\$2,000,000 per occurrence
Personal Liability (Bodily Injury)	\$2,000,000 aggregate

(D) UMBRELLA LIABILITY: To be provided over the primary general liability; automobile liability, contractual liability and employer's liability insurance policies.

Each Occurrence	\$10,000,000
Aggregate	\$10,000,000

(E) CONTRACTOR'S POLLUTANT/ENVIRONMENTAL LIABILITY (with Mold riders):

Each Occurrence	\$3,000,000
Aggregate	\$3,000,000

§ 11.1.3 Duplicate certificates of insurance and applicable endorsements acceptable to Owner shall be filed with Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. The certificates and the insurance policies required by this Section 11.1 shall contain (i) a cross liability, severability or substantially similar clauses; (ii) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Owner and/or the Additional Insureds and that any coverage carried by Owner and/or the Additional Insureds shall be solely excess insurance; and (iii) a provision that coverages afforded under the policies will not be canceled except after Owner has received written notice of same as evidenced by return receipt of a certified letter. The Contractor shall not cause any insurance to be canceled or permit any insurance to lapse. Certificates of insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured and specifically setting forth evidence of all coverage required by this Section 11.1, the location and the operations in which the insurance applies, the expiration date, and notice of cancellation clause. The Contractor shall immediately furnish to Owner copies of all endorsements that are subsequently issued amending coverage or limits. 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 11.1.2.2. 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 All policies of insurance required to be carried hereunder shall be written on an occurrence basis by insurance companies duly licensed in the state in which the Project is located with a Best rating of not less than A-VIII; however, Contractor acknowledges and agrees that Owner does not in any way agree that the above minimum insurer rating is sufficient to protect Contractor or Subcontractor from potential insolvency of such insurer.

§ 11.1.5 The Contractor's Pollutant/Environmental Liability coverage shall contain no exclusion for microbial matter, asbestos containing materials or lead based paint. The coverage shall include coverage for blanket non-owned disposal sites, and coverage for pollution incidents related to transported cargo. The coverage shall be primary, and contain no sharing provisions. With the exception of the Microbial Matter coverage, the coverage should be provided on an occurrence basis.

§ 11.2 Owner's Insurance

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

§ 11.2.2 **Property Insurance.** 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 GMP, plus the value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the Project 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 11.2.2 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor (who shall be listed as an additional insured) and, Subcontractors and Sub-subcontractors in the Project. Contractor acknowledges and agrees that Owner's builder's risk insurance policy requires certain security measures (*e.g.*, fencing, signage, lighting, and after-hours security patrols and/or cameras with third-party monitoring) for the Project, and that Contractor will be responsible, as part of the Work hereunder, for complying with all such requirements and for providing and maintaining all such security measures in good working order throughout the course of the Project.

§ 11.2.2.1 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.

§ 11.2.2.2 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.

§ 11.2.2.3 If the property insurance requires deductibles, Contractor shall pay costs not covered because of such deductibles.

§ 11.2.2.4 This property insurance shall cover portions of the Work stored off the Project Site, and also portions of the Work in transit.

§ 11.2.2.5 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.

§ 11.2.3 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 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against: (i) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other; (ii) Owner's lenders, investors and mortgagees; and (iii) 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 insurance obtained pursuant to subsections (A) and (B) of Section 11.1.2.2 above and this Section 11.3 or other insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as loss payee. As loss payee, the Owner shall treat each interested party fairly and with good faith in resolving all matters related thereto. 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.

§ 11.3.2 Intentionally Deleted.

§ 11.4 Intentionally Deleted.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under any insurance required by the Contract shall be adjusted by the Owner as loss payee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause and of Section 11.5.3. 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.

§ 11.5.2 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 arbitration award or judgment in which case the procedure shall be as provided in Article 15. 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.

§ 11.5.3 The Owner as loss payee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Article 15. The Owner as loss payee shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.6 Performance and Payment Bonds

§ 11.6.1 The Owner shall have the right to require the Contractor and/or any Subcontractors 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.

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

§ 11.6.3 The Contractor and Subcontractors, as applicable, shall furnish separate performance and payment bonds covering faithful performance of the Contract (or subcontract, as applicable) and payment of obligations arising thereunder each in a penal sum equal to one hundred percent (100%) of the GMP (or subcontract price, as applicable) and issued by a surety acceptable to Owner and authorized to do business in the state where the Project is located. Except to the extent otherwise permitted by Owner in writing, each bond shall name the Owner Indemnitees as co-obligees. The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a current certified copy of the power of attorney. The cost of the bonds shall be included in the GMP. The Contractor shall deliver the required bond(s) to Owner not later than the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to Owner that such bond(s) will be furnished.

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

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

§ 12.1.3 Notwithstanding anything to the contrary herein, in the event a concealed defect or latent defect is discovered more than one (1) year after the date of Substantial Completion, the Owner shall report the discovery of such defective

condition to Contractor and Contractor shall immediately take such action as may be necessary at Contractor's sole cost to correct such defective work, subject to any applicable statutes of limitation.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The Contractor shall immediately correct Work rejected by the Architect or Owner as defective or failing to conform to the requirements of the Contract Documents (including, without limitation, any defective and/or nonconforming Work, resulting from any defects, omissions or failure in workmanship or material), 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 (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any other warranty, any of the Work is found to be not in accordance with the requirements of the Contract Documents or defective, the Contractor shall correct it immediately after receipt of written notice from the Owner to do so. The Owner shall give such notice after discovery of the condition. If the Contractor fails to correct nonconforming Work within thirty (30) days (or earlier if the condition involves damage to persons or property) after receipt of notice from the Owner or Architect, the Owner may correct the work in accordance with Section 2.5 and all related costs shall be at the Contractor's expense.

§ 12.2.2.2 The one (1) 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 (1) year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the Project Site portions of the Work that are not in accordance with the requirements of the Contract Documents and that 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 of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 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 (1) year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the GMP 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.

§ 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 or in part 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. In addition, the Owner and Contractor agree that the Owner may assign this Contract to another entity as designated Owner if such entity is an affiliate to Owner or is an entity in which Owner or an affiliate of Owner will be a partner or joint venturer. In the event of such assignment, the Contractor agrees to continue to perform in accordance with the terms of this Contract without any increase in the fees or charges set forth herein.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable Laws. 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 (i) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded and (ii) tests, inspections, or approvals where building codes or applicable Laws prohibit the Owner from delegating their cost to the Contractor.

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

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

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

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

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

§ 13.5 Interest

All monies not paid when due as provided in Article 9 or elsewhere in the Contract Documents shall accrue simple interest from the date payment is due, at the from the rate of one percent (1%) per annum.

§ 13.6 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.

§ 13.7 Audit Rights

The Contractor shall maintain and produce, and shall require Subcontractors to maintain and produce, any and all data which the Owner may request for any purpose of determining the correctness and allowability of the charges made pursuant to the Contract, including all items in the Cost of the Work and in any Change Order. The Contractor shall keep, and shall require all Subcontractors to keep such full and detailed accounts as may be necessary to reflect its operations with respect to such charges, and the system adopted shall be such as is satisfactory to the Owner. The Owner, its lenders, accountants, agents and employees, HUD, the Comptroller General of the United States or any of their duly authorized representatives, shall be afforded access at all reasonable times, and permitted to make copies, audit and examine, the Contractor's and Subcontractor's books, correspondence, instructions, receipts, vouchers, memoranda, subcontracts, purchase orders and records of all kinds, relating to all Work under the Contract as well as to changes in the Work and extras. In regard to the foregoing and generally, the Contractor hereby authorizes the Owner, and shall require all Subcontractors to authorize the Owner, to check directly with all Subcontractors, as to the charges for any labor, material and other items appearing in the Contractor's bills rendered to the Owner and the balances due on such charges and to obtain sworn statements and waivers of lien from any such suppliers. Upon completion of the Project, the Owner shall have the right to audit the books and records of the Contractor and its Subcontractors in order to verify the Cost of the Work as represented by the Contractor in its Applications for Payment. All records relating to the Project, including all records required by this Section 13.7, shall be preserved for a period of four (4) years after Final Payment, for such longer period as may be required by law. In addition, the Contractor shall provide, and shall cause each Subcontractor to provide to Owner copies of all third party prepared audits, reviews, compilations or other reports of the books and records of the Contractor or any Subcontractor concerning the Project within thirty (30) days of the issuance thereof. Such documents will include, but not be limited to, all audits, reviews, or compilations, concerning compliance with low-income housing tax credit requirements, the annual audit or review submitted to the low-income housing tax credit investor, and the final tax credit certification.

§ 13.8 Confidentiality

§ 13.8.1 In addition to Contractor's other confidentiality obligations pursuant to the Contract Documents, Contractor shall comply with, and shall cause all Subcontractors to comply with, the terms of this Section 13.8, each to the extent applicable

§ 13.8.2 All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to the Contractor by Owner in connection with the Contract Documents is confidential, proprietary information owned by Owner. Except as specifically provided in this Contract, the Contractor shall not disclose data transmitted to or generated by the Contractor in the performance of the Work to any third person without the prior written consent of Owner.

§ 13.8.3 Personal identifying information, financial account information, or restricted Owner information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the Contractor must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

§ 13.8.4 When personal identifying information, financial account information, or restricted Owner information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

§ 13.8.5 In the event that data collected or obtained by the Contractor in connection with the Contract is believed to have been compromised, the Contractor shall notify Owner immediately. The Contractor agrees to reimburse Owner for any costs incurred by Owner to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

§ 13.8.6 The Contractor agrees that the requirements of this Section 13.8 shall be incorporated into all subcontract agreements entered into by the Contractor. It is further agreed that a violation of this Section 13.8 shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section 13.8 may result in immediate termination of the Contract without notice.

§ 13.8.7 The Contractor shall indemnify, defend, save and hold harmless Owner, McCormack Baron Salazar, Inc., McCormack Baron Salazar Development, Inc., and their officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claims processing, investigation and litigation) for any loss caused, or alleged to be caused, in whole or in part, by the Contractor's, any Subcontractor's or any of their owners', officers', directors', agents' or employees' failure to comply with the requirements of this Section 13.8. This indemnity includes any claim arising out of the failure of the Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

§ 13.8.8 The obligations of Contractor under this Section 13.8 shall survive any termination of the Contract.

§ 13.9 Severability

In case any one or more provisions set forth in the Contract Documents or the application thereof to any person or circumstances shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality, or unenforceability shall not affect any other provision of the Contract Documents or the application of such provisions to other persons or circumstances, and the Contract Documents shall be enforced to the greatest extent permitted by law.

§ 13.10 Modifications to be in Writing

No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever other than by a Modification, as defined in Section 1.1.1 above, and no evidence shall be introduced in any proceeding of any waiver of Modification.

§ 13.11 Counterparts

The Contract Documents may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts shall constitute one and the same agreement.

§ 13.12 Additional Contract Provisions Required by Law

The Contract provisions required by law are incorporated herein by reference.

§ 13.13 Additional Documents

Subject to Section 1.1.2.4 of the General Conditions, the Contractor agrees to provide and execute such additional forms and documents as required by any Lender or applicable governmental entities for financing on the Project, in such form as is acceptable to such Lender and/or governmental entities.

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 thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work 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, a Subcontractor, a 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 one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (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 (7) additional 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 and costs incurred by reason of such termination. Owner shall have the right to pay the Contractor's invoice, or approved portion thereof, during the seven (7) day period following written notice, in which event the Contract shall not be terminated.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, 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 (7) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors, including, without limitation, suppliers, in accordance with the respective agreements between the Contractor and such Subcontractors;
- .3 disregards applicable Laws; or
- .4 otherwise has committed a breach of the Contract, including, but not limited to, failure of Contractor to: timely commence the Work, or to prosecute the Work in a diligent and skillful manner, or to complete the Work in accordance with the Project Schedule, or to complete the Work on or before any date established for Substantial Completion of the entire Work (or any applicable designated portion thereof) or Final Completion.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 exclude the Contractor from the Project 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 In the event of a termination pursuant to Sections 14.2.1 and 14.2.2, the Contractor shall be liable to the Owner for all costs and damages incurred by the Owner as a result of the Contractor's acts, omissions, fault, negligence, errors or breach of contract (including attorneys' fees and court costs, the costs of completing the Contractor's performance of the Work as required by the Contract Documents, and the cost of any additional services required of the Architect as a result of the Contractor's fault or breach). After all such damages have been paid, the Contractor shall be entitled to the amount, if any, remaining due to the Contractor (after deducting for any such damages) for any Work performed by the Contractor up to and including the date of such termination. If such costs exceed the unpaid balance due to the Contractor, the Contractor shall be liable to the Owner for the difference.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, in its sole discretion, 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 GMP and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption to the extent allowed by Section 7.3.3. Adjustment of the GMP shall include profit. No adjustment to the GMP or Contract Time 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 In addition to the reasons set forth in Section 14.2.1, the Owner may terminate this Contract without cause (at any time) upon seven (7) days' written notice to the Contractor. In the event the Owner so terminates this Contract, the Contractor shall be entitled to compensation only for the Work performed by the Contractor and accepted by the Owner pursuant to the provisions of and subject to the limitations set forth in this Contract, up to and including the date of termination, plus the amount of the Contractor's Fee earned pursuant to the terms of this Contract as of the date of termination, all as determined by the schedule of values then applicable to the Work and the percentage of completion achieved by the Contractor (overall and in each category of the Work, as applicable) as of the date of termination. The Owner agrees that acceptance of such services shall not be unreasonably withheld. Further, in the event the Owner so terminates this Contract, the Owner agrees to pay for services, materials, supplies ordered prior to the date of termination by the Contractor, for use in connection with the Project, and necessary for the reasonable discharge of the Contractor's responsibilities under this Contract, or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by the Contractor without cost or penalty upon notice of termination. In addition to the foregoing, if the Contractor is so terminated, the Owner shall pay the Contractor the reasonable value (based on purchase or rental as applicable) of any equipment retained by Owner and the reasonable costs of clean-up, removal of debris and removal of equipment, trailers and machinery used at the Project Site incurred as a result of the termination. The Owner will not be responsible, however, to reimburse the Contractor for any continuing contractual commitments to Subcontractors or penalties or damages for canceling such contractual commitments, and no compensation shall be allowed to Contractor or its Subcontractors for anticipated profit, unperformed services or intangibles. Any compensation due under this Section shall be payable to the Contractor thirty (30) days after such termination. The Contractor's sole remedy for any termination pursuant to this Section shall be the compensation allowed in this Section. Any termination by the Owner pursuant to Sections 14.2.1 and 14.2.2 that is later determined to be unjustified or without cause, and any termination of this Contract by Contractor pursuant to Sections 14.1.1, 14.1.2 or 14.1.3, shall be treated as a termination without cause pursuant to this Section. In either such event the Contractor's remedies for such termination shall be limited to those set forth in this Section.

§ 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 Intentionally Deleted.

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 Intentionally Deleted.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Except as otherwise stated in the Agreement, Claims by the Contractor must be initiated within fourteen (14) calendar days after the occurrence of the event giving rise to such Claim or within fourteen (14) calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and Owner and clearly referencing itself as a Claim pursuant to this Section 15.1.3.1 of these General Conditions to be resolved. Notwithstanding any other provision of this Contract, the failure of the Contractor to provide Owner with written notice of any Claim (including, but not limited to, Claims asserted pursuant to Sections 15.1.5 through 15.1.6 and any Claims seeking any increase in the GMP or an extension of the Contract Time or the required dates for Substantial Completion of the entire Work, or any applicable designated portion thereof, or Final Completion or other damages or costs of any kind) within the applicable time frames established by this

Section 15.1.3.1 (or such earlier time as may be established elsewhere in the Contract Documents) shall mean that the Contractor has waived such Claim and shall perform all Work required by or in connection with any occurrence or condition giving rise to the Claim without increase in the GMP or extension of the Contract Time and/or applicable Substantial Completion Dates.

§ 15.1.3.2 Intentionally Deleted.

§ 15.1.4 Continuing Contract Performance

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

§ 15.1.4.2 Intentionally Deleted.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the GMP, 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. The Contractor's sole and complete remedy with respect to any successful Claim shall be as set forth in Article 7 of the General Conditions, subject to Section 15.1.6.5 below. This recovery shall be deemed to include (and no additional damages or costs may be sought or recovered by Contractor for) all delay, acceleration or impact costs or other expenses or losses allegedly sustained or incurred by Contractor as a result of any Claim.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an extension of the Contract Time or Substantial Completion Dates required for the entire Work, or any applicable designated portion thereof, or the Final Completion Date, as set forth in the Agreement, written notice as provided in Section 15.1.3.1 above 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.

§ 15.1.6.2 The Contractor agrees that timely completion of the Work is of essence in this Contract. The Contractor shall continuously and diligently perform, forward and prosecute the Work required by this Contract subject only to Excused Delays as defined herein. In order to achieve completion of the Work by the times established in this Contract, as they may be extended pursuant to the provisions of the Contract, the Contractor agrees, without any increase in the GMP or any additional compensation of any kind, to assign more personnel, work overtime and take such other appropriate measures as are necessary to overcome delays attributable to the Contractor, its Subcontractors and any other persons or entities performing Work under contract with, on behalf of or under the direction or supervision of, the Contractor.

§ 15.1.6.3 The Contractor shall not be entitled to any increase in the times established for Substantial or Final Completion of the Contract as a result of any delay, regardless of its cause or nature, unless and only to the extent that such delay is attributable to causes beyond the reasonable control of, and could not have been avoided or mitigated by reasonable efforts taken by, the Contractor or its Subcontractors. Any such delay is referred to herein as an "**Excused Delay**." Excused Delays shall, to the extent they satisfy the foregoing definition, include, fire, natural catastrophe, or an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner. Time taken by Owner and Architect to approve Shop Drawings or other submittals shall not be considered an Excused Delay unless and only to the extent: (1) the duration of the approval time is two (2) weeks in excess of the times required by the Contract Documents; (2) the resulting delay to the Work could not have been avoided by the Contractor; and (3) the delay is shown by the Contractor to have adversely impacted a critical path item. Delays caused by the unavailability of, or general shortages with regard to, labor, skilled or otherwise, shall not constitute Excused Delays. Unusual weather shall not constitute an Excused Delay except and only to the extent provided in Section 15.1.6.4 below.

§ 15.1.6.4 Any delays caused by adverse weather conditions shall be considered Excused Delays only if: (a) the Contractor demonstrates that the weather condition at issue is more severe than one would reasonably expect to encounter at the Project Site based on historical conditions over the past five (5) years, as established by the National Weather Service; (b) the Contractor notifies Owner by telephone voice mail message and facsimile by 8:30 a.m. Central time on the date of the event, or within one (1) hour of the occurrence of the event giving rise to the cause for

the delay, whichever is later; (c) the notification identifies the time critical trades which will be delayed by the adverse weather and the impact on the Project Schedule; (d) the Contractor demonstrates to the Owner's reasonable satisfaction that such adverse weather conditions will in fact cause a delay in the completion of the Project beyond the Contract Time (*i.e.*, it must be a "critical path" delay); and (e) Contractor demonstrates to Owner that the lost time cannot be recovered by adding additional manpower in affected trades or other trades during standard pay rate work periods, or that additional manpower is not available when needed. A delay of non-time critical activity is not cause for extension of Contract Time. For purposes of this Contract, a demonstration of adverse weather conditions will require documentation by the National Weather Service of rainfall or snowfall of sufficient accumulation and duration to justify any claimed delay.

§ 15.1.6.5 In the event of an Excused Delay, the Contractor shall be entitled to an extension of time to perform the Work, which shall be equal to the actual time lost on the critical path of the Project Schedule by reason of the Excused Delay, but no claim for extension of time on account of an Excused Delay shall be allowed unless presented to the Owner in accordance with the requirements of the Contract Documents. Contractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased labor or material costs on account of any Excused Delay and agrees that its sole right and remedy shall be an extension of time as set forth herein unless and only to the extent that the Owner directs the Contractor in writing to accelerate its work, and the Contractor agrees (which agreement shall not be unreasonably withheld) that through a plan of acceleration the Contractor can achieve the dates for Substantial Completion of the entire Work, or any applicable designated portion thereof and Final Completion set forth in the Contract Documents, in which case the Contractor shall be entitled to an increase in the GMP sufficient to pay the actual premium portion of overtime wages necessary to make up lost time which would otherwise prevent the Substantial Completion or any applicable designated portion thereof or Final Completion of the entire Work as set forth in Section 4.3 of the Agreement and to the extent of the following conditions: (i) the Contractor demonstrates to the Owner that it is impractical to provide, during non-premium pay rate work periods, additional manpower in the delayed trades or other trades sufficient to recover time lost due to Excused Delays; (ii) entitlement to overtime premium shall be limited to those time critical trades delayed by Excused Delays, or others approved by Owner, and only to the extent of the amount of time lost due to Excused Delays; and (iii) the Contractor achieves dates for the Substantial Completion of the entire Work, or any applicable designated portion thereof and Final Completion set forth in the Contract Documents.

§ 15.1.6.6 Irrespective of the progress of the Work, if requested by Owner, Contractor will accelerate construction, subject to mutual agreement on a schedule and on a price which shall be consistent with actual additional costs to be incurred to Owner for actual premium time costs incurred.

§ 15.1.7 Intentionally Deleted.

§ 15.2 Intentionally Deleted.

§ 15.3 Mediation

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agreed 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 suit but, in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 Intentionally Deleted.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the city and state 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.

§ 15.3.5 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 prior to resolution of the Claim by mediation or litigation.

§ 15.3.6 The Contractor shall include in all subcontracts and purchase orders, litigation, mediation and consolidation provisions equivalent to those contained in this Section. This agreement to mediate and consolidate parties and claims shall be specifically enforceable. During mediation or litigation proceedings, the Owner and Contractor shall comply with Section 15.1.4.1.

§ 15.3.7 If the parties are unable to resolve their Claims through mediation, either party may institute litigation in a court of competent jurisdiction in the state where the Project is located.

§ 15.4 Intentionally Deleted.

§ 15.4.1 Intentionally Deleted.

§ 15.4.1.1 Intentionally Deleted.

§ 15.4.2 Intentionally Deleted.

§ 15.4.3 Intentionally Deleted.

§ 15.4.4 Intentionally Deleted.

§ 15.4.4.1 Intentionally Deleted.

§ 15.4.4.2 Intentionally Deleted.

§ 15.4.4.3 Intentionally Deleted.

[signatures appear on the following page]



These General Conditions are entered into as of the day and year first written in the Agreement and are executed in at least three (3) original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to Owner.

OWNER:

By: _____

(Signature)

(Printed name and title)

CONTRACTOR:

By: _____

(Signature)

(Printed name and title)

