THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2013-CP-21-2722
Appellate Case No. 2013-002722

RECEIVED
JUN 30 2014
SC Court of Appeals

Omega Construction, Inc. ..... Respondent,

v.

Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc., ... Appellant.

RECORD ON APPEAL

RECEIVED
JUN 30 2014
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)

OMEGA CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.)

Defendant.)

FILED
2013 OCT 23 PM 1:50
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

TEMPORARY RESTRAINING ORDER

C.A. No: 2013 CP 21 2722

This matter came before me on motion of Plaintiff Omega Construction, Inc. ("Omega"), pursuant to Rules 65(a) and (b), SCRCP, requesting an ex parte Order temporarily restraining Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar") from removing and/or destroying approximately 12.5 million pounds of raw flax material used in its production process, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment currently located at Crailar's manufacturing facility located in Florence County ("Pamplico Facility").

Omega presented evidence by way of affidavit testimony of its Chief Financial Officer Greg Marshall and Senior Project Manager Brock Hennings that it is owed the amount of **TWO HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED TWENTY EIGHT AND 66/100 DOLLARS ($285,428.66)** under a design and construction contract with Crailar, that Crailar has suddenly and without notice closed its business operations at the Pamplico Facility and is moving those operations to an overseas location, and that Crailar has substantial assets

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located at the Pamplico Facility. I therefore find that Omega will suffer immediate and irreparable injury, loss, or damage to its business interests if Crailar is not restrained from selling, moving, or otherwise disposing of such amounts of these materials as would be sufficient to satisfy the outstanding amount owed by Crailar to Omega.

IT IS THEREFORE ORDERED THAT Crailar be immediately restrained from from selling, moving, or otherwise disposing of such amounts of these materials as would be sufficient to satisfy the outstanding amount owed by Crailar to Omega.

IT IS FURTHER SO ORDERED that a hearing will be held within 10 days to determine further action.

IT IS SO ORDERED.

October 23, 2013

By: _____
The Honorable Michael G. Nettles
Chief Administrative Judge, Twelfth Circuit

FILED
2013 OCT 23 PM 1:50
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)

OMEGA CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.)

Defendant.)

FILED
2013 NOV -6 AM 11:58
CONNIE REEL-SIGUS
CCOP & GS
FLORENCE COUNTY, S.C.

ORDER EXTENDING TEMPORARY RESTRAINING ORDER FOR A PERIOD OF 10 DAYS

C.A. No: 2013-CP-21-2722

On October 23, 2013, I granted a Temporary Restraining Order on motion of Plaintiff Omega Construction, Inc. ("Omega"), pursuant to Rules 65(a) and (b), SCRCP, temporarily restraining Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar") from removing and/or destroying certain materials and equipment, identified fully therein, located at Crailar's manufacturing facility in Florence County ("Pamplico Facility").

On October 31, 2013, this matter came before me for the hearing on Omega's Motion for Temporary Injunction. All parties received proper notice and were represented at the hearing. I found in favor of granting the Temporary Injunction under certain terms and conditions, and a formal order is to follow. The Temporary Restraining Order currently in place will expire on November 2, 2013.

Therefore, for good cause shown pursuant to Rule 65, SCRCP, it is ordered that the October 23, 2013 Temporary Restraining Order be extended for an additional 10 days beyond

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

November 2, 2013, in order to allow the Order on Motion for Temporary Injunction to be finalized and filed.

IT IS SO ORDERED.

October 1, 2013

By: _____
The Honorable William H. Seals, Jr.
Judge, Twelfth Circuit

FILED
2013 NOV -6 AM 11:58
CONNIE REEL-SHEARIN
CCP & GS
FLORENCE COUNTY, SC

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

OMEGA CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.)

Defendant.)

IN THE COURT OF COMMON PLEAS

FILED
2013 NOV 18 PM 2:24
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

ORDER EXTENDING TEMPORARY RESTRAINING ORDER FOR A PERIOD OF 10 DAYS

C.A. No: 2013-CP-21-2722

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

On October 23, 2013, I granted a Temporary Restraining Order on motion of Plaintiff Omega Construction, Inc. ("Omega"), pursuant to Rules 65(a) and (b), SCRCP, temporarily restraining Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar") from removing and/or destroying certain materials and equipment, identified fully therein, located at Crailar's manufacturing facility in Florence County ("Pamplico Facility").

On October 31, 2013, this matter came before me for the hearing on Omega's Motion for Temporary Injunction. All parties received proper notice and were represented at the hearing. I found in favor of granting the Temporary Injunction under certain terms and conditions, and a formal order is to follow. On November 1, 2013, I signed an Order extending the Temporary Restraining Order until November 12, 2013.

Omega and Crailar have not yet been able to establish the details of the security for the Temporary Injunction. Therefore, for good cause shown pursuant to Rule 65, SCRCP, it is ordered that the Temporary Restraining Order be extended for an additional 10 days beyond

November 12, 2013, in order to allow the Order on Motion for Temporary Injunction to be finalized and filed.

IT IS SO ORDERED.

November 14, 2013

By: _____

The Honorable William H. Seals, Jr.
Judge, Twelfth Circuit

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FLORENCE COUNTY, S.C.

FILED
2013 NOV 18 PM 2:24
CONNIE REEL-SHELDON
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)

OMEGA CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.)

Defendant.)

ORDER GRANTING TEMPORARY INJUNCTION AND/OR REQUIRING BOND

C.A. No: 2013-CP-21-2722

On October 23, 2013, the Court granted a Temporary Restraining Order on motion of Plaintiff Omega Construction, Inc. ("Omega"), pursuant to Rules 65(a) and (b), SCRCP, temporarily restraining Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar") from removing and/or destroying certain materials and equipment, identified fully therein, located at Crailar's manufacturing facility in Florence County ("Pamplico Facility"). The Court extended this Order for good cause shown until November 22, 2013.

On October 31, 2013, this matter came before me for the hearing on Omega's Motion for Temporary Injunction. All parties received proper notice and were represented at the hearing. For the reasons set forth herein, I find in favor of granting the Temporary Injunction.

FINDINGS OF FACT

On or about May 23, 2012, it appears that Omega, as Design-Builder, entered into Design-Build contract with Crailar. This contract set forth Omega and Crailar's rights and obligations with respect to the design and construction of Crailar's manufacturing facility located

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

in Pamplico, South Carolina ("Pamplico Facility"). Allegedly, despite demands for payment, Crailar did not pay pursuant to the contract. Omega claims that the outstanding amount owed to Omega is $285,000. Crailar disputes this amount.

Omega attempted to reach an agreement with Crailar concerning the debt owed in order to avoid legal action leading up to the sudden closure of the Pamplico Facility. These attempts included discussions about an Escrow Agreement to protect Omega's interest. The parties exchanged drafts of an Escrow Agreement that was intended to hold the funds owed to Omega by Crailar, but an Escrow Agreement was never finalized.

On October 1, 2013, Omega learned that Crailar had suddenly and without notice to Omega closed the Pamplico Facility. Omega learned that Crailar had halted production in the Pamplico Facility, laid off its employees, and intended to move its production operations overseas. Although Crailar indicated that it would like to "retool" the Pamplico Facility and resume operations there at some time in the future, Crailar offered no written guarantee of payment or return of operations to the United States.

Omega has filed a proper Bond in an amount sufficient to protect Crailar's interest in the amount owed to Omega and secured by this Temporary Injunction. Crailar has not identified reliable security in the way of goods, equipment, or otherwise to satisfy the entire potential judgment amount established by Omega.

CONCLUSIONS OF LAW

The purpose of a temporary injunction is to preserve the status quo in order to avoid possible irreparable injury to a party pending litigation. I find that Omega has made a showing that (1) it will suffer irreparable harm if the injunction is not granted, (2) it will likely succeed on the merits of the case, and (3) there is an inadequate remedy at law. Peek v. Spartanburg

RECORD 000010

Regional Healthcare System, 367 S.C. 450, 626 S.E.2d 34, 36 (Ct. App. 2005); see also AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).

Irreparable Harm

Whether a wrong is irreparable in the sense to allow equity to intervene is not governed by narrow and artificial rules. The trial court must balance the equities and look at the specific facts of each case. The record reflects that Crailar may owe a substantial sum to Omega. While simultaneously purporting to negotiate the payment of this debt, it closed operations on its Pamplico Facility, fired its employees, and proceeded to move the operations overseas, all with no word to Omega. Omega only learned of these actions through another contractor. When directly addressed about the closure, Crailar representatives gave only vague assurances that it would make good on its debt. It thereafter ceased communications with Omega concerning the proposed Escrow Agreement.

Omega brought this lawsuit to protect its interest in the Pamplico Facility. This interest will be imminently and irreparably harmed by Crailar's sudden shutdown and transfer of its Pamplico Facility operations overseas. I find that granting the temporary injunction to secure enough assets to protect Omega's interest will maintain the status quo pending litigation or other disposition of the issues between the parties.

Success on the Merits

A plaintiff need not prove an absolute legal right; rather, it must only present a fair question as to the existence of such a right. The determination of whether to grant a temporary injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made. Once the plaintiff has made a showing entitling him to injunctive relief, a temporary injunction will be

granted without regard to the ultimate termination of the case on the merits. Peek, 626 S.E.2d at 37; see also Atwood Agency v. Black, 646 S.E.2d 882 (2007).

In addition to requesting the Temporary Injunction, Omega has in its Complaint brought causes of action for Breach of Contract and Quantum Meruit. With respect to the contract claim, Omega has established by way of sworn testimony and exhibits the existence of the contract and the amount owed. Even if Crailar disputes the actual amount owed, Omega has established its claim for payment in equity due to its provision of services and materials to Crailar for the Pamplico Facility.

Further, even if Crailar claims that the contract requires mediation or arbitration, this does not affect the court's power to issue a temporary injunction. The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation. Powell v. Immanuel Baptist Church, 261 S.C. 219, 199 S.E.2d 60 (1973). Whether the case is ultimately subject to or resolved by mediation, arbitration, or trial, the granting of temporary relief is within the sound discretion of the trial court. City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 531 S.E.2d 518 (2000). A court can and should grant a temporary injunction in an arbitrable dispute whenever an injunction is necessary to preserve the status quo pending arbitration. The fact that a party claims arbitration should apply, or even the fact that a court orders arbitration of a dispute, does not absolve the court of its obligation to consider the merits of a requested preliminary injunction. MailSource, LLC v. M.A. Bailey & Associates, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003). I make no finding in this order concerning the merits of Crailar's claim that mediation or arbitration applies to Omega's claim.

Because Omega has presented a fair question to its right to both legal and equitable relief, it has met the burden of this element.

No Adequate Remedy at Law

Omega seeks relief in its Complaint by way of both legal and equitable causes of action. Omega's recovery, even though in the nature of a money judgment, is not protected by an adequate remedy at law under the unique facts and circumstances of this case.

"The basis for granting equitable relief is the **impracticality** of obtaining full and adequate compensation at law." Nutt Corp. v. Howell Road, LLC, 396 S.C. 323, 721 S.E.2d 447, 449 (Ct. App. 2011) (emphasis added). An "'adequate' remedy at law is one which is **as certain, practical, complete and efficient** to attain the ends of justice and its administration as the remedy in equity." Milliken & Co. v. Morin, 386 S.C. 1, 685 S.E.2d 828, 832 (Ct. App. 2009), citing Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119, 123 (1989) (emphasis added). If imminent and actual harm is threatened and the available legal remedy would result in a judgment in name that is otherwise unrecoverable, the court should not hesitate to exercise its equitable powers. 27 S.C. Jur. Injunctions § 9.

Crailar has closed the Pamplico Facility and is moving its operations out of the United States. Although Crailar claims that it intends to resume operations in Pamplico, Crailar cannot guarantee that this will occur. It has equipment, raw material, and finished material at the Pamplico Facility that could be taken out of the country to run its new facility. If this occurred, any money judgment obtained by Omega at the conclusion of this case would be unrecoverable, because Crailar no longer has a presence in the state or the United States. This empty legal judgment is not certain, practical, complete, or efficient. An injunction prohibiting the removal

of assets sufficient to protect Omega's interest is proper in order to secure the status quo pending the resolution of this case.

IT IS THEREFORE ORDERED

That the terms of the October 23, 2013 Temporary Restraining Order be incorporated herein and made part of this Temporary Injunction during the pendency of the underlying litigation. However said Order is hereby modified to ***restrain and encumber only*** (1) a 2012 Chevrolet Colorado truck, (2) a Mettler-Toledo Model VTS100 Truckmate Analog Truck Scale and (3) a Holland Tractor;

Furthermore, Crailar is hereby Ordered to immediately post a bond in the amount of $190,246.75 in order to protect Omega's claim during the pendency of this litigation.

IT IS SO ORDERED.

November 25, 2013

By: _____
The Honorable William H. Seals, Jr.
Judge, Twelfth Circuit

FILED
2013 NOV 26 PM 2:05
CONNIE REESE CO & G.S.
FLORENCE CO.

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE OMEGA CONSTRUCTION, INC., Plaintiff, vs. CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC. Defendant.	IN THE COMMON PLEAS COURT SUMMONS C.A. No: _____

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

By: _____

D. Alan Lazenby, Esq.
Ginger D. Goforth, Esq.

LAZENBY LAW FIRM, LLC
Post Office Box 6099
Spartanburg, SC 29304
Phone: (864) 804-5050
Fax: (864) 804-5051
Email: alan@lazenbylawfirm.com
Email: ginger@lazenbylawfirm.com

October 15, 2013

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
OMEGA CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	
vs.	)	
	)	
CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.	)	C.A. No: _____
	)	
Defendant.	)	
	)	

COMES NOW Plaintiff Omega Construction, Inc. ("Omega") who, complaining of Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar"), herein and hereby file their Complaint and would respectfully show unto this Honorable Court the following:

PARTIES, JURISDICTION AND VENUE

1. Omega is a corporation organized and existing under the laws of the State of North Carolina, doing business in South Carolina, with its principal place of business in Surry County, North Carolina.
2. Crailar is a corporation organized and existing under the laws of the State of Nevada, doing business in South Carolina. On or about January 4, 2013, Crailar changed its name from Naturally Advanced Technologies US, Inc. Crailar operated the business at issue on property located at 1728 North Old River Road, Pamplico, South Carolina 29583 ("Pamplico Facility").
3. This is an action to recover monies owed for improvements to the Pamplico Facility made by Omega under contract with Crailar.
4. Accordingly, this Court has jurisdiction over the parties and claims in this case.

5. Venue is proper in this Court.

FACTUAL ALLEGATIONS

6. Omega incorporates herein the above allegations as if the same were set forth verbatim.

7. On or about May 23, 2012, Omega, as Design-Builder, entered into a Design-Build contract with Crailar with respect to the design, construction, and/improvement of the Pamplico Facility.

8. Crailar has failed and refused to pay the amount due and owing to Omega. (Exhibit A, Verified Statement of Account).

9. Despite timely demands, Crailar has failed and refused to make the final payment in full.

10. On September 30, 2013, Crailar ceased its operations at the Pamplico Facility.

11. Upon information and belief, Crailar intends to transfer the operations it conducted at the Pamplico Facility to a foreign facility.

12. Upon further information and belief, Crailar owns approximately 12.5 million pounds of raw flax material used in its production process, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment. This material is presently located at the Pamplico Facility. These materials constitutes assets of significant value.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

13. Omega incorporates herein the above allegations as if the same were set forth verbatim.

14. A contract existed between Omega and Crailar.

15. Crailar breached the contract by failing to pay all sums due.

RECORD 000017

16. Omega has suffered actual damages in the amount of TWO HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED TWENTY EIGHT and 66/100 DOLLARS ($285,428.66), plus interest, costs, and attorney's fees.

17. Omega prays that the Court would inquire into the matters alleged and grant it relief from Crailar in the form of a judgment for TWO HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED TWENTY EIGHT and 66/100 DOLLARS ($285,428.66), plus interest, c costs, and attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

18. Omega incorporates herein the above allegations as if same were set forth verbatim.

19. Omega conferred a benefit on Crailar by providing Design/Build materials and/or services for the Pamplico Facility.

20. Plaintiff conferred this benefit with the expectation of payment.

21. Crailar accepted and realized the value of the benefit of the provision of these materials and/or services.

22. It would be unjust for Crailar to accept and realize this benefit without payment.

23. Omega prays that his Honorable Court would inquire into the matters alleged and grant a judgment against Crailar for the value of the benefit conferred by Omega.

FOR A THIRD CAUSE OF ACTION
(Temporary Restraining Order and Temporary Injunction)

24. Omega incorporates herein the above allegations as if same were set forth verbatim.

25. Crailar's sudden closure and effective abandonment of the Pamplico Facility before making final payment to Omega causes immediate and irreparable harm to Omega.

26. If Crailar is allowed to remove the raw flax material from the Pamplico Facility by transporting this material overseas or otherwise, Omega will be deprived of its recourse against these substantial assets to recover the contract amount due.

27. Omega has no adequate remedy at law and a temporary restraining order, preliminary injunction, and permanent injunction must be issued against Crailar under the circumstances to prevent it from disposing of assets that would satisfy the contract debt owed to Omega.

WHEREFORE, having pled its case, Omega prays that this Honorable Court would inquire into the matters alleged and grant Omega relief from Crailar as follows:

a. For a judgment in favor of Omega against Crailar in the amount of TWO HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED TWENTY EIGHT and 66/100 DOLLARS ($285,428.66), plus interest and a reasonable attorney's fee for collection;

b. For an Order issuing a temporary restraining order, preliminary injunction, and permanent injunction against Crailar to prevent it from removing the raw flax material currently in stored at the Pamplico Facility.

c. For such other and further relief as the Court deems just and proper.

October 15, 2013

By: _____

D. Alan Lazenby
Ginger D. Goforth

LAZENBY LAW FIRM, LLC
340 E Main St, Suite 240 (29302)
Post Office Box 6099
Spartanburg, SC 29304
Phone: (864) 804-5050
Fax: (864) 804-5051
Email: alan@lazenbylawfirm.com
Email: ginger@lazenbylawfirm.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT A

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-_____

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE OMEGA CONSTRUCTION, INC., Plaintiff, vs. CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC. Defendant.	)	IN THE COURT OF COMMON PLEAS VERIFIED STATEMENT OF ACCOUNT C.A. No: _____

VERIFIED STATEMENT OF ACCOUNT

Personally appeared before me, Ginger D. Goforth, Esquire, who being duly sworn, deposes and states that she is the attorney for Plaintiff Omega Construction, Inc. ("Omega"), and that she is authorized to give this Affidavit. According Omega's records, Omega has issued the following invoices to Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc., ("Crailar") which have not been paid by Crailar:

Pay Application #4	**07/31/2012**	**$20.00**
Pay Application #12R	**03/21/2013**	**$99,822.90**
Pay Application #14	**05/03/2013**	**$119.857.83**
Pay Application #15	**08/13/2013**	**$20,010.50**
Pay Application #15R	**08/13/2013**	**$45,717.43**

Omega is still due and owning the sum of **TWO HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED TWENTY EIGHT AND 66/100 DOLLARS ($285,428.66)**

for work that Omega performed on the subject property.

Ginger D. Goforth, Esquire

Sworn to by: Jessica Holmen
(Notary Public)

This 15 day of October 2013

My Commission expires on 4/23/19

JESSICA HOLMEN
COM. EXP.
NOTARY
PUBLIC
APRIL 23, 2019
SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
OMEGA CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	MOTION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION
vs.	)	
	)	
CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.	)	
	)	
Defendant.	)	
	)	C.A. No: _____

Plaintiff Omega Construction, Inc. ("Omega"), pursuant to Rules 65(a) and (b), SCRCP, moves the Court for an ex parte Order temporarily restraining and enjoining Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar") from removing and/or destroying approximately 12.5 million pounds of raw flax material used in its production process, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment currently located at Crailar's manufacturing facility located in Florence County ("Pamplico Facility").

This Motion is made upon the grounds that Omega will suffer immediate and irreparable injury, loss, or damage to its business interests if Crailar is not restrained as identified. This Motion is based upon Omega's Complaint, filed simultaneously herewith, as well as the Affidavits of Brock Hennings and Greg Marshall, any memoranda of law that may be filed in support, and the statutory and case law of this state. Additionally, Omega requests that

the Court set a hearing as soon as possible to consider issuing a temporary injunction enjoining Crailar from the activities identified by the temporary restraining order.

Respectfully submitted,

October 15, 2013

By: _____
D. Alan Lazenby
Ginger D. Goforth

LAZENBY LAW FIRM, LLC
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Email: ginger@lazenbylawfirm.com

ATTORNEYS FOR PLAINTIFF

RECORD 000024

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	C.A. NUMBER: _____
OMEGA CONSTRUCTION, INC., Plaintiff, vs. CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC. Defendant.	AFFDAVIT OF BROCK HENNINGS

PERSONALLY APPEARED BEFORE ME Brock Hennings who, being duly sworn, deposes and says as follows:

1. I am the Senior Project Manager of Omega Construction, Inc. ("Omega"). Omega is a corporation organized and existing under the laws of the State of North Carolina. It also does business in South Carolina. I have personal knowledge of all matters

2. On or about May 23, 2012, Omega, as Design-Builder, entered into Design-Build contract with Defendant Crailar, Inc., d/b/a/ Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailer"). This contract set forth Omega and Crailar's rights and obligations with respect to the design and construction of Crailar's manufacturing facility located in Pamplico, South Carolina ("Pamplico Facility"). (Exhibit A to Affidavit of Greg Marshall, Contract).

3. Despite timely demands for payment, Crailar has failed and refused to pay the amount due and owing to Omega under the contract. (Exhibit B to Affidavit of Greg Marshall, Verified Statement of Account).

4. On October 1, 2013, I learned through Greg Marshall that Crailar had suddenly and without notice closed the Pamplico Facility.

5. I attempted to contact Tom Robinson at Crailar by telephone to ascertain the status of the company and its intent/ability to pay what it owed to Omega. Through Tom Robinson, Crailar's Chief Operating Officer, I learned that Crailar closed its operations on September 30, 2013 and laid off all of its employees. Mr. Robinson indicated that the closure was intended to be temporary, for the purpose of "retooling" the Pamplico Facility. Mr. Robinson indicated that some of the equipment in the facility has been repossessed. He offered no written guarantees of payment or return of operations to the United States.

6. Crailar's sudden closure and effective abandonment of the Pamplico Facility before making final payment to Omega causes immediate and irreparable harm to Omega.

7. Currently, there are approximately 12.5 million pounds of raw flax material, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment located at the Pamplico Facility. (Exhibit C to Affidavit of Greg Marshall, Photographs) (Exhibit D to Affidavit of Greg Marshall, List of Equipment). If Crailar is allowed to remove these materials and equipment from the Pamplico Facility by transporting this material overseas, selling it, or otherwise, Omega will be

deprived of its recourse against these substantial assets to recover the contract amount due.

8. A temporary restraining order issued against Crailar under the circumstances will prevent it from disposing of assets that could be applied to satisfy the contract debt owed to Omega.

FURTHER AFFIANT SAYETH NOT.

Brock Hennings

Sworn to and subscribed before me this
14th day of October, 2013

Notary Public, State of North Carolina

Anjanette L Hodges
Notary Public, North Carolina
Surry County
My Commission Expires
12/14/15

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

C.A. NUMBER: _____

OMEGA CONSTRUCTION, INC,

.Plaintiff,

vs.

CRAILER, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.

Defendant.

AFFIDAVIT OF D. GREG MARSHALL

PERSONALLY APPEARED BEFORE ME D. Greg Marshall who, being duly sworn, deposes and says as follows:

1. I am the Chief Financial Officer of Omega Construction, Inc. ("Omega"). Omega is a corporation organized and existing under the laws of the State of North Carolina. It also does business in South Carolina. I have personal knowledge of all matters set forth herein.

2. On or about May 23, 2012, Omega, as Design-Builder, entered into Design-Build contract with Defendant Crailar, Inc., d/b/a/ Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailer"). This contract set forth Omega and Crailar's rights and obligations with respect to the design and construction of Crailar's manufacturing facility located in Pamplico, South Carolina ("Pamplico Facility"). (Exhibit A, Contract).

3. Despite timely demands for payment, Crailar has failed and refused to pay the amount due and owing to Omega under the contract. (Exhibit B, Verified Statement of Account).

4. On October 1, 2013, I learned through another contractor that is owed money by Crailar that Crailar had suddenly and without notice closed the Pamplico Facility.

5. I attempted to contact officials at Crailar by telephone and electronic mail to ascertain the status of the company and its intent/ability to pay what it owed to Omega. Through Guy Prevost, Crailar's Corporate Controller and Compliance Officer, I learned that Crailar had halted production in the Pamplico Facility and intends to move its production operations overseas in a facility that Crailar intends to acquire or has already acquired. Although Mr. Prevost indicated that Crailar would like to "retool" the Pamplico Facility and resume operations there at some time in the future, he offered no written guarantees of payment or return of operations to the United States. Mr. Prevost indicated that there were approximately 12.5 million pounds of raw flax material at the Pamplico Facility that will need to be processed by Crailar to produce finished goods inventory.

6. I received similar information from Ryan Levernz, Director of Corporate Communications for Crailar. Despite assurances that Crailar intended to return operations to the Pamplico Facility at some point, Mr. Levernz offered no substantive guarantee of payment or protection of the amounts owed to Omega.

7. Crailar's sudden closure and effective abandonment of the Pamplico Facility before making final payment to Omega causes immediate and irreparable harm to Omega.

8. Currently, there are approximately 12.5 million pounds of raw flax material, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment located at the Pamplico Facility. (Exhibit C, Photographs) (Exhibit D, List of Equipment). If Crailar is allowed to remove these materials and equipment from the Pamplico Facility by transporting this material overseas, selling it, or otherwise, Omega will be deprived of its recourse against these substantial assets to recover the contract amount due.

9. A temporary restraining order issued against Crailar under the circumstances will prevent it from disposing of assets that could be applied to satisfy the contract debt owed to Omega.

FURTHER AFFIANT SAYETH NOT.

D. Greg Marshall

Sworn to and subscribed before me this
14th day of October, 2013

Notary Public, State of North Carolina

Anjanette L Hodges
Notary Public, North Carolina
Surry County
My Commission Expires
12-19-17

EXHIBIT A

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-_____

AIA® Document A141™ – 2004

Standard Form of Agreement Between Owner and Design-Builder

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

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

Naturally Advanced Technology
1728 North Old River Road
Pamplico, South Carolina 29583

and the Design-Builder:
(Name, legal status, address and other information)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

NAT Flax Fiber Facility
Pamplico, South Carolina

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents (which may also be referred to as the Design-Build Documents) consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontractors, purchase orders, and other agreements between the Design-Builder and third parties. The Design-Builder shall incorporate the obligations of this Design-Build Contract into its respective subcontracts, supply agreements, and purchase orders.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Design-Build Documents, other than a Modification, is inconsistent with this Agreement, this Agreement will govern.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

§ 1.4 The Design-Builder accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Design-Builder agrees to furnish the architectural, engineering, and construction services set forth herein and agrees to furnish efficient business administration and superintendence, and to use its best efforts to

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complete the Project in the best, most expeditious, and economical manner consistent with the interests of the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the latter of the date of the issuance of the building permit or the date the Owner provides reasonable documentation of project financing as required by Article A.2.2.8 of Exhibit A. If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:
(Insert Owner's time requirements.)

N/A

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.
(Paragraph deleted)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than days from the date of commencement, or as follows:
(Paragraph deleted)

Design-Builder achieving Substantial Completion within 100 days from commencement is contingent upon (1) The agreement of the local building authority to issue a Temporary Certificate of Occupancy allowing machine commissioning before the Permanent Fire Pump is active and (2) NAT electing to install a temporary fire pump until the Permanent Fire Pump; System is active (see Additional Pricing Item #6 in Addendum A (NAT Outline Scope of Work) for pricing). If either of these 2 conditions are not satisfied, Substantial Completion shall be achieved not later than 130 days from date of Commencement. The Design-Builder understands and acknowledges that time is of the essence in the execution of the work in accordance with the schedule as noted herein and that any delay in completion of the Work beyond the Substantial Completion date will materially affect the Owner by causing among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages.

Portion of Work	Substantial Completion Date

§ 3.4 Within ten (10) days of the award of the Contract, the Progress Schedule shall be prepared by Design-Builder utilizing the critical path method and submitted to Owner. The Progress Schedule shall be detailed to a degree which will permit proper coordination of all trades for the Work, including all design elements of the Work. The Design-Builder shall be required to update the status of the Work according to the Progress Schedule on a monthly basis or as reasonably requested by Owner. The Progress Schedule shall show the amount of Work constructed and comparing the Work in place to the progress required by the Progress Schedule. Failure to provide such updates to the Progress Schedule shall be a material breach of this Agreement. In addition, if, at any time, the progress of the Work is such that the Design-Builder will not be able to meet the Substantial Completion date in the Progress Schedule (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents), Design-Builder shall inform Owner of this potential delay as required by the Design-Build Documents. At that time, Design-Builder shall also present a recovery schedule and plan for such overtime work or other measures that may be required to recover the schedule. Failure to provide the Owner with notice in accordance with the Design-Build Documents of a potential delay to one or more of the completion dates and a plan of corrective action shall be deemed a waiver of the Design-Builder's right to claim any extension of time for delay caused by that activity.

§ 3.6 Should the Design-Builder fail to progress with the Work in accordance with the Progress Schedule (taking into account extensions of the Contract Time approved in accordance with the Design-Build Documents), it shall, without being entitled to any increase in the Contract Sum or other compensation or extension in the Contract Times, work

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overtime, increase his force, or take other such action as may be necessary or appropriate to recover the Schedule and complete the activity by the dates shown on the Progress Schedule.

§ 3.7 The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Design-Build Documents. In the event that Design-Builder does not achieve Substantial Completion of the Work as set forth in Article 3.3 of this Agreement, Design-Builder shall pay Owner liquidated damages in the amount of Five hundred dollars ($500.00) per day for each day after the date for substantial Completion that Design-Builder fails to properly complete the Work. If the Design-Builder is more than ten (10) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the tenth (10th) day that Design-Builder fails to properly complete the Work. If Design-Builder is more than thirty (30) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the thirtieth (30th) day that Design-Builder fails to properly complete the Work. Design-Builder acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[ ] Stipulated Sum in accordance with Section 4.2 below;

[ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

[X] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM (Intentionally omitted.)

§ 4.2.1 Intentionally omitted.

§ 4.2.2 Intentionally omitted.

§ 4.2.3 Intentionally omitted.

Description	Units	Price ($0.00)

§ 4.2.4 Intentionally omitted.

Allowance	Amount ($0.00)	Included Items

§ 4.2.5 Intentionally omitted.

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 Intentionally omitted.

§ 4.3.2
(Paragraphs deleted)
Intentionally omitted.

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

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§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

Five percent (5%) of the Cost of the Work.

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 No later than May 18, 2012, the Design-Builder shall propose a Guaranteed Maximum Price for the Work. If accepted by the Owner in writing, this proposal shall become Amendment 1 to this Agreement and shall establish the Guaranteed Maximum Price for the Work. The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The Guaranteed Maximum Price shall include the cost of all design, labor, equipment, supplies, materials, services and allowances required to complete the Project pursuant to the Design-Build Documents.
(Insert specific provisions if the Design-Builder is to participate in any savings.)

To the extent the Cost of the Work plus the Design-Builder's fee is less than the Guaranteed Maximum Price (minus any remaining contingencies and allowances), the Owner and Design-Builder shall share such savings with the Owner receiving eighty percent (80%) of such savings and the Design-Builder receiving twenty percent (20%) of such savings.

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price ($0.00)

§ 4.4.3.4 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount ($0.00)	Included Items

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:
(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Intentionally omitted.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Design-Builder shall submit monthly Applications for Payment.

§ 5.1.3 Provided that an Application for Payment is received not later than the 5th day of the following month, the Owner shall make payment to the Design-Builder not later than the 25th day of the month in which the billing is received by the Owner. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Owner receives the Application for Payment.

§ 5.1.4 If requested by Owner in writing, with each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM (Intentionally omitted)

§ 5.2.1 Intentionally omitted

§ 5.2.2
(Paragraphs deleted)
Intentionally omitted

§ 5.2.3 Intentionally omitted.
(Paragraphs deleted)

§ 5.2.4
(Paragraphs deleted)
Intentionally omitted

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Intentionally omitted.

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§ 5.3.2
(Paragraphs deleted)
Intentionally omitted.
(Paragraphs deleted)

§ 5.3.3 Intentionally omitted.

§ 5.3.4 Intentionally omitted.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. When the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, elect not to withhold additional retainage. In such event, there will be a total of five percent (5%) retainage held by the Owner at the time of Substantial Completion of the Work. Nevertheless, any reduction or release of retainage, or a portion thereof, shall not be a waiver of (i) any of the rights to retainage in connection with other payments to the Design-Builder or (ii) any other right or remedy that the Owner has under any Design-Build Documents, at law or in equity.

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§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1
(Paragraphs deleted)
Intentionally omitted.

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:
(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)
(Check one.)

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:
(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:
(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

Init.
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§ 7.4 The Owner's Designated Representative is:
(Insert name, address and other information.)

Tom Robinson
Naturally Advanced Technologies U.S., Inc.
6188 Old Ironworks Road
Greensboro, North Carolina 27455Telephone: (336) 549-7873

COPY TO:
Guy Prevost
Naturally Advanced Technologies U.S., Inc.
305-4420 Chatterton Way
Victor, BC, Canada V8X 5J2

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

J. Barry Hennings
Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

(Office) 336-368-5156; (Fax) 336-368-2277; (email) barryh@omegaconstruction.com

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

Insurance Requirements

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

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

percent (%)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

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§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Document	Title	Pages
Insurance Requirements		1 - 3

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title	Date

§ 8.1.4 The Design-Builder's Proposal, dated , consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Number	Date	Pages

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

N/A

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Insurance Requirements

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

OWNER *(Signature)*	DESIGN-BUILDER *(Signature)*
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for
AIA® Document A141™ – 2004

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Naturally Advanced Technology
1728 North Old River Road
Pamplico, South Carolina 29583

...

(Name, legal status, address and other information)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

...

NAT Flax Fiber Facility
Pamplico, South Carolina

PAGE 2

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents (which may also be referred to as the Design-Build Documents) consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder ~~and accepted by the Owner, if any; the Design-Builder's Proposal~~ and ~~written modifications to the Proposal~~ accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontractors, purchase orders, and other agreements between the Design-Builder and third parties. The Design-Builder shall incorporate the obligations of this Design-Build Contract into its respective subcontracts, supply agreements, and purchase orders.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Design-Build Documents, other than a Modification, is inconsistent with this Agreement, this Agreement will govern.

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...

§ 1.4 The Design-Builder accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Design-Builder agrees to furnish the architectural, engineering, and construction services set forth herein and agrees to furnish efficient business administration and superintendence, and to use its best efforts to complete the Project in the best, most expeditious, and economical manner consistent with the interests of the Owner.

PAGE 3

§ 3.1 The date of commencement of the Work shall be the ~~date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.~~
~~(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)~~ latter of the date of the issuance of the building permit or the date the Owner provides reasonable documentation of project financing as required by Article A.2.2.8 of Exhibit A.

...

N/A

...

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

...

~~*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)*~~

Design-Builder achieving Substantial Completion within 100 days from commencement is contingent upon (1) The agreement of the local building authority to issue a Temporary Certificate of Occupancy allowing machine commissioning before the Permanent Fire Pump is active and (2) NAT electing to install a temporary fire pump until the Permanent Fire Pump System is active (see Additional Pricing Item #6 in Addendum A (NAT Outline Scope of Work) for pricing). If either of these 2 conditions are not satisfied, Substantial Completion shall be achieved not later than 130 days from date of Commencement. The Design-Builder understands and acknowledges that time is of the essence in the execution of the work in accordance with the schedule as noted herein and that any delay in completion of the Work beyond the Substantial Completion date will materially affect the Owner by causing among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages.

...

§ 3.4 Within ten (10) days of the award of the Contract, the Progress Schedule shall be prepared by Design-Builder utilizing the critical path method and submitted to Owner. The Progress Schedule shall be detailed to a degree which will permit proper coordination of all trades for the Work, including all design elements of the Work. The Design-Builder shall be required to update the status of the Work according to the Progress Schedule on a monthly basis or as reasonably requested by Owner. The Progress Schedule shall show the amount of Work constructed and comparing the Work in place to the progress required by the Progress Schedule. Failure to provide such updates to the Progress Schedule shall be a material breach of this Agreement. In addition, if, at any time, the progress of the Work is such that the Design-Builder will not be able to meet the Substantial Completion date in the Progress Schedule (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents), Design-Builder shall inform Owner of this potential delay as required by the Design-Build Documents. At that time,

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Design-Builder shall also present a recovery schedule and plan for such overtime work or other measures that may be required to recover the schedule. Failure to provide the Owner with notice in accordance with the Design-Build Documents of a potential delay to one or more of the completion dates and a plan of corrective action shall be deemed a waiver of the Design-Builder's right to claim any extension of time for delay caused by that activity.

§ 3.6 Should the Design-Builder fail to progress with the Work in accordance with the Progress Schedule (taking into account extensions of the Contract Time approved in accordance with the Design-Build Documents), it shall, without being entitled to any increase in the Contract Sum or other compensation or extension in the Contract Times, work overtime, increase his force, or take other such action as may be necessary or appropriate to recover the Schedule and complete the activity by the dates shown on the Progress Schedule.

§ 3.7 The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Design-Build Documents. In the event that Design-Builder does not achieve Substantial Completion of the Work as set forth in Article 3.3 of this Agreement, Design-Builder shall pay Owner liquidated damages in the amount of Five hundred dollars ($500.00) per day for each day after the date for substantial Completion that Design-Builder fails to properly complete the Work. If the Design-Builder is more than ten (10) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the tenth (10th) day that Design-Builder fails to properly complete the Work. If Design-Builder is more than thirty (30) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the thirtieth (30th) day that Design-Builder fails to properly complete the Work. Design-Builder acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty.

PAGE 4

[X] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

...

§ 4.2 STIPULATED SUM (Intentionally omitted.)

§ 4.2.1 ~~The Stipulated Sum shall be ($), subject to additions and deductions as provided in the Design-Build Documents.~~Intentionally omitted.

§ 4.2.2 ~~The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~
Intentionally omitted.

§ 4.2.3 ~~Unit prices, if any, are as follows:~~Intentionally omitted.

...

§ 4.2.4 ~~Allowances, if any, are as follows:~~
~~(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)~~Intentionally omitted.

...

§ 4.2.5 ~~Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:~~
Intentionally omitted.

...

§ 4.3.1 ~~The Cost of the Work is as defined in Exhibit B.~~Intentionally omitted.

§ 4.3.2 ~~The Design-Builder's Fee is:~~

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~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)~~

Intentionally omitted.

Five percent (5%) of the Cost of the Work.

...

§ 4.4.3.1 No later than May 18, 2012, the Design-Builder shall propose a Guaranteed Maximum Price for the Work. If accepted by the Owner in writing, this proposal shall become Amendment 1 to this Agreement and shall establish the Guaranteed Maximum Price for the Work. The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed ~~($—),~~ the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The Guaranteed Maximum Price shall include the cost of all design, labor, equipment, supplies, materials, services and allowances required to complete the Project pursuant to the Design-Build Documents.

...

To the extent the Cost of the Work plus the Design-Builder's fee is less than the Guaranteed Maximum Price (minus any remaining contingencies and allowances), the Owner and Design-Builder shall share such savings with the Owner receiving eighty percent (80%) of such savings and the Design-Builder receiving twenty percent (20%) of such savings.

...

§ 4.5.2 ~~Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.~~ Intentionally omitted.

...

§ 5.1.1 Based upon Applications for Payment properly submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

month. Design-Builder shall submit monthly Applications for Payment.

§ 5.1.3 Provided that an Application for Payment is received not later than the 5th day of the following month, the Owner shall make payment to the Design-Builder not later than the ~~day of the month.~~ 25th day of the month in which the billing is received by the Owner. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than ~~(~~ twenty (20) days after the Owner receives the Application for Payment.

§ 5.1.4 ~~With~~ If requested by Owner in writing, with each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on

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account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

PAGE 6

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM (Intentionally omitted)

§ 5.2.1 ~~Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.~~ Intentionally omitted

§ 5.2.2 ~~Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

~~.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;~~

~~.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);~~

~~.3 Subtract the aggregate of previous payments made by the Owner; and~~ Intentionally omitted

~~.4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.~~

§ 5.2.3 ~~The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:~~ Intentionally omitted.

~~.1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and~~

~~*(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*~~

~~.2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.~~

§ 5.2.4 ~~Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:~~

~~*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)*~~

Intentionally omitted ...

...

§ 5.3.1 ~~Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.~~ Intentionally omitted.

§ 5.3.2 ~~Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

~~.1 Take the Cost of the Work as described in Exhibit B;~~

~~.2 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed sum~~

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~~Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~Intentionally omitted.

~~.3 Subtract the aggregate of previous payments made by the Owner;~~

~~.4 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and~~

~~.5 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.~~

§ 5.3.3 ~~Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:~~Intentionally omitted.

PAGE 7

§ 5.3.4 ~~Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.~~Intentionally omitted.

...

.3 Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;

...

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. When the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, elect not to withhold additional retainage. In such event, there will be a total of five percent (5%) retainage held by the Owner at the time of Substantial Completion of the Work. Nevertheless, any reduction or release of retainage, or a portion thereof, shall not be a waiver of (i) any of the rights to retainage in connection with other payments to the Design-Builder or (ii) any other right or remedy that the Owner has under any Design-Build Documents, at law or in equity.

PAGE 8

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in ~~Section A.9.10 of~~ Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

...

§ 6.1 ~~The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.3 of Exhibit A, Terms and Conditions:~~

~~*(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)*~~

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Intentionally omitted.

...

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

PAGE 9

Tom Robinson
Naturally Advanced Technologies U.S., Inc.
6188 Old Ironworks Road
Greensboro, North Carolina 27455Telephone: (336) 549-7873

COPY TO:
Guy Prevost
Naturally Advanced Technologies U.S., Inc.
305-4420 Chatterton Way
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...

J. Barry Hennings
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344 Shelleybrook Drive
Pilot Mountain, NC 27041
(Office) 336-368-5156; (Fax) 336-368-2277; (email) barryh@omegaconstruction.com

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Insurance Requirements

PAGE 10

Insurance Requirements 1 - 3

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N/A

...

Insurance Requirements

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Certification of Document's Authenticity

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I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:10:16 on 05/23/2012 under Order No. 3143417507_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2004, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A141™ – 2004 Exhibit B

Determination of the Cost of the Work

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

NAT Flax Fiber Facility
Pamplico, South Carolina

THE OWNER:
(Name, legal status and address)

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

THE DESIGN-BUILDER:
(Name, legal status and address)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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(1431843163)

ARTICLE B.1 CONTROL ESTIMATE

§ B.1.1 Intentionally omitted.

§ B.1.2
(Paragraphs deleted)
Intentionally omitted

§ B.1.3 Intentionally omitted

§ B.1.4 Intentionally omitted.

ARTICLE B.2 COSTS TO BE REIMBURSED

§ B.2.1 COST OF THE WORK

The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

§ B.2.2 LABOR COSTS

§ B.2.2.1 Wages of construction workers and an on-site field superintendant directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval, and for Design-Builder's Project Manager when engaged in the Work.

§ B.2.2.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

§ B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or

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others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, photographs, facsimile transmissions and long-distance telephone calls, data transmissions, postage and parcel delivery charges, telephone service and computer-related costs at the site and necessary and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the necessary and reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work, including, but not limited to, reasonable transportation, travel, hotel, and per diem expenses.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in writing in advance by the Owner.

§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents.

§ B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums required by the Design-Build Documents that can be directly attributed to this Design-Build Contract, including any additional premiums required as a result of approved change Orders increasing the Guaranteed Maximum Price.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents.

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Intentionally omitted.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or breach of this Agreement.

§ B.2.7.8 Intentionally omitted.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in advance in writing by the Owner.

§ B.2.7.10 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

§ B.2.7.11 All water, power and fuel costs necessary for the Work.

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§ B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions, so long as such costs do not result from the negligence or breach of contract by Design-Builder or a subcontractor or designer employed by Design-Builder.

§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Article B.2;

.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in Section B.2;

.3 Overhead and general expenses, except as may be expressly included in Article B.2;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.7 **Bonuses, incentive compensation, contributions (other than Workmen's Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, Federal Unemployment Insurance), gratuities and entertainment expense. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Article B.2;**

.9 **Expenses for travel, including Design-Builder-supplied vehicles used for personal use, incurred by Design-Builder's employees while traveling for purposes other than the direct execution of the Work;**

.10 **Fines other than those due to the acts or omissions of Owner or its agents;**

.11 **Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines and work stoppages or slowdowns, except where such costs are due to circumstances beyond the control of the Design-Builder;**

.12 **Consultants to the Design-Builder not approved, in writing, by Owner;**

.13 **Corporate accounting, check and accounting processing cost shall not be reimbursed; and**

.14 **Other costs, damages, or expenses specifically excluded elsewhere in the Design-Build Documents.**

(Paragraphs deleted)

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

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§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Design-Builder shall then determine, with the advice of the Owner, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 When a specific bidder (1) is recommended in writing to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ B.5.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Design-Builder 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 Design-Builder.

§ B5.4 All Subcontractors shall be pre-qualified by the Design-Builder. The Owner shall have the opportunity and right to disapprove of any proposed subcontractor. However, to the extent there is an increase in cost due to the Owner disapproving of a proposed subcontractor, the Design-Builder shall be due a Change Order as provided for under Section b.5.2 above.

§ B5.5 Design-Builder may self-perform any of the work. Owner, however, reserves the right to require the Design-Builder to seek competitive pricing for such portions of the Work from other qualified contractors.

§ B5.6 All Subcontractors shall conform and be subject to the requirements of the Design-Build Documents. Subcontracts awarded on the basis of the cost of such work plus a fee shall require Owner's prior written approval.

§ B5.7 Subcontractor agreements shall, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Design-Builder is terminated by the Owner.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be in accordance with generally accepted accounting procedures. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's final accounting of the Cost of the Work.

§ B.6.3 Upon the Owner's direction, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after delivery of the final accounting by the Design-Builder. Based upon the Cost of

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the Work as acknowledged by the Owner, or, if the Owner has directed its auditors to report thereon, based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions for payment under the Design-Build Documents have been met, the Owner will, within forty (40) days after receipt of the Design-Builder's final accounting, issue final payment or notify the Design-Builder in writing of its reasons for withholding final payment.

§ B.6.4 If the Owner disputes the Cost of the Work as set forth in the Design-Builder's final accounting, the Design-Builder shall be entitled to assert a Claim in accordance with Article A.4, as modified. The Owner shall, pending resolution of any such dispute, pay the Design-Builder all sums otherwise payable and not in dispute.

§ B.6.5 Intentionally omitted.

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PAGE 1

NAT Flax Fiber Facility
Pamplico, South Carolina

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Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

...

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
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PAGE 2

§ B.1.1 ~~Where the Contract Sum is the Cost of the Work, plus the Design-Builder's Fee without a Guaranteed Maximum Price pursuant to Section 4.3 of the Agreement, the Design-Builder shall prepare and submit to the Owner prior to the Design-Builder's first Application for Payment, in writing, a Control Estimate. The Control Estimate shall include the estimated Cost of the Work plus the Design-Builder's Fee. The Control Estimate shall be used to monitor actual costs.~~Intentionally omitted.

§ B.1.2 ~~The Control Estimate shall include:~~

~~.1 the documents enumerated in Article 8 of the Agreement, including all Addenda thereto and the Terms and Conditions of the Contract;~~

~~.2 a statement of the estimated Cost of the Work showing separately the compensation for design services, construction costs organized by trade categories or systems and the Design-Builder's Fee; and~~

~~.3 contingencies for further development of design and construction.~~Intentionally omitted

§ B.1.3 ~~The Design-Builder shall meet with the Owner to review the Control Estimate. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge its acceptance in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.~~Intentionally omitted

§ B.1.4 ~~The Design-Builder shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control~~

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~~Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Design-Builder's first Application for Payment and shall be revised monthly or at other intervals as mutually agreed.~~ Intentionally omitted.

...

The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

...

§ B.2.2.1 Wages of construction workers and an on-site field superintendant directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's ~~approval.~~ prior written approval, and for Design-Builder's Project Manager when engaged in the Work.

...

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, ~~customary benefits such as~~ sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

PAGE 3

§ B.2.5.4 Cost of document reproductions, photographs, facsimile transmissions and long-distance telephone calls, data transmissions, postage and parcel delivery charges, telephone service and computer-related costs at the site and necessary and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the necessary and reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the ~~Work.~~Work, including, but not limited to, reasonable transportation, travel, hotel, and per diem expenses.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in writing in advance by the Owner.

...

§ B.2.7.1 That portion of insurance and bond premiums required by the Design-Build Documents that can be directly attributed to this Design-Build ~~Contract.~~Contract, including any additional premiums required as a result of approved change Orders increasing the Guaranteed Maximum Price .

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the ~~Work.~~Work and for which the Design-Builder is liable.

...

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and ~~Conditions,~~ Conditions as modified, or other provisions of the Design-Build Documents, ~~and which do not fall within the scope of Section A.13.5.3.~~

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§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and ~~Conditions,~~ Conditions as modified, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 ~~Data processing costs related to the Work.~~ Intentionally omitted.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or ~~failure to fulfill a specific responsibility to the Owner as set forth in the Design-Build Documents.~~ breach of this Agreement.

§ B.2.7.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.~~ Intentionally omitted.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in advance in writing by the Owner.

§ B.2.7.10 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

§ B.2.7.11 All water, power and fuel costs necessary for the Work.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and ~~Conditions.~~ Conditions, so long as such costs do not result from the negligence or breach of contract by Design-Builder or a subcontractor or designer employed by Design-Builder.

...

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Article B.2;

.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in Section B.2;

.3 Overhead and general expenses, except as may be expressly included in Article B.2;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.7 Bonuses, incentive compensation, contributions (other than Workmen's Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, Federal Unemployment Insurance), gratuities and entertainment expense. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Article B.2;

.9 Expenses for travel, including Design-Builder-supplied vehicles used for personal use, incurred by Design-Builder's employees while traveling for purposes other than the direct execution of the Work;

.10 Fines other than those due to the acts or omissions of Owner or its agents;

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.11 Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines and work stoppages or slowdowns, except where such costs are due to circumstances beyond the control of the Design-Builder;

.12 Consultants to the Design-Builder not approved, in writing, by Owner;

.13 Corporate accounting, check and accounting processing cost shall not be reimbursed; and

.14 Other costs, damages, or expenses specifically excluded elsewhere in the Design-Build Documents.

~~§ B.3.1.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Sections B.2.2.2 and B.2.2.3.~~

~~§ B.3.1.2 Expenses of the Design-Builder's principal office and offices other than the site office.~~

~~§ B.3.1.3 Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.~~

~~§ B.3.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.~~

~~§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.~~

~~§ B.3.1.6 Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.~~

~~§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.~~

~~§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.~~

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed ~~by others under contracts~~ under subcontracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from ~~whom~~ which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from ~~Contractors~~ Subcontractors and from suppliers of materials or equipment fabricated especially for the ~~Work and shall deliver such bids to the Owner. The Owner shall then determine~~ Work. The Design-Builder shall then determine, with the advice of the Owner, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 ~~Contracts or other agreements shall conform to the applicable payment provisions of this Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior consent.~~ When a specific bidder (1) is recommended in writing to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ B.5.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Design-Builder 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 Design-Builder.

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§ B5.4 All Subcontractors shall be pre-qualified by the Design-Builder. The Owner shall have the opportunity and right to disapprove of any proposed subcontractor. However, to the extent there is an increase in cost due to the Owner disapproving of a proposed subcontractor, the Design-Builder shall be due a Change Order as provided for under Section b.5.2 above.

§ B5.5 Design-Builder may self-perform any of the work. Owner, however, reserves the right to require the Design-Builder to seek competitive pricing for such portions of the Work from other qualified contractors.

§ B5.6 All Subcontractors shall conform and be subject to the requirements of the Design-Build Documents. Subcontracts awarded on the basis of the cost of such work plus a fee shall require Owner's prior written approval.

§ B5.7 Subcontractor agreements shall, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Design-Builder is terminated by the Owner.

...

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be ~~satisfactory to the Owner.~~ in accordance with generally accepted accounting procedures. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's ~~accountant a final~~ accounting of the Cost of the Work.

§ B.6.3 ~~The Owner's accountants~~ Upon the Owner's direction, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within ~~21~~ 30 days after delivery of the final ~~accounting. Based upon~~ accounting by the Design-Builder. Based upon the Cost of the Work as acknowledged by the Owner, or, if the Owner has directed its auditors to report thereon, based upon such Cost of the Work as the Owner's ~~accountants~~ auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions ~~of Section A.9.10 of the Agreement~~ for payment under the Design-Build Documents have been met, the Owner will, within ~~seven~~ forty (40) days after receipt of the ~~written report of the Owner's accountants,~~ Design-Builder's final accounting, issue final payment or notify the Design-Builder in writing of ~~the Owner's intention to make final payment or to withhold final payment its reasons for withholding final payment.~~

§ B.6.4 If the ~~Owner's accountants report~~ Owner disputes the Cost of the Work as ~~substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner's accountants shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the Owner's accountant to be due the Design-Builder.~~ set forth in the Design-Builder's final accounting; the Design-Builder shall be entitled to assert a Claim in accordance with Article A.4, as modified. The Owner shall, pending resolution of any such dispute, pay the Design-Builder all sums otherwise payable and not in dispute.

§ B.6.5 ~~If, subsequent to final payment and at the Owner's request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the Owner shall reimburse the Design-Builder such costs and the Design-Builder's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Design-Builder has participated in savings as provided in Section 4.4.3.1 of the Agreement, the amount of such savings shall be recalculated and appropriate credit~~

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RECORD 000061

~~given to the Owner in determining the net amount to be paid by the Owner to the Design Builder.~~ Intentionally omitted.

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User Notes: (1431643153)

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE OMEGA CONSTRUCTION, INC., Plaintiff, vs. CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC. Defendant.	)	IN THE COURT OF COMMON PLEAS VERIFIED STATEMENT OF ACCOUNT C.A. No: _____

VERIFIED STATEMENT OF ACCOUNT

Personally appeared before me, Ginger D. Goforth, Esquire, who being duly sworn, deposes and states that she is the attorney for Plaintiff Omega Construction, Inc. ("Omega"), and that she is authorized to give this Affidavit. According Omega's records, Omega has issued the following invoices to Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc., ("Crailar") which have not been paid by Crailar:

Pay Application #4	**07/31/2012**	**$20.00**
Pay Application #12R	**03/21/2013**	**$99,822.90**
Pay Application #14	**05/03/2013**	**$119,857.83**
Pay Application #15	**08/13/2013**	**$20,010.50**
Pay Application #15R	**08/13/2013**	**$45,717.43**

Omega is still due and owning the sum of **TWO HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED TWENTY EIGHT AND 66/100 DOLLARS ($285,428.66)**

for work that Omega performed on the subject property.

Ginger D. Goforth, Esquire

Sworn to by: Jessica Holmen
(Notary Public)

This 15 day of October 2013

My Commission expires on 4/23/19

EXHIBIT C

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-_____

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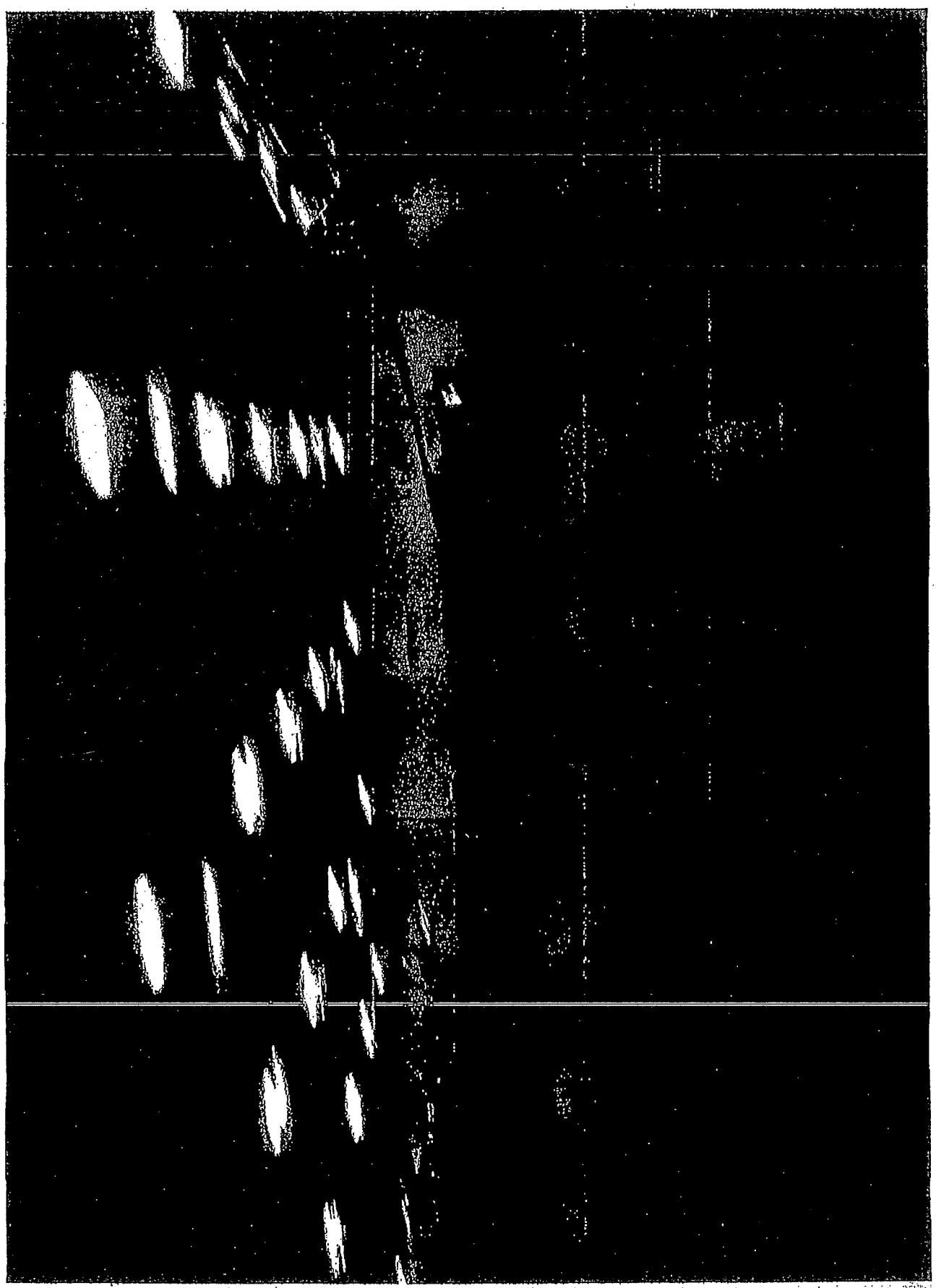

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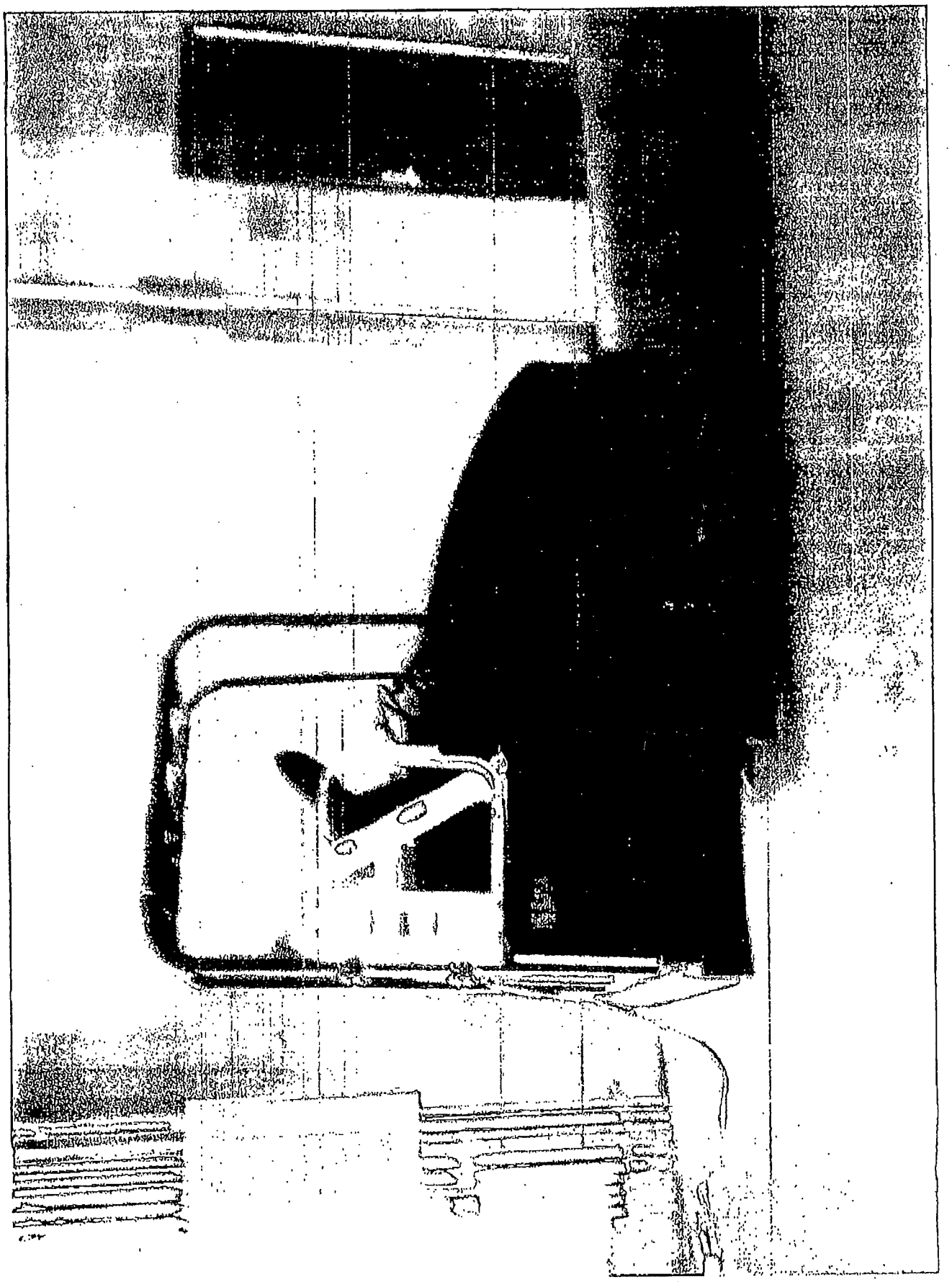

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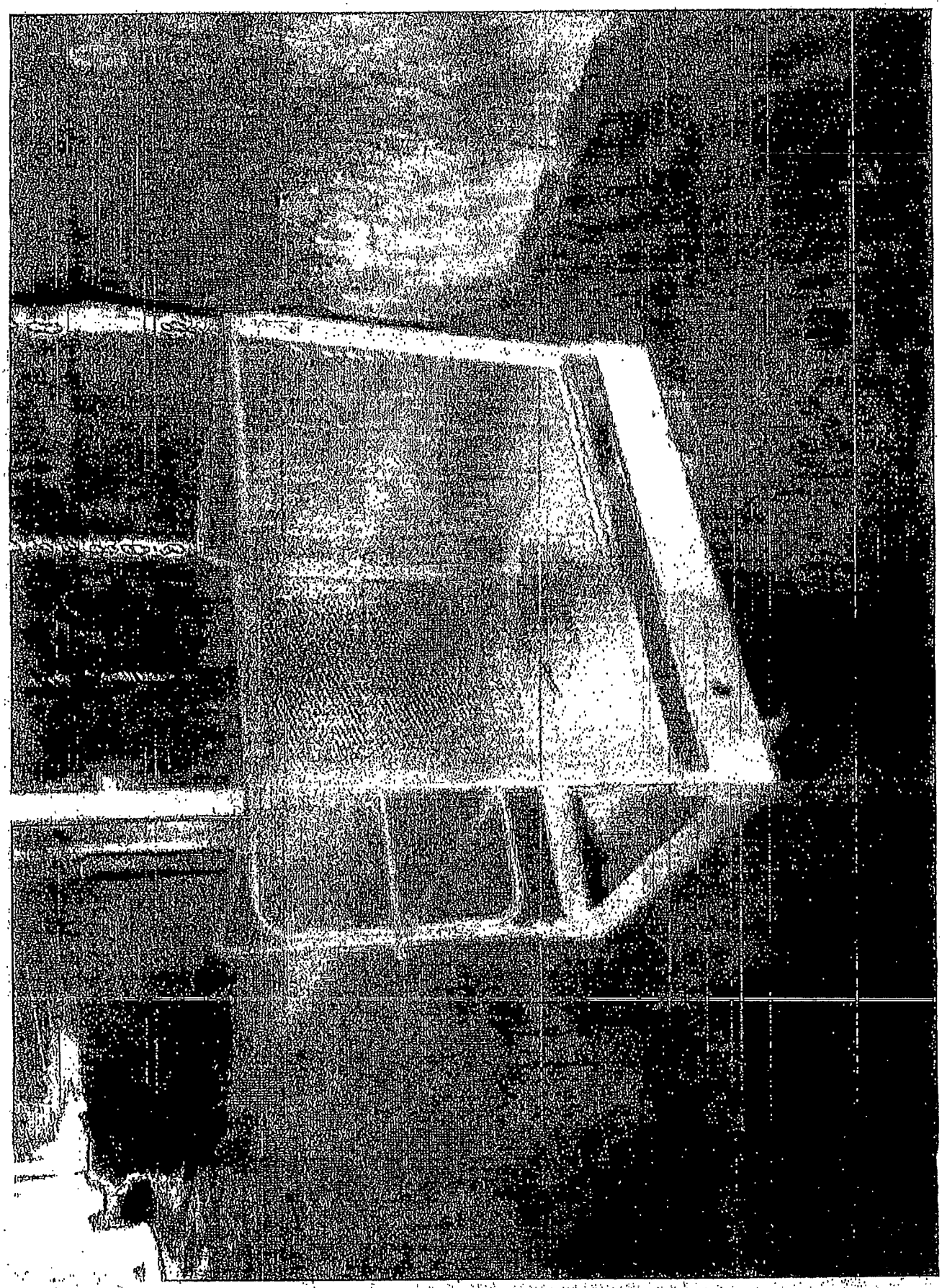

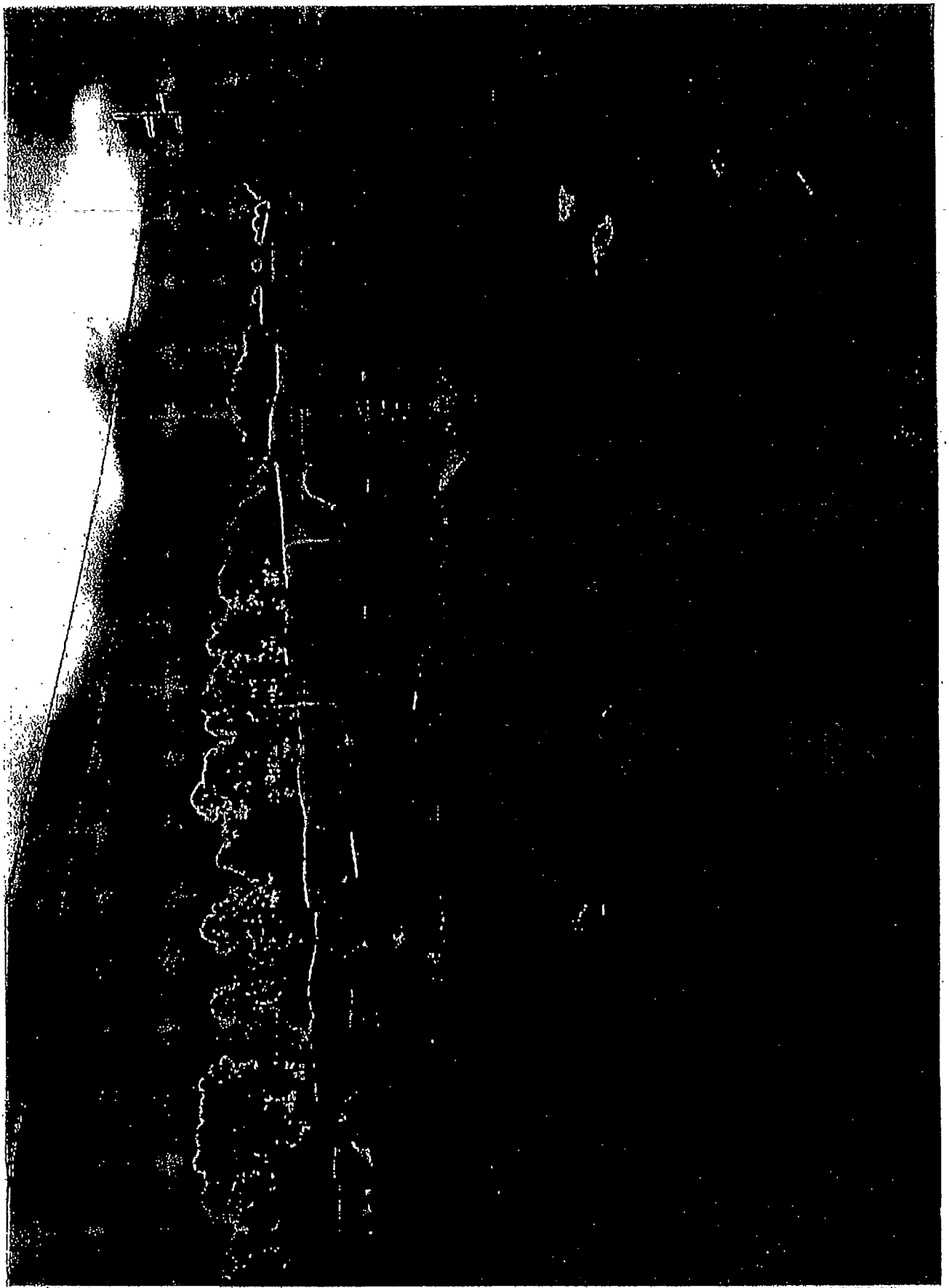

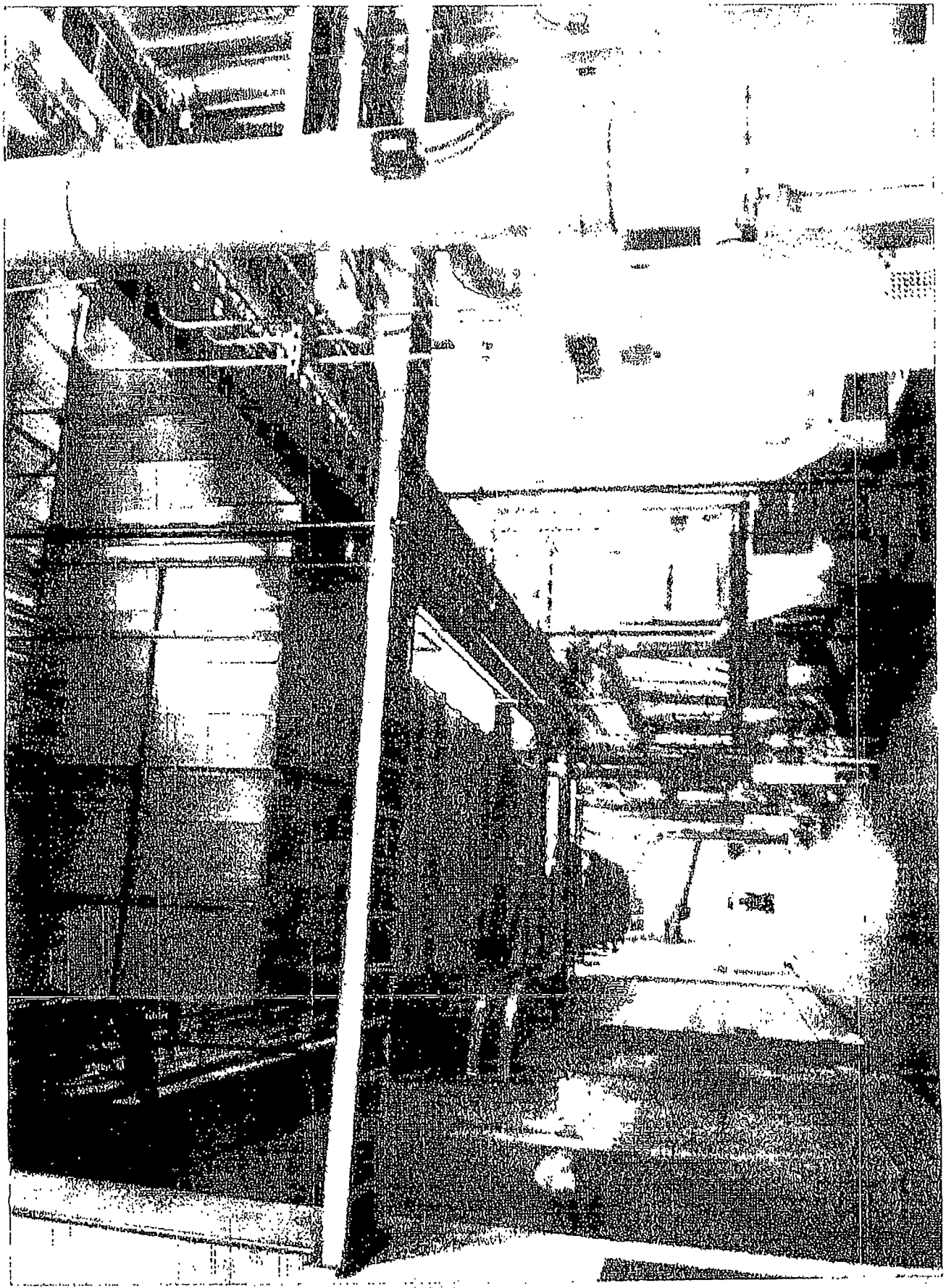

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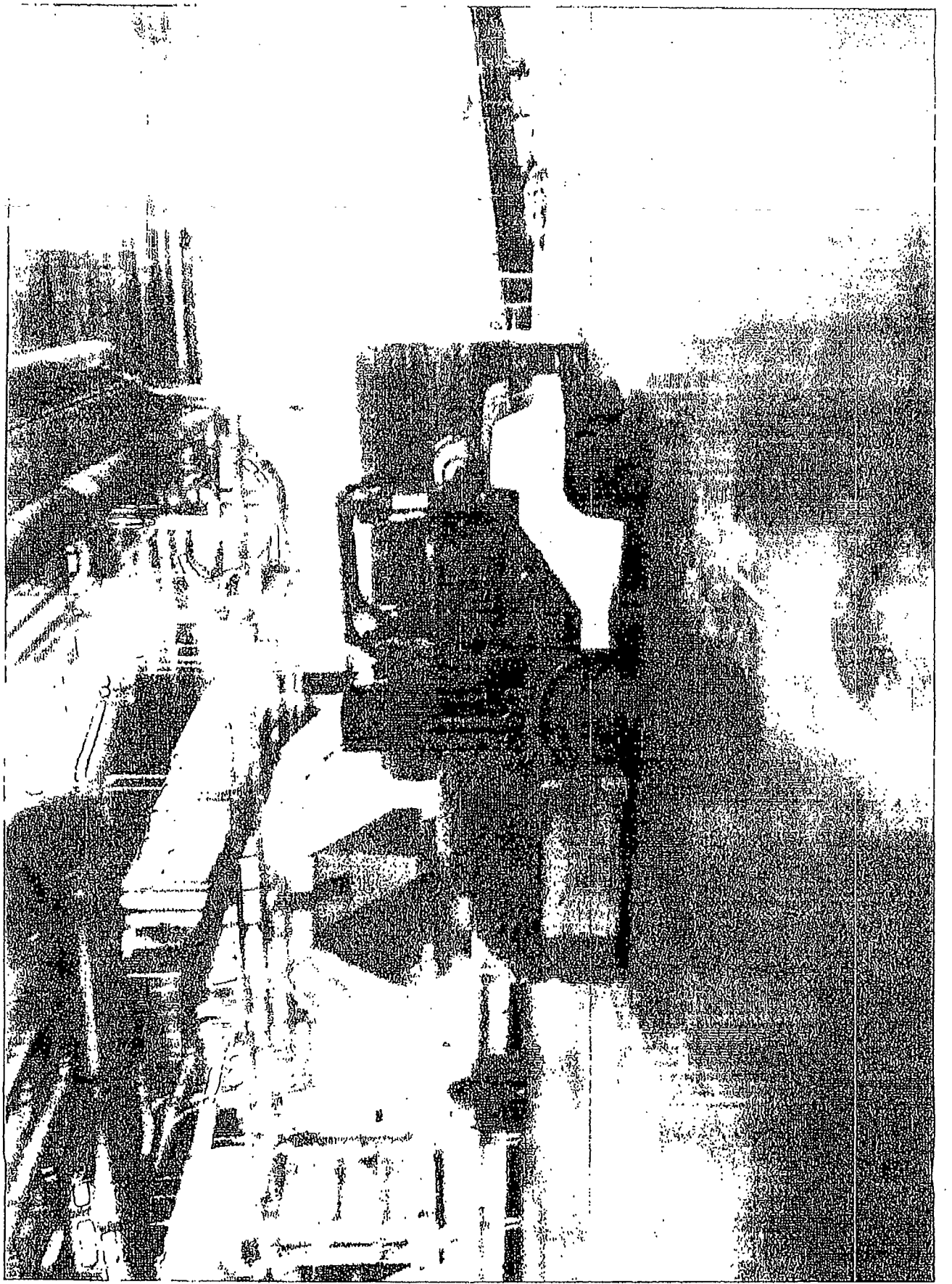

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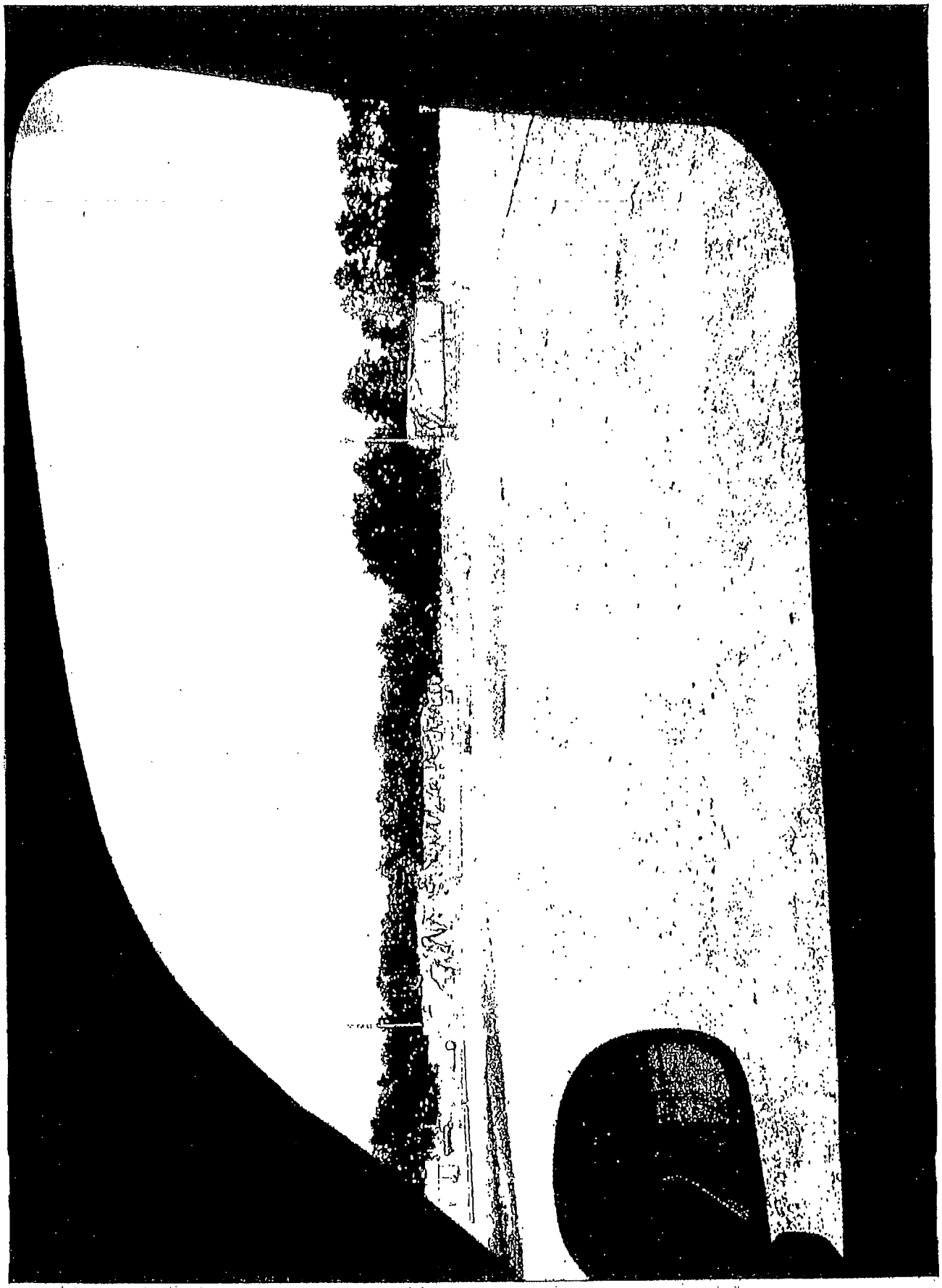

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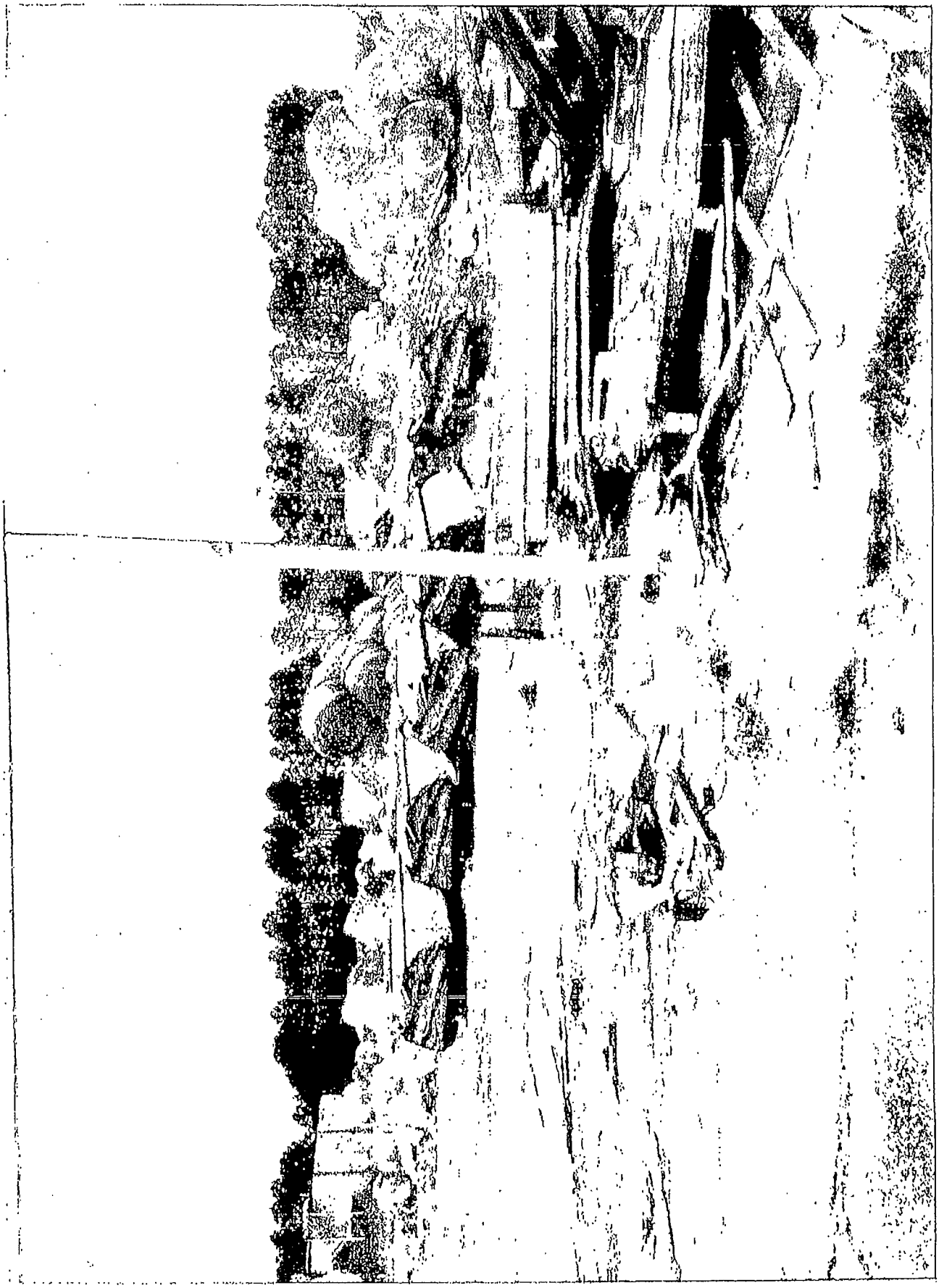

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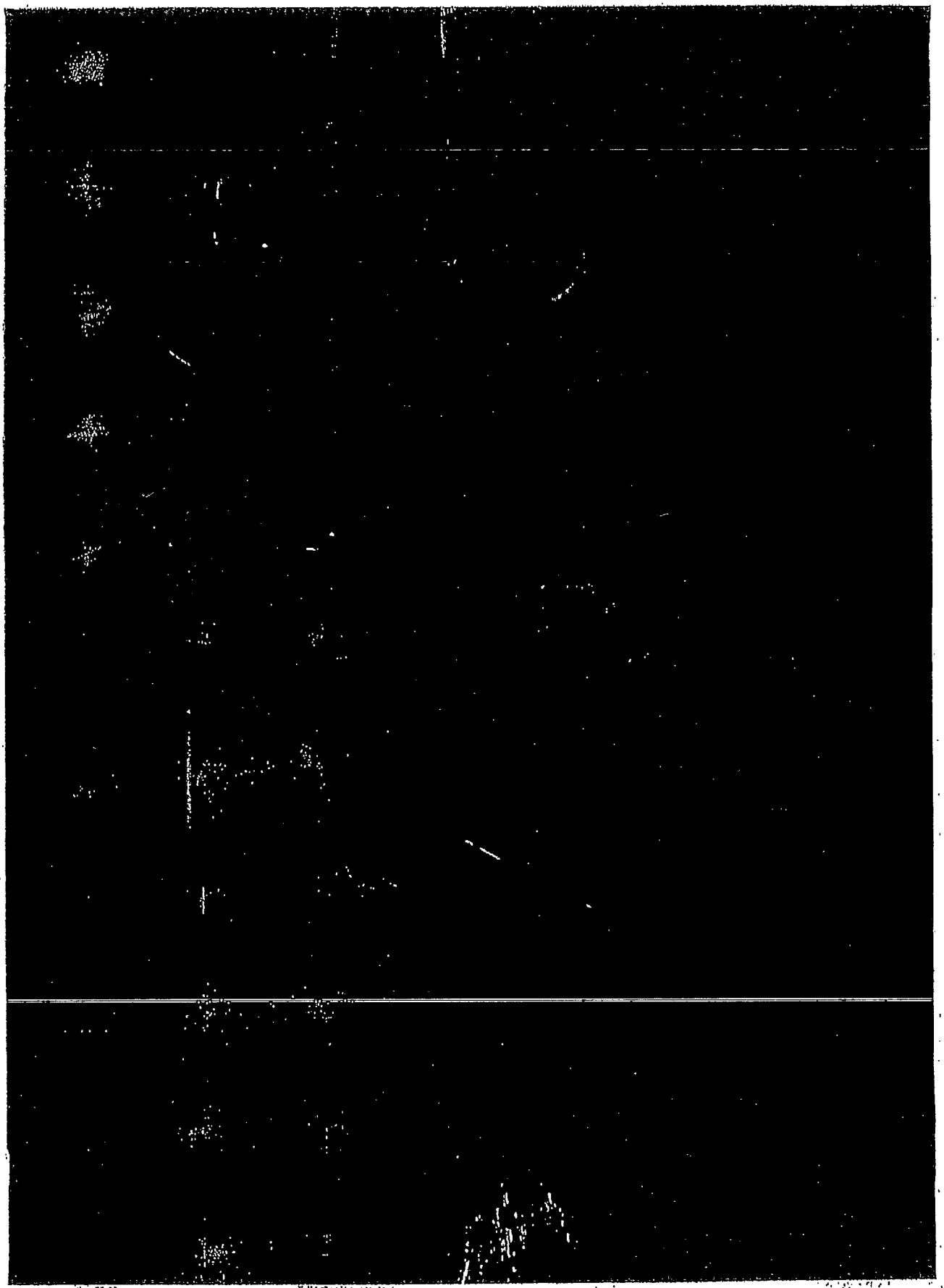

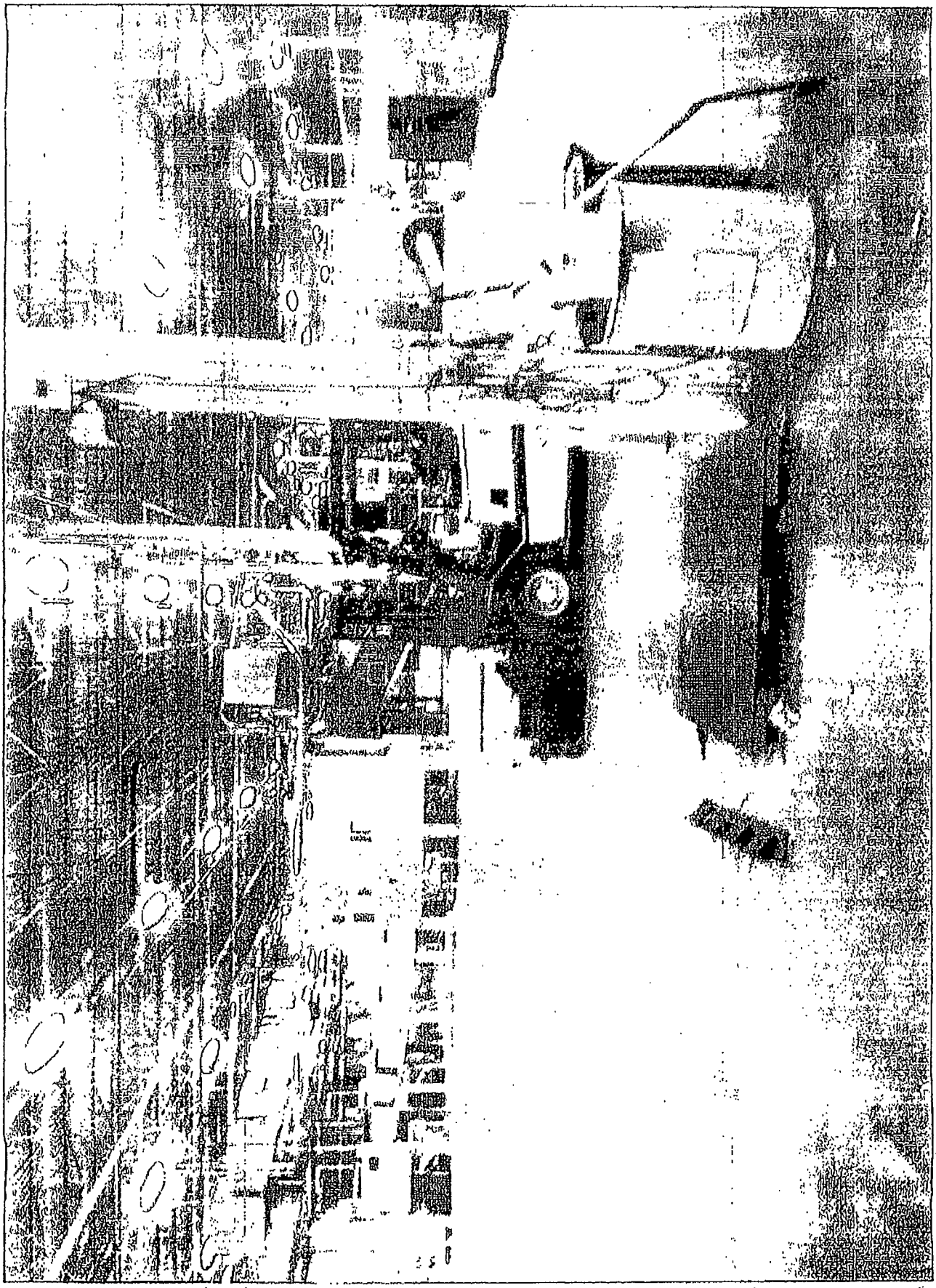

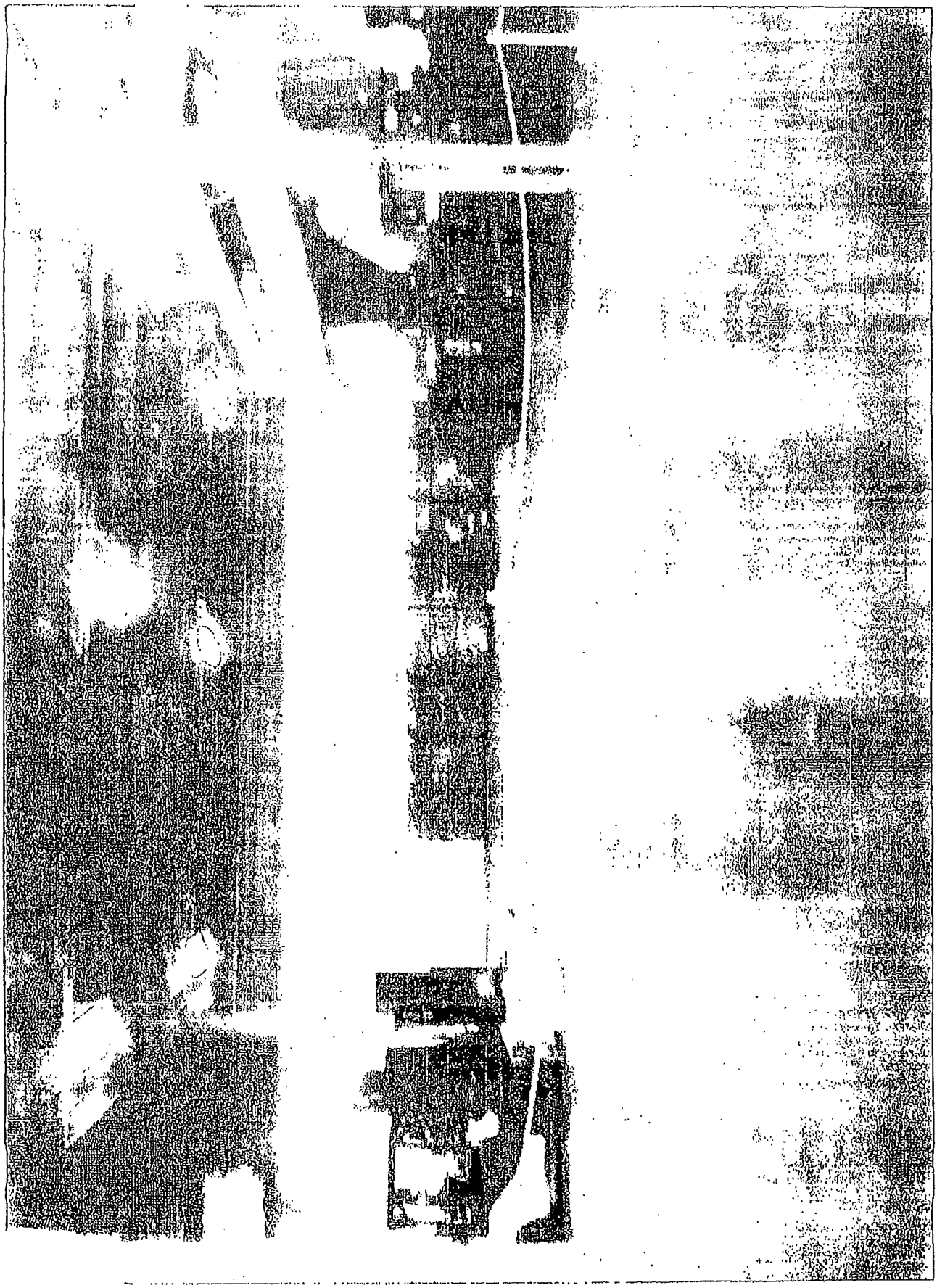

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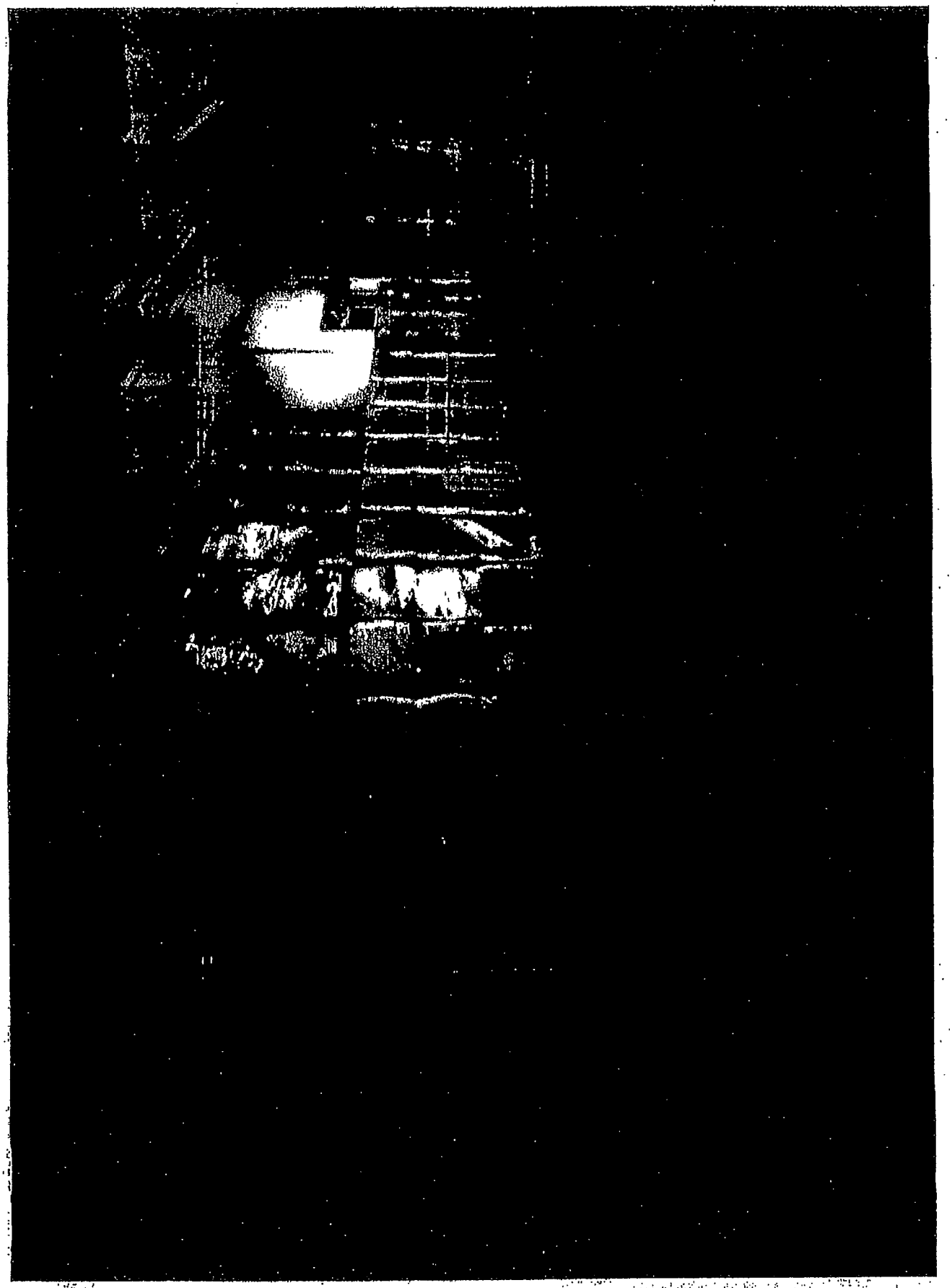

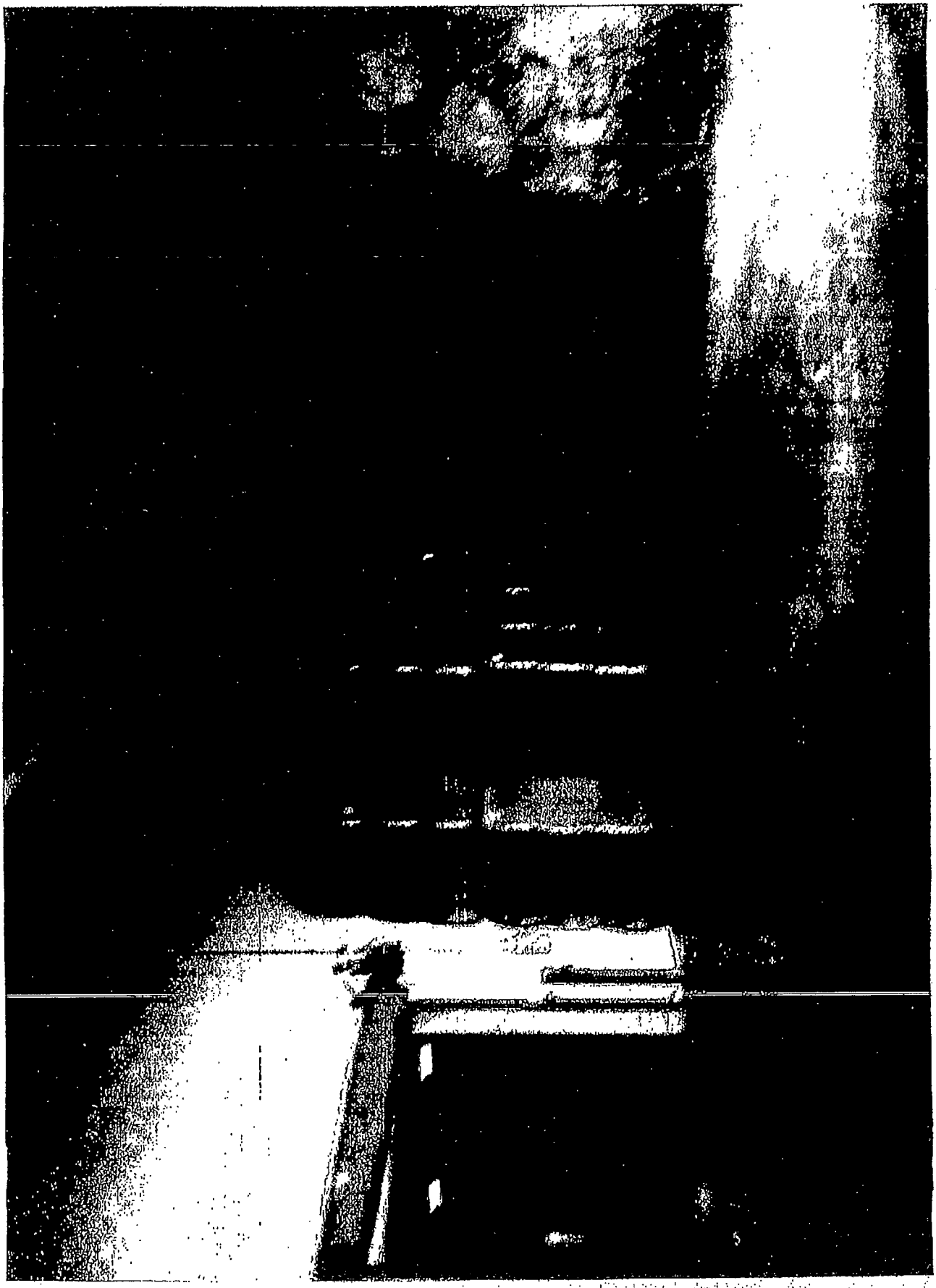

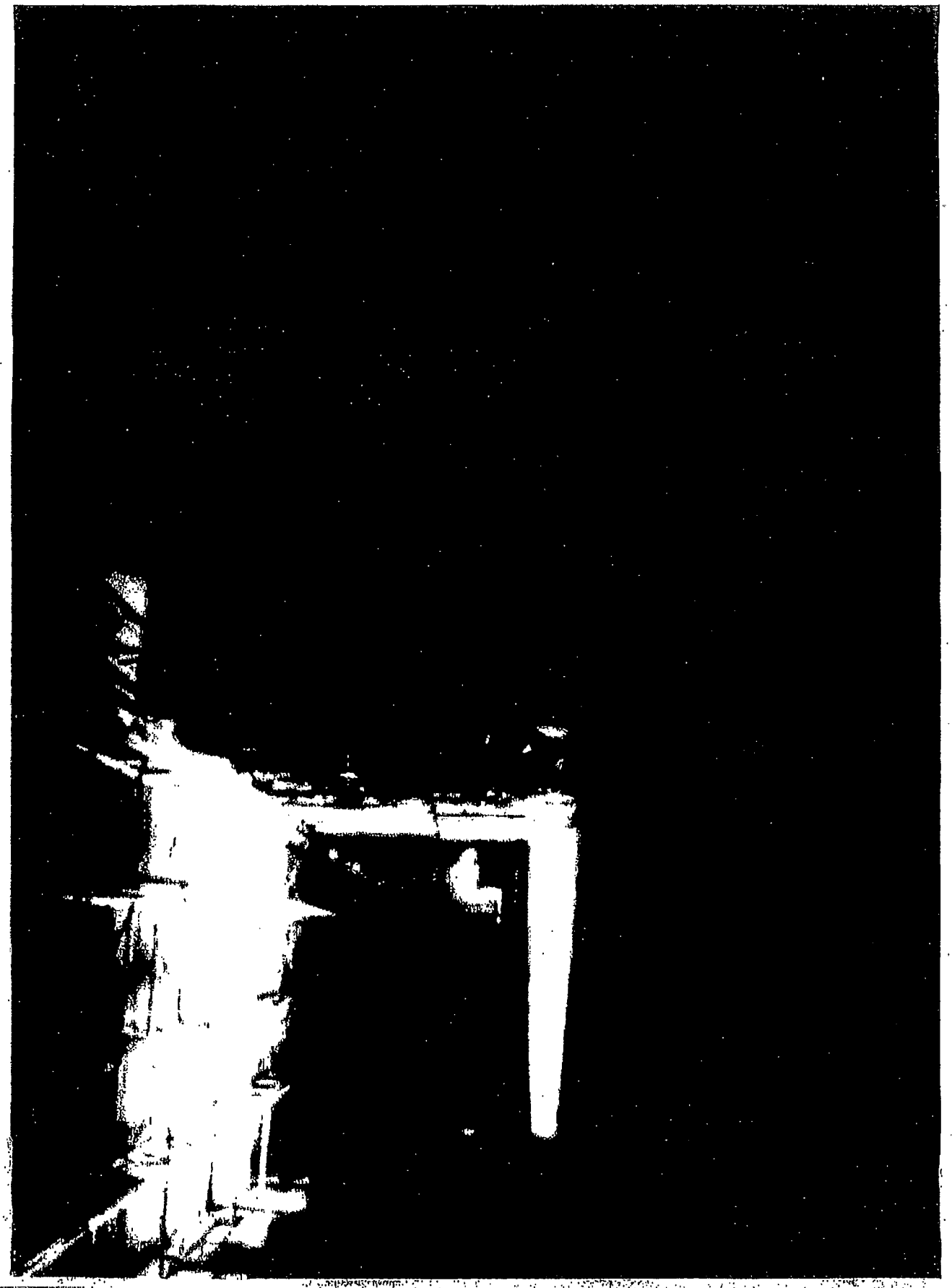

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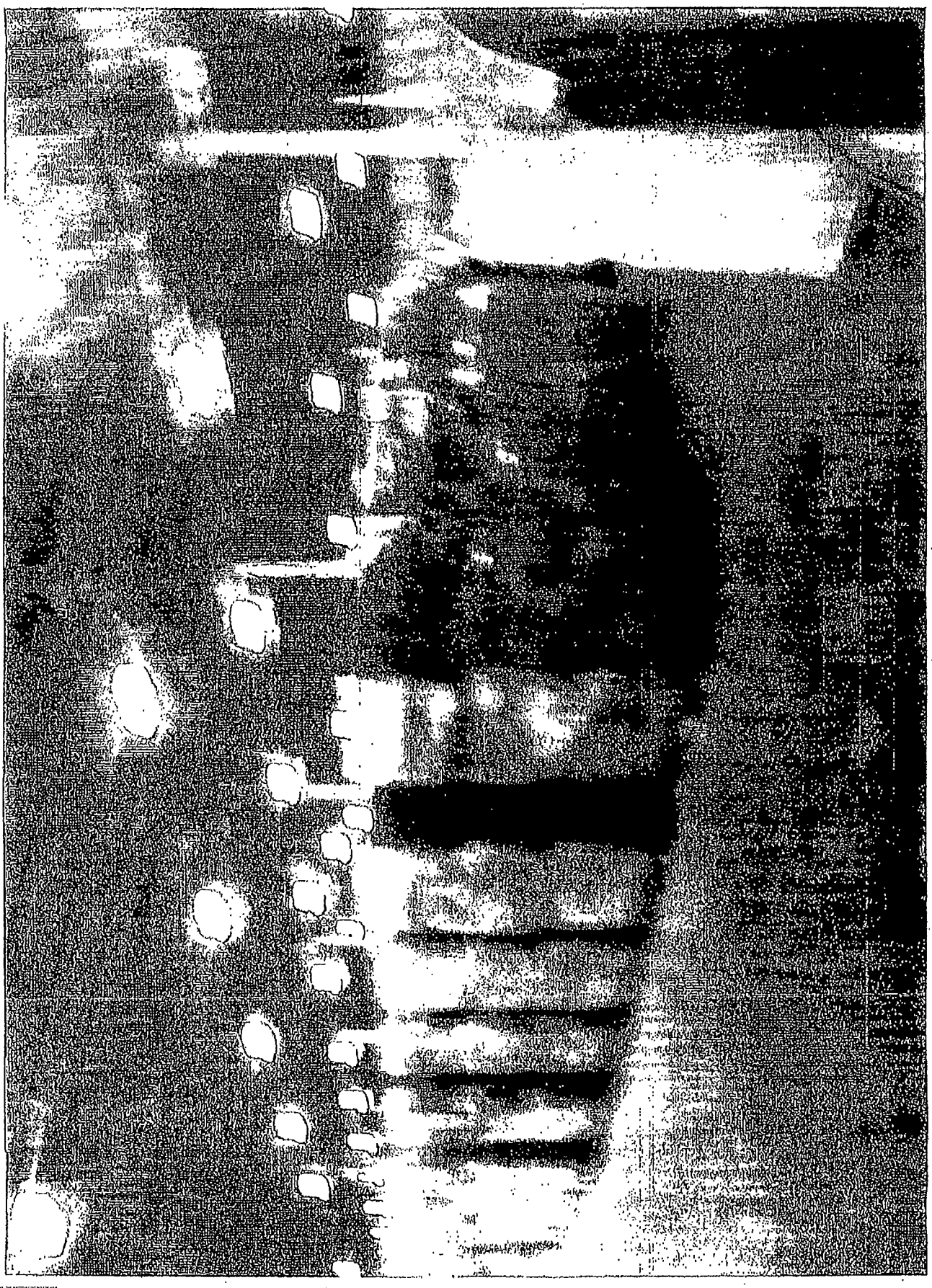

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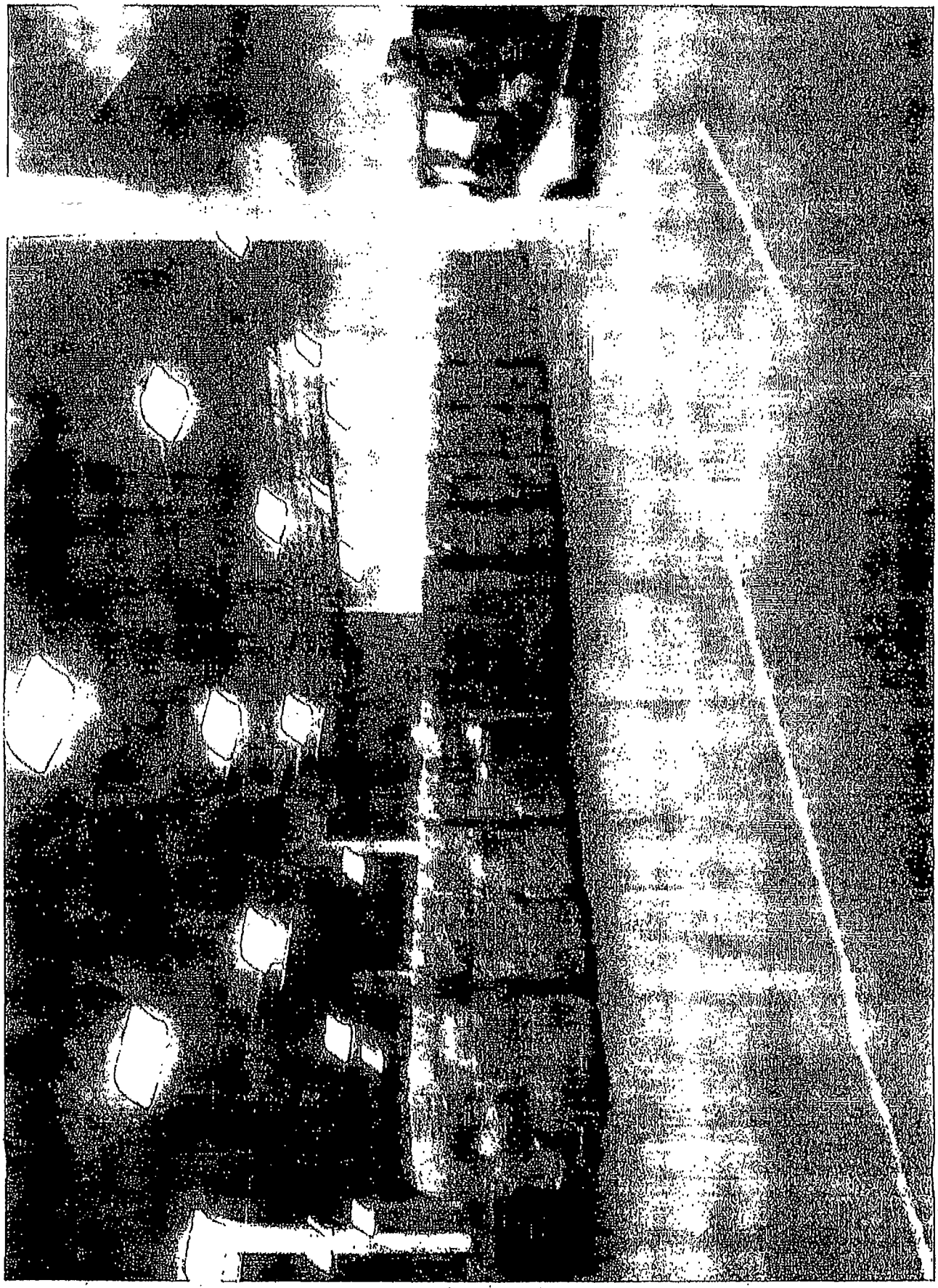

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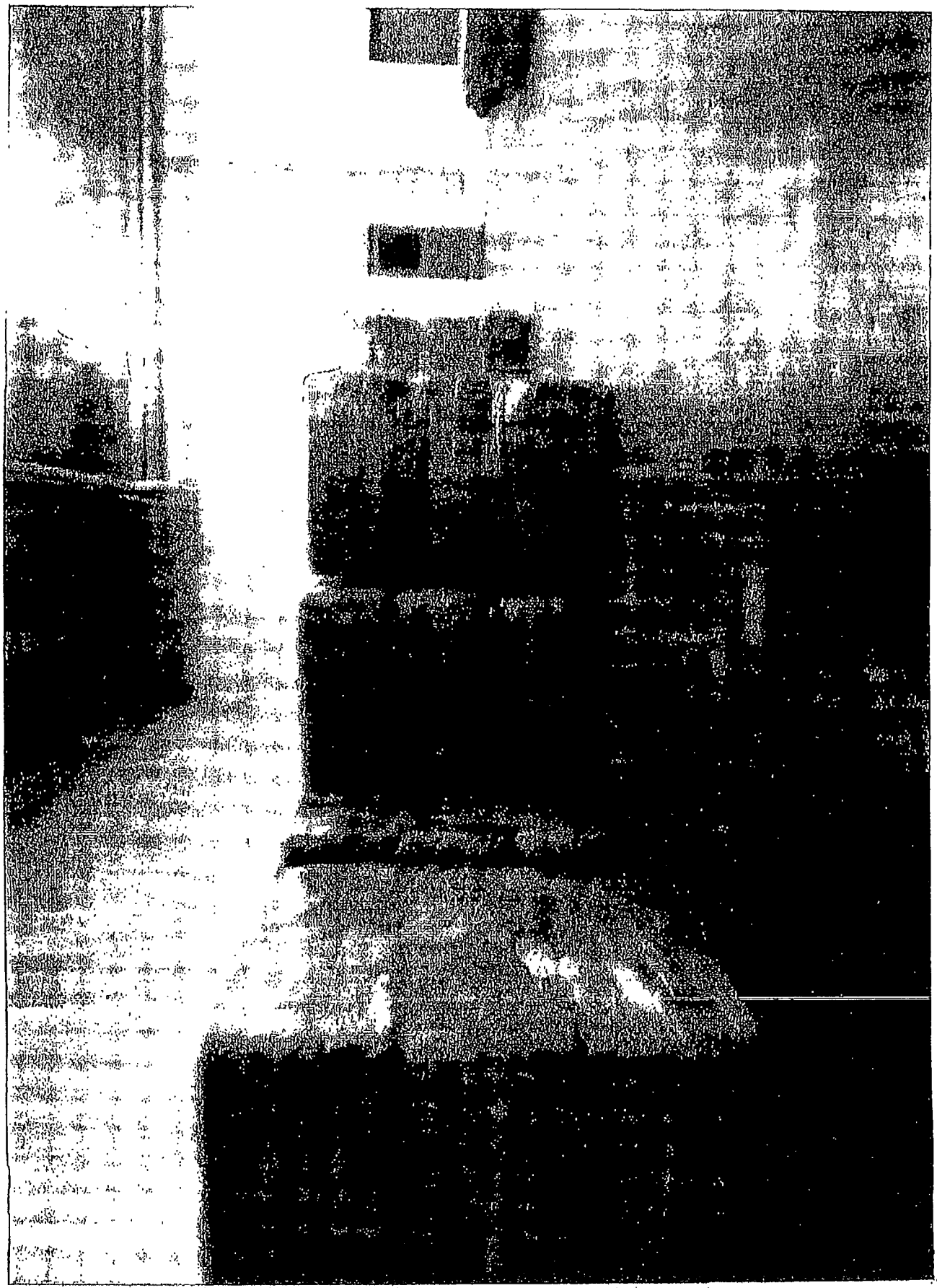

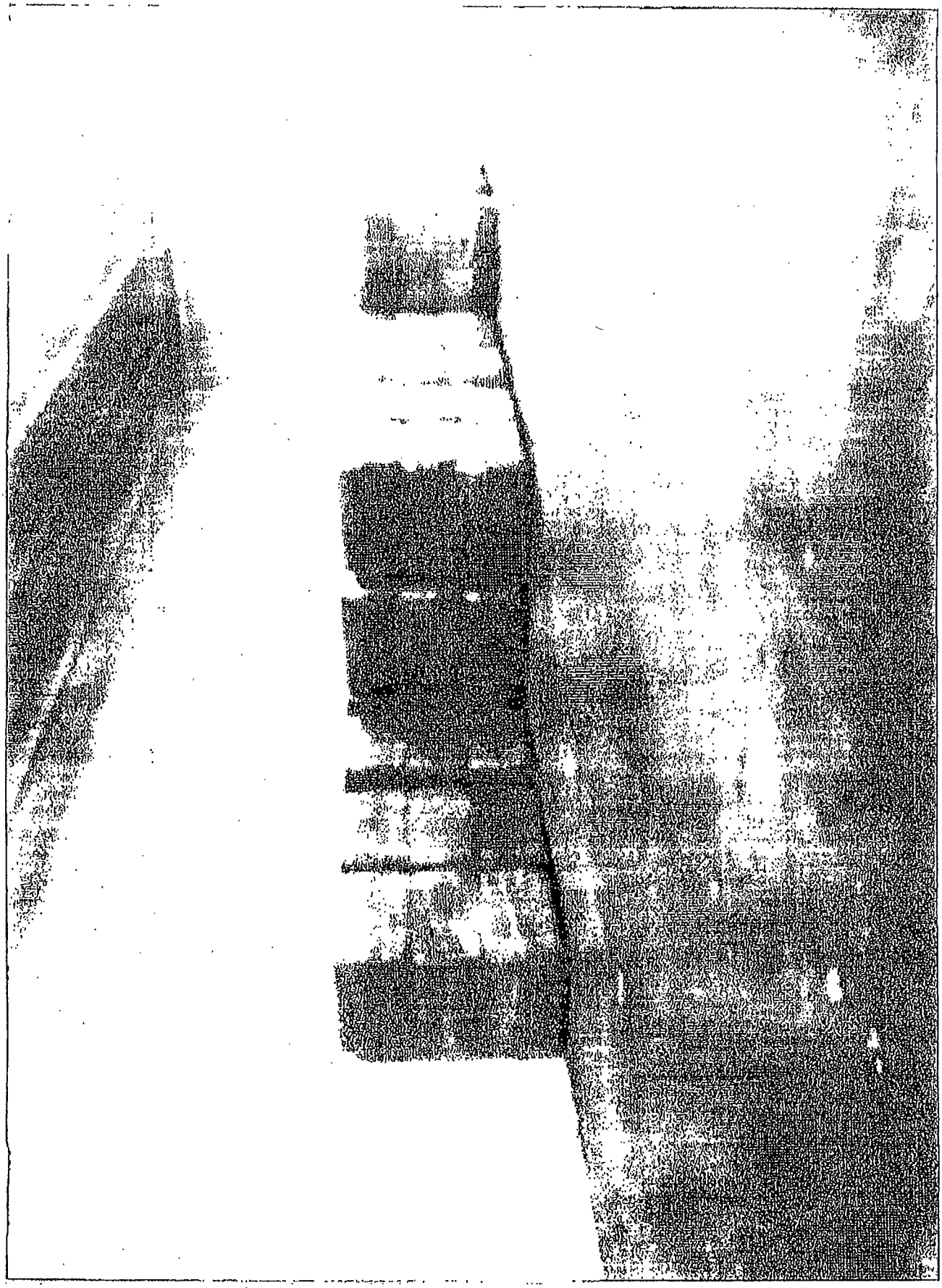

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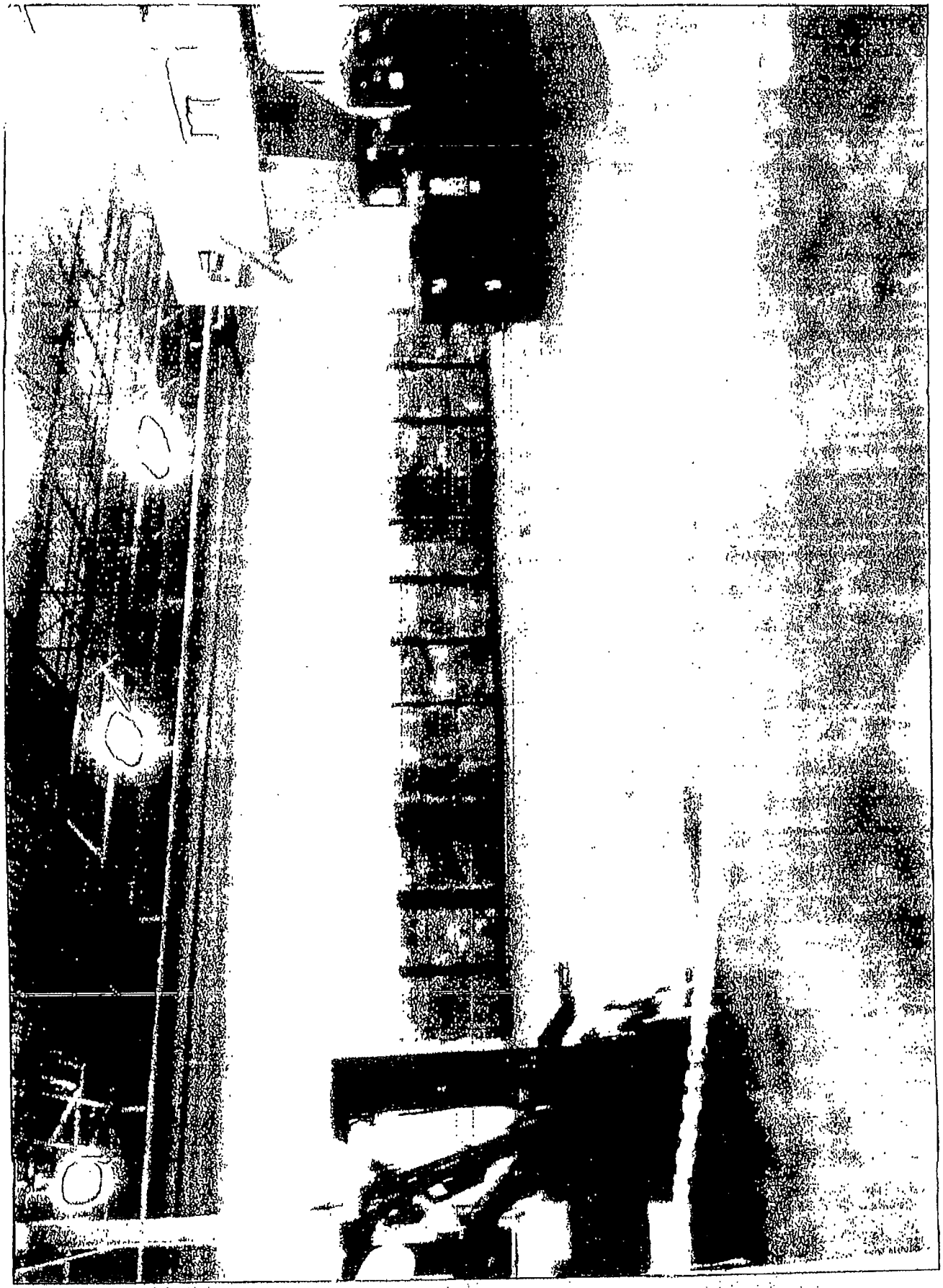

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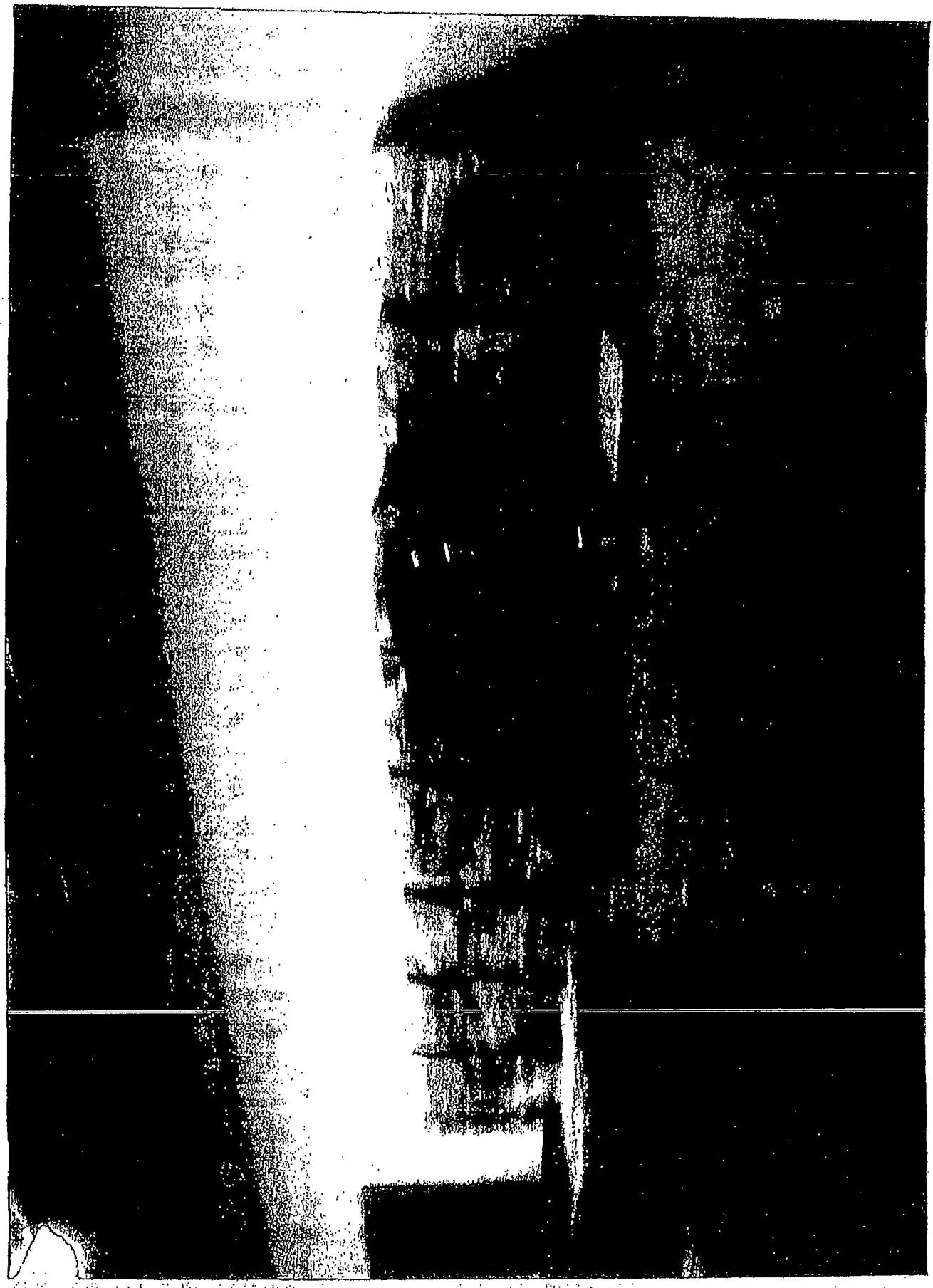

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EXHIBIT D

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-_____

Finished Bales

		Stacks		
Area A	Row 1	2x3		Ref: Finished Bales - Area A - Img_2711.jpg
	Row 2	3x3		
	Total		15	
Area B	Row 1	6x3		Ref: Finished Bales - Area B - Img_2709.jpg
	Row 2	6x3		
	Row 3	3x3		
	Total		45	
Area C	Row 1 B	13x3		Ref: Finished Bales - Area C - Img_2758.jpg
	Row 1 T	6x3		
	Total		67	
Area D	Row 1 B	13x3		Ref: Finished Bales - Area D - Img_2748.jpg Ref: Finished Bales - Area D - Img_3019.jpg
	Row 1 T	13x3		
	Row 2 B	11x3		
	Row 2 T	11x3		
	Row 3	10x3		Ref: Finished Bales - Area D - Img_3017.jpg
	Row 4	9x3		Ref: Finished Bales - Area D - Img_3018.jpg
	Total		183	
Area E	Row 1	10x3		Ref: Finished Bales - Area E - Img_2762.jpg Ref: Finished Bales - Area E - Img_2697.jpg
	Row 2	14x3		
	Row 3	14x3		
	Total		114	
Area F	Row 1	12x3		Ref: Finished Bales - Area F - Img_2743.jpg Ref: Finished Bales - Area F - Img_2763.jpg Ref: Finished Bales - Area F - Img_2625.jpg Ref: Finished Bales - Area F - Img_2900.jpg Ref: Finished Bales - Area F - Img_2901.jpg
	Row 2	9x3		
	Row 3	9x3		
	Row 4	3x3		
	Total		99	
Estimated Total Finished Bales			513	

Motorized Equipment and Farm Implements

1 Tow Motor with forks	Ref: Equipment - 1 Tow Motor with forks - Img_2868.jpg
3 Tow Motors with compression lift	Ref: Equipment - 1 Tow Motor with compression Lift - Img_2740.jpg Ref: Equipment - Two Tow Motors with compression lift - Img_2835.jpg Ref: Equipment - Two Tow Motors with compression lift - Img_2898.jpg
1 Lull Lift Basket	Ref: Equipment - 1 Lull Lift Basket - Img_2753.jpg
1 New Holland Workmaster Tractor	Ref: Equipment - New Holland Workmaster Tractor - Img_2754.jpg
1 floor sweeper	Ref: Equipment - 1 floor sweeper - Img_2755.jpg
1 disc-bine circular mower	Ref: Equipment - 1 disc-bine circular mower - Img_2985.jpg Ref: Equipment - 1 disc-bine circular mower - Img_2986.jpg
5 combine stripper heads	Ref: Equipment - 5 Combine Stripper Heads - Img_2986.jpg Ref: Equipment - 5 Combine Stripper Heads - Img_2987.jpg
1 bale spike	Ref: Equipment - 1 bale spike - Img_2980.jpg
5 rakes	Ref: Equipment - 4 rakes - Img_3025.jpg Ref: Equipment - 1 rake - Img_2979.jpg
1 scissor lift	Ref: Equipment - 1 scissor lift - Img_2827.jpg
1 boom lift	Ref: Equipment - 1 boom lift - Img_2891.jpg

Production Equipment (Uninstalled)

- 2 Obermaier Cake Presses
- 2 Obermaier dryer lines with additional fine opener
- 2 Cake lifts/breakers (1 for each dryer)
- 2 Cake Extractors
- 3 Hydro Extractors
- ~ 16 Wet Processing Containers
- One 2+2 Bale Opener
- Metal Studs for Partition Wall
- Hollow Metal Door Frames for Partition Wall

Production Equipment (Installed)

- 2 - Bale Busters
- 3 - LaRoche Opening Lines
- 1 - LaRoche Decortication Fine Opening Lines
- 2 - 25 hp Air Compressors
- 2 Balers — Ref: Installed - Balers - Img_2741.jpg
- Filtration System with associated equipment
- 6 - Dust Filters with pulse jet controls
- 125 hp vacuum pump
- Central High Vacumm waste and dust collection system
- ~10 Conveyors
- Refurbished Air Washer
- Office HVAC System
- Control Room HVAC System
- 1 - 2500 kVA 4160 V to 4000 A 480/277 V substation
- Motor Control Centers for the production equipment
- Control Cabinets for the LaRoche Line

Bond No. 9117908

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
OMEGA CONSTRUCTION, INC.,)
)
Plaintiff,)
)
vs.)
)
CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.)
)
Defendant.)

MOTION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

C.A. No: _____

We, Plaintiff Omega Construction, Inc. ("Omega"), plaintiff-principal, and Fidelity and Deposit Company of Maryland, surety, acknowledge ourselves bound unto the defendant Crailar, Inc., d/b/a/ Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies, Inc. ("Crailar") in the sum of Three Hundred Seventy Nine Thousand Six Hundred Twenty and 12/100 ---------- ($379,620.12), subject to the following conditions:

That Omega is seeking a restraining order against Crailar, which is now about to be issued;

That, if Crailar should later be found to have been wrongfully restrained, the costs and damages proved to be incurred by Crailar shall be paid by Omega;

That, in the event of Omega's failure to pay all or part of any sum owed to Crailar because of the above stated occurrence, the surety is bound and does guarantee to pay such amounts owed to Crailar for damages or costs.

Done this 15th day of October 2013.

Signed, sealed, and delivered in the presence of:

Lisa Singleton, Asst. Secretary

Angela M. Young

Omega Construction, Inc.

By: D. Greg Marshall, Secretary/Treasurer

Plaintiff

Fidelity and Deposit Company of Maryland

By: Debra S. Ritter, Attorney-in-Fact

Surety

APPROVAL

The above undertaking by Plaintiff who is joined by surety is hereby approved.

Dated: _____

_____

Presiding Judge

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **THOMAS O. MCCLELLAN, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Raymond J. GARRUTO, Debra S. RITTER, Ramona FEWELL, Martin D. PALLAZZA, Brad W. GIBSON and Angela M. YOUNT, all of Charlotte, North Carolina, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND,** this 27th day of February, A.D. 2013.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: _____
Assistant Secretary
Eric D. Barnes

_____
Vice President
Thomas O. McClellan

State of Maryland
City of Baltimore

On this 27th day of February, A.D. 2013, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **THOMAS O. MCCLELLAN, Vice President, and ERIC D. BARNES, Assistant Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
Constance A. Dunn, Notary Public
My Commission Expires: July 14, 2015

POA-F 177-0134B

RECORD 000099

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-In-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 15th day of October, 20 13.

Geoffrey Delisio

Geoffrey Delisio, Vice President

FILED
2013 OCT 31 AM 11:32
CONNIE REEL-SHEARD
CCCP & GS
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF FLORENCE)	
OMEGA CONSTRUCTION, INC.,)	
)	
Plaintiff,)	**MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION**
vs.)	
)	
CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.)	**C.A. No.: 2013-CP-21-2722**
)	
Defendant.)	

On October 23, 2013, Plaintiff Omega Construction, Inc. ("Omega"), obtained a Temporary Restraining Order prohibiting Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar") from removing and/or destroying approximately 12.5 million pounds of raw flax material used in its production process, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment currently located at Crailar's manufacturing facility located in Florence County ("Pamplico Facility"). Omega submits that, based on the evidence of record, it is entitled to a temporary injunction preserving the status quo and protecting it from imminent and irreparable harm pending the outcome of this lawsuit. Rule 65(a) and (b), SCRCP.

FACTS

On or about May 23, 2012, Omega, as Design-Builder, entered into Design-Build contract with Defendant Crailar, Inc., d/b/a/ Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailer"). This contract set forth Omega and Crailar's rights and

CERTIFIED: A TRUE COPY
Connie Reel-Sheard
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

obligations with respect to the design and construction of Crailar's manufacturing facility located in Pamplico, South Carolina ("Pamplico Facility"). (Affidavit of Greg Marshall ¶2 and Exhibit A thereto) (Affidavit of Brock Hennings ¶2). Despite timely demands for payment, Crailar has failed and refused to pay the amount due and owing to Omega under the contract. (Affidavit of Greg Marshall ¶3 and Exhibit B thereto) (Affidavit of Brock Hennings ¶3).

Omega made several attempts to reach an agreement with Crailar concerning the debt owed in order to avoid legal action leading up to the sudden closure of the Pamplico Facility. (Supplemental Affidavit of Greg Marshall ¶4). These included discussions about Crailar's intent to enter into an Escrow Agreement to protect Omega's interest. The parties discussed this by telephone and through email communications, and even exchanged drafts of the Escrow Agreement. (Supplemental Affidavit of Greg Marshall ¶¶ 5, 6, and & and Exhibits C and D thereto).

On October 1, 2013, Greg Marshall, Omega's Chief Financial Officer, learned through another contractor that is owed money by Crailar that Crailar had suddenly and without notice closed the Pamplico Facility. Mr. Marshall attempted to contact officials at Crailar by telephone and electronic mail to ascertain the status of the company and its intent/ability to pay what it owed to Omega. Through Guy Prevost, Crailar's Corporate Controller and Compliance Officer, Mr. Marshall learned that Crailar had halted production in the Pamplico Facility and intends to move its production operations overseas in a facility that Crailar has already acquired. Although Mr. Prevost indicated that Crailar would like to "retool" the Pamplico Facility and resume operations there at some time in the future, he offered no written guarantees of payment or return of operations to the United States. Mr. Prevost indicated that there were approximately 12.5

million pounds of raw flax material at the Pamplico Facility that will need to be processed by Crailar to produce finished goods inventory. (Affidavit of Greg Marshall ¶¶ 4 and 5).

Mr. Marshall also spoke with Ryan Leverenz, Crailar's Director of Corporate Communications. Mr. Leverenz indicated that he had spoken to Guy Prevost, and was told that Omega did not have to worry about the balance owed on the contract, and that legal action was not necessary. Omega needed written assurances of this statement, but none were forthcoming. (Supplemental Affidavit of Greg Marshall ¶4). Despite verbal assurances that Crailar intended to return operations to the Pamplico Facility at some point, Mr. Levernz offered no substantive guarantee of payment or protection of the amounts owed to Omega. (Affidavit of Greg Marshall ¶6).

Brock Hennings, Senior Project Manager of Omega, upon learning of Crailar's sudden closure, attempted to contact Tom Robinson at Crailar by telephone to ascertain the status of the company and its intent/ability to pay what it owed to Omega. Through Tom Robinson, Crailar's Chief Operating Officer, Mr. Hennings learned that Crailar closed its operations on September 30, 2013 and laid off all of its employees. Mr. Robinson stated that the closure was intended to be temporary, for the purpose of "retooling" the Pamplico Facility. Mr. Robinson indicated that some of the equipment in the facility has been repossessed. He offered no written guarantees of payment or return of operations to the United States. (Affidavit of Brock Hennings ¶¶ 4 and 5).

Currently, there are approximately 12.5 million pounds of raw flax material, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment located at the Pamplico Facility. (Affidavit of Greg Marshall ¶8 and Exhibits C and D thereto).

Omega does not know the precise value of these materials and equipment, but has no intention of seeking an order enjoining the use of any more than necessary to satisfy the contract amount. To that end, Greg Marshall has made a good faith effort to establish those values to the best of his knowledge, information, and belief. The farm equipment is worth around $30-$35,000. The processed bales are worth around $125,000. (513 bales @ 700lbs each x $0.35 per pound). The uninstalled production equipment is the most valuable, and also the equipment that Crailar could most easily move to its European facility. He would place a value on this equipment of over $1,000,000, and possibly as much as $2,000,000. He does not have an educated assumption as to the value of the unprocessed bales or the installed production equipment. (Supplemental Affidavit of Greg Marshall ¶¶ 9 and 10).

If Crailar is allowed to remove these materials and equipment from the Pamplico Facility by closing the business, transporting it overseas, selling it, or otherwise, Omega will be deprived of its recourse against these substantial assets to recover the contract amount due. (Affidavit of Greg Marshall ¶8) (Affidavit of Brock Hennings ¶8).

Because of the shockingly abrupt closure of Crailar's Pamplico Facility on September 30, 2013, and the fact that Crailar will not respond with written assurances to secure payment - despite acknowledging its debt - Omega's interest in the contract amount owed is subject to immediate and irreparable harm if Crailar removes all material of value sufficient to satisfy its debt from the Pamplico Facility to an overseas location. (Supplemental Affidavit of Greg Marshall ¶ 8) (Affidavit of Greg Marshall ¶7) (Affidavit of Brock Hennings ¶6).

ARGUMENT

Standard of Proof and Review

To obtain a temporary injunction, the plaintiff must show that (1) it will suffer irreparable harm if the injunction is not granted, (2) it will likely succeed on the merits of the case, and (3) there is an inadequate remedy at law. The decision whether to grant a temporary injunction is within the sole and sound discretion of the trial court. Absent an abuse of discretion, the decision will not be overturned. Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 626 S.E.2d 34, 36 (Ct. App. 2005); see also AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). A trial court does not abuse its discretion by basing its decision on conflicting evidence, if evidence in the record reasonably supports the trial court's decision. IAC, Ltd., 160 S.W.2d 191, 196 (Tex. Ct. App. 2005).

Irreparable Harm

Whether a wrong is irreparable in the sense to allow equity to intervene is not governed by narrow and artificial rules. Rather, the trial court must balance the equities and look at the specific facts of each case. The purpose of a temporary injunction is to preserve the status quo in order to avoid possible irreparable injury to a party pending litigation. Peek, 626 S.E.2d at 36-37.

Here, the irreparable harm is immediately apparent. Crailar owes a substantial sum to Omega. While simultaneously purporting to negotiate the payment of this debt, it closed operations on its Pamplico Facility, fired its employees, and proceeded to move the operations overseas, all with no word to Omega. Omega only learned of these actions through another contractor. When directly addressed about the closure, Crailar representatives gave only vague

assurances that it would make good on its debt. It thereafter ceased communications with Omega concerning the proposed Escrow Agreement.

Omega, realizing that Crailar is not acting in good faith, brought this lawsuit to protect its interest in the Pamplico Facility. This interest will be imminently and irreparably harmed by Crailar's sudden shutdown and transfer of its Pamplico Facility operations overseas.

Success on the Merits

A plaintiff need not prove an absolute legal right, rather, it must only present a fair question as to the existence of such a right. The determination of whether to grant a temporary injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made. Once the plaintiff has made a showing entitling him to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits. Peek, 626 S.E.2d at 37; see also Atwood Agency v. Black, 646 S.E.2d 882 (2007).

In addition to requesting the Temporary Injunction, Omega has in its Complaint brought causes of action for Breach of Contract and Quantum Meruit. With respect to the contract claim, Omega has established by way of sworn testimony and exhibits the existence of the contract and the amount owed. Even if Crailar disputes the actual amount owed, Omega has established its claim for payment in equity due to its provision of services and materials to Crailar for the Pamplico Facility. Because Omega has presented far more than even a fair question to its right to both legal and equitable relief, it has met the burden of this element.

No Adequate Remedy at Law

Omega has sought relief in its Complaint by way of both legal and equitable causes of action. Omega's recovery, even though in the nature of a money judgment, is not protected by an

adequate remedy at law under the unique facts and circumstances of this case, which the trial court can and must take into account.

The Court has held that "[t]he basis for granting equitable relief is the **impracticality** of obtaining full and adequate compensation at law." Nutt Corp. v. Howell Road, LLC, 396 S.C. 323, 721 S.E.2d 447, 449 (Ct. App. 2011) (emphasis added). An "'adequate' remedy at law is one which is **as certain, practical, complete and efficient** to attain the ends of justice and its administration as the remedy in equity." Milliken & Co. v. Morin, 386 S.C. 1, 685 S.E.2d 828, 832 (Ct. App. 2009), citing Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119, 123 (1989) (emphasis added). If imminent and actual harm is threatened and the available legal remedy would result in a judgment in name that is otherwise unrecoverable, the court should not hesitate to exercise its equitable powers. 27 S.C. Jur. Injunctions § 9.

Crailar is moving its operations out of the United States. This is not a projected risk; this is a fact that Crailar has admitted. It has equipment, raw material, and finished material at the Pamplico Facility that it will be taking out of the country to run its new facility. Any money judgment obtained by Omega at the conclusion of this case will be unrecoverable, because Crailar no longer has a presence in the state. This empty legal judgment is not certain, practical, complete, or efficient. An injunction prohibiting the removal of these assets is the only way to secure the status quo pending the resolution of this case.

CONCLUSION

Crailar is not simply refusing to pay. Crailar has shuttered the business that secures Omega's interest, and by all information available to Omega, has moved the business overseas. It logically follows that Crailar will remove all equipment and materials possible to the new

business location to continue its operations. If that is allowed to happen, Omega will be completely deprived of any way to recover its judgment in this case. For the reasons set forth herein, Omega submits that the evidence in this case calls but for one conclusion – that Omega has established its prima facie case for a temporary injunction and is entitled to have such an injunction issued to protect it in the amount of its interest in the Pamplico Facililty.

October 30, 2013

By: _____

D. Alan Lazenby
Ginger D. Goforth

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ATTORNEYS FOR PLAINTIFF

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2013 OCT 31 AM 11:35
CONNIE REEL-SHEARIN
CCOP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No. 2013-CP-21-2722
	)	
Omega Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Crailar, Inc., d/b/a Crailar Technologies, Inc. f/k/a Naturally Advanced Technologies US, Inc.,	)	
	)	
Defendants.	)	

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

Defendant Crailar, Inc. ("Crailar") submits this Memorandum of Law in Opposition to Plaintiff's Motion for Temporary Restraining Order and Temporary Injunction.

The Court should deny Plaintiff's motion because Plaintiff cannot establish any basis in law or fact for the extraordinary relief in the form of the injunction they seek. Specifically, (1) the contract contains a condition precedent to seeking the relief requested that has not been fulfilled; (2) Plaintiff will not suffer irreparable harm; (3) Plaintiff cannot show that it is likely to succeed on the merits in the litigation; and (4) Plaintiff has an adequate remedy at law.

LEGAL STANDARD

The only purpose of an injunction is to preserve the status quo to avoid possible irreparable injury to a party pending litigation. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001). A court will not enter a temporary restraining order or temporary injunction except as an extraordinary and drastic measure to preserve the status quo of the parties until the Court can address the ultimate issue or issues in a case. *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006); *see also LeFurgy v.*

Long Cove Club Owners Assoc., 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994) (noting "the remedy of injunction is a drastic one and should be cautiously applied only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected"). Whether a preliminary injunction should be issued generally falls within the discretion of the court; however, the court must consider the equities and relative advantages and disadvantages to the parties of imposing such an exceptional remedy. *Strategic Resources Co.*, 367 S.C. at 544, 627 S.E.2d at 689.

The party seeking injunctive relief bears a heavy burden of demonstrating "facts and circumstances warranting an injunction." *Id.* at 544, 627 S.E.2d at 689; *Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 55 (Ct. App. 1984). The party seeking to obtain injunctive relief bears the burden of establishing that: (1) it would suffer irreparable harm if the injunction is not granted; (2) it is likely to succeed in the litigation; and (3) it has no adequate remedy at law. *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006); *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

ARGUMENT

I. The Plaintiff Has Failed to Abide by the Terms of the Underlying Contract by Failing to Pursue Mediation Prior Filing its Lawsuit

Crailar and Plaintiff entered into a certain contract for the design, construction, and improvement of Crailar's facility located in Pamplico, South Carolina (the "Agreement"). The Agreement is attached as Exhibit 1 to the Affidavit of Guy Prevost, attached hereto as Exhibit A.

The Agreement filed with the Court by Plaintiff is incomplete. Missing from the filed copy of the Agreement is a very important exhibit to the Agreement: its Exhibit A, the Trems and Conditions to the Agreement.

Section 4.3.1 of Exhibit A contains a clear condition precedent to seeking any claim under the Agreement:

RECORD 000110

> Any Claim arising out of or related to the [Agreement], shall be subject to mediation as a condition precedent to arbitration or the institution of legal **or equitable** or other binding dispute resolution proceedings by either party.
>
> (emphasis added)

Plaintiff has failed to acknowledge this provision in its pleadings filed with the Court. Put simply, this condition has not been met. As an agreement between two sophisticated parties, this provision must be given its plain and simple meaning. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (Ct. App. 2009) ("Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect."). Without having requested or conducted mediation, Plaintiff is not permitted to seek an equitable remedy such as the one requested here.

In addition, §4.4 of the Agreement requires the parties to arbitrate any claim, if mediation fails. As the Agreement involves interstate commerce, the Federal Arbitration Act applies. The South Carolina Supreme Court has ruled that "[u]nless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). Because of the arbitration act, this action should not even be heard by this Court and must be dismissed. *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 85 (2002) ("issues of procedural arbitrability, *i.e.*, whether prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate have been met, are for the arbitrators to decide" (emphasis omitted)).

II. The Plaintiff Cannot Show that It Will Suffer Irreparable Harm if the Motion Is Denied

The court must be convinced, based on verified facts, that irreparable injury is imminent. *Twin City Power Co. v. Savannah River Electric Co.*, 163 S.C. 438, 161 S.E. 750 (1930), *app.*

dism'd, 284 U.S. 574, 52 S. Ct. 17 (1931) (holding it must appears in all the circumstances that the injunction is reasonably necessary to preserve the rights of the plaintiff pending the litigation); *Childs v. Columbia*, 87 S.C. 566, 70 S.E. 296 (1911) (same). The harm to Plaintiff must not be remote or speculative, and the alleged injury must be one incapable of being fully remedied by monetary damages. *Strategic Resources Co.*, 367 S.C. at 544, 627 S.E.2d at 689.

The central document in this lawsuit is a contract. It is entirely inaccurate to state that Plaintiff will suffer irreparable harm, because Plaintiff, if successful in its litigation, can obtain an award of monetary damages through its breach of contract cause of action for the alleged harm suffered.

The threat that Plaintiff alleges that it will suffer – that Crailar will move all of its assets from South Carolina (which is unfounded and unsubstantiated) – is an issue related to ***post***-judgment relief. Put simply, even if it were true that Crailar is moving all of its assets from South Carolina, which is denied, Plaintiff would have legal remedies it could pursue. Any judgment it obtains can be filed in any state in the United States and can be enforced abroad under international law. While recovery of damages outside of South Carolina might be more difficult than collecting against assets in-state, this issue of "difficulty" does not rise to the level of irreparable harm or a failure to have a remedy for monetary damages.

III. Plaintiff Cannot Meet Its Burden that It Is Likely to Succeed in the Litigation

Plaintiff cannot succeed on the merits of the claims alleged in the Complaint. To justify the issuance of injunctive relief, the Plaintiff bears the heavy burden of establishing the merits of their case such that it appears that it will likely prevail in litigation. *Strategic Resources Co.*, 367 S.C. at 544, 627 S.E.2d at 689.

As stated in the Complaint, Plaintiff seeks damages from a breach of contract. As established in the affidavit of Thomas Robinson, attached hereto as Exhibit B, there are several

items that Plaintiff has failed to perform relating to the Agreement. It is Crailar's position that the Agreement has not been fully performed. Based on this affidavit alone, there is a strong question of fact as to whether Plaintiff can succeed in the litigation.

IV. Plaintiff Has an Adequate Remedy at Law

Plaintiff's Complaint establishes that it has an adequate remedy at law and, therefore, no injunction should be issued by this Court. Plaintiff pleads a cause of action for breach of contract. Based on Plaintiff's allegations, damages ensuing from such breach provide an adequate remedy: the amount sworn to in the verification of the Complaint.

Plaintiff has pled a cause of action for breach of contract, and this remedy is fully adequate for the issues contained in the lawsuit. Again, the issue of post-judgment relief is entirely separate from whether there is an adequate remedy at law. The adequacy of a legal remedy is a pragmatic determination based upon the certainty of fixing damages and the efficiency of the legal remedy in the particular circumstances. *Columbia Broadcasting Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 189 S.E.2d 305, *cert. denied*, 409 U.S. 1007 (1972).

V. A Balancing of the Equities Favors Defendants

In making a determination on a motion for injunctive relief, the Court must weigh the relative burdens on each party and balance the equities, looking at the particular facts of each case and the equities of each party. *See Gibbs v. Kimbrell*, 311 S.C. 261 (Ct. App. 1993) (if a great injury would be done to the defendant with little benefit to the plaintiff, the trial court should refuse equitable relief).

To force Crailar to not use its business assets in the what it deems the best and most productive fashion would greatly prejudice Crailar:

- Crailar's business will be harmed in that it will not have free use of its assets.
- An injunction prevents Crailar from obtaining revenue from use of its equipment while it is dealing with the breach of contract by Plaintiff in its work at the Pamplico Faciility.

RECORD 000113

[*See generally* Aff. of Guy Prevost, attached hereto as Exhibit A, and Aff. of Thomas Robinson, attached hereto as Exhibit B]

The imposition of an injunction clearly places a demanding burden on Crailar and limits the normal rights it would have related to its property.

VI. If an Injunction Is Granted, Plaintiff Must Post Bond in the Full Amount of Potential Harm to Defendant

While Crailar vehemently opposes any injunctive relief for Plaintiff, if the Court determines that an injunction is necessary, the Court must require Plaintiff to post a bond (or other security) to protect the defendant from the damages it may incur if it is found that the defendant was wrongfully enjoined. Rule 65(c), SCRCP; *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 49 (Ct. App. 2009) (remanding case to the trial court to award the appropriate amount of costs and damages incurred as a result of the temporary injunction).

Security in any amount less than the full amount of damages Crailar could suffer is inadequate. A bond in a nominal amount does not satisfy Rule 65(c) and is improper "because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect [defendants] in the event the injunction is ultimately deemed improper." *Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007).

The equipment and property at issue is secured by no less than $10,500,000 (Canadian) in debentures ($10,080,000 U.S.). [See Affidavit of Guy Prevost] The bond posted by Plaintiff is inadequate, as it does not properly value the property being restrained.

VI. Conclusion

For the reasons stated above, the Motion for Temporary Restraining Order and Temporary Injunction should be denied. If the motion is granted, the Court must order Plaintiff to post proper bond. If the Motion is denied, Crailar requests that the Court enter an order

rewarding it the damages directly attributable to the entry of the temporary restraining order, including attorneys' fees. *See Walker v. Oswald*, 181 S.C. 278, 186 S.E. 916 (1936).

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(803) 255-8017 (facsimile)
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Attorneys for Defendants

October 31, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No. 2013-CP-21-2722
	)	
Omega Construction, Inc.,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF GUY PREVOST**
	)	
vs.	)	
	)	
Crailar, Inc., d/b/a Crailar Technologies, Inc. f/k/a Naturally Advanced Technologies US, Inc.,	)	
	)	
Defendants.	)	

GUY PREVOST, being duly sworn, deposes and says:

1. I am over the age of eighteen and am under no disability which would render me incompetent to make this affidavit. I have personal knowledge of all the matters stated in this affidavit, except where stated upon information and belief, and all statements made are true and correct.

2. I am Corporate Controller & Compliance Officer for Crailar Technologies Inc.

3. Crailar, Inc. ("Crailar") is the United States subsidiary of Crailar Technologies Inc. Crailar was formerly known as Naturally Advanced Technologies US Inc.

4. In my duties as Corporate Controller & Compliance Officer, I oversee business operations, and am responsible for issuing financial statements for Crailar, among other things.

5. Attached as Exhibit 1 is an accurate copy of the Agreement between Plaintiff and Defendant for the Design-Build of the Crailar facility located in Pamplico, South Carolina (the "Agreement").

6. The Agreement contains an express condition precedent to arbitration or to taking any legal or equitable action, see Section 4.3 of Exhibit A to the Agreement, that the parties mediate any claim arising out or related to the Agreement.

EXHIBIT A

7. Claims that have not been resolved by mediation are subject to arbitration under Section 4.4 of the Agreement.

8. Plaintiff has not requested or demanded mediation with Crailar.

9. In order to finance the construction and operation of Crailar's facility located in Pamplico, South Carolina (the "Pamplico Facility"), Crailar raised capital through convertible debentures in September 2012, February 2013, and July 2013 (the "Debentures").

10. Attached as Exhibit 2 is a list of all the assets secured by the Debentures. Most of the equipment located in the Pamplico Facility is fully pledged to the holders of Crailar's debt obligations under the Debentures.

11. One of the only assets of Crailar located at the Pamplico Facility that is not secured by the Debentures is approximately 12.5 million pounds of certain raw flax fiber. Crailar plans for the Pamplico Facility to re-open, as the raw flax will need to be separated or otherwise used at the Pamplico Facility.

12. The equipment secured by the Debentures has an estimated value of no less than $10,500,000 CDN.

13. If Crailar is prevented from using its equipment and assets as it best sees fit for use in its business operations, it will face irreparable damage in the marketplace.

14. Upon information and belief, the length of time of the litigation could range from six to eighteen months or longer. If an injunction on the use of assets is permitted, Crailar's worldwide operations will be affected and will certainly face drastic monetary damages.

Further this Affiant sayeth not.

[SIGNATURE BLOCK APPEARS ON THE FOLLOWING PAGE]

This the 30 day of October, 2013.

GUY PREVOST

SWORN to and subscribed before me
this the 30 day of October, 2013.

Notary Public

My Commission expires:

GRAHAM N. WEEKS
Barrister & Solicitor and
Notary in and for the
Province of British Columbia
Ste. 201, 4430 Chatterton Way,
Victoria, British Columbia, V8X 5J2
Ph: (250) 479-8384 Fax: (250) 479-8316

AIA® Document A141™ – 2004

Standard Form of Agreement Between Owner and Design-Builder

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

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

Naturally Advanced Technology
1728 North Old River Road
Pamplico, South Carolina 29583

and the Design-Builder:
(Name, legal status, address and other information)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

NAT Flax Fiber Facility
Pamplico, South Carolina

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

EXHIBIT 1

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ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents (which may also be referred to as the Design-Build Documents) consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontractors, purchase orders, and other agreements between the Design-Builder and third parties. The Design-Builder shall incorporate the obligations of this Design-Build Contract into its respective subcontracts, supply agreements, and purchase orders.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Design-Build Documents, other than a Modification, is inconsistent with this Agreement, this Agreement will govern.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

§ 1.4 The Design-Builder accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Design-Builder agrees to furnish the architectural, engineering, and construction services set forth herein and agrees to furnish efficient business administration and superintendence, and to use its best efforts to

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complete the Project in the best, most expeditious, and economical manner consistent with the interests of the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the latter of the date of the issuance of the building permit or the date the Owner provides reasonable documentation of project financing as required by Article A.2.2.8 of Exhibit A. If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

(Insert Owner's time requirements.)

N/A

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.

(Paragraph deleted)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than days from the date of commencement, or as follows:

(Paragraph deleted)

Design-Builder achieving Substantial Completion within 100 days from commencement is contingent upon (1) The agreement of the local building authority to issue a Temporary Certificate of Occupancy allowing machine commissioning before the Permanent Fire Pump is active and (2) NAT electing to install a temporary fire pump until the Permanent Fire Pump; System is active (see Additional Pricing Item #6 in Addendum A (NAT Outline Scope of Work) for pricing). If either of these 2 conditions are not satisfied, Substantial Completion shall be achieved not later than 130 days from date of Commencement. The Design-Builder understands and acknowledges that time is of the essence in the execution of the work in accordance with the schedule as noted herein and that any delay in completion of the Work beyond the Substantial Completion date will materially affect the Owner by causing among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages.

Portion of Work	Substantial Completion Date

§ 3.4 Within ten (10) days of the award of the Contract, the Progress Schedule shall be prepared by Design-Builder utilizing the critical path method and submitted to Owner. The Progress Schedule shall be detailed to a degree which will permit proper coordination of all trades for the Work, including all design elements of the Work. The Design-Builder shall be required to update the status of the Work according to the Progress Schedule on a monthly basis or as reasonably requested by Owner. The Progress Schedule shall show the amount of Work constructed and comparing the Work in place to the progress required by the Progress Schedule. Failure to provide such updates to the Progress Schedule shall be a material breach of this Agreement. In addition, if, at any time, the progress of the Work is such that the Design-Builder will not be able to meet the Substantial Completion date in the Progress Schedule (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents), Design-Builder shall inform Owner of this potential delay as required by the Design-Build Documents. At that time, Design-Builder shall also present a recovery schedule and plan for such overtime work or other measures that may be required to recover the schedule. Failure to provide the Owner with notice in accordance with the Design-Build Documents of a potential delay to one or more of the completion dates and a plan of corrective action shall be deemed a waiver of the Design-Builder's right to claim any extension of time for delay caused by that activity.

§ 3.6 Should the Design-Builder fail to progress with the Work in accordance with the Progress Schedule (taking into account extensions of the Contract Time approved in accordance with the Design-Build Documents), it shall, without being entitled to any increase in the Contract Sum or other compensation or extension in the Contract Times, work

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overtime, increase his force, or take other such action as may be necessary or appropriate to recover the Schedule and complete the activity by the dates shown on the Progress Schedule.

§ 3.7 The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Design-Build Documents. In the event that Design-Builder does not achieve Substantial Completion of the Work as set forth in Article 3.3 of this Agreement, Design-Builder shall pay Owner liquidated damages in the amount of Five hundred dollars ($500.00) per day for each day after the date for substantial Completion that Design-Builder fails to properly complete the Work. If the Design-Builder is more than ten (10) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the tenth (10th) day that Design-Builder fails to properly complete the Work. If Design-Builder is more than thirty (30) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the thirtieth (30th) day that Design-Builder fails to properly complete the Work. Design-Builder acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[ ] Stipulated Sum in accordance with Section 4.2 below;

[ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

[X] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM (Intentionally omitted.)

§ 4.2.1 Intentionally omitted.

§ 4.2.2 Intentionally omitted.

§ 4.2.3 Intentionally omitted.

Description	Units	Price ($0.00)

§ 4.2.4 Intentionally omitted.

Allowance	Amount ($0.00)	Included Items

§ 4.2.5 Intentionally omitted.

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 Intentionally omitted.

§ 4.3.2
(Paragraphs deleted)
Intentionally omitted.

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

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§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

Five percent (5%) of the Cost of the Work.

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 No later than May 18, 2012, the Design-Builder shall propose a Guaranteed Maximum Price for the Work. If accepted by the Owner in writing, this proposal shall become Amendment 1 to this Agreement and shall establish the Guaranteed Maximum Price for the Work. The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The Guaranteed Maximum Price shall include the cost of all design, labor, equipment, supplies, materials, services and allowances required to complete the Project pursuant to the Design-Build Documents.
(Insert specific provisions if the Design-Builder is to participate in any savings.)

To the extent the Cost of the Work plus the Design-Builder's fee is less than the Guaranteed Maximum Price (minus any remaining contingencies and allowances), the Owner and Design-Builder shall share such savings with the Owner receiving eighty percent (80%) of such savings and the Design-Builder receiving twenty percent (20%) of such savings.

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price ($0.00)

§ 4.4.3.4 Allowances, if any, are as follows:
(Identify, and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount ($0.00)	Included Items

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:
(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Intentionally omitted.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Design-Builder shall submit monthly Applications for Payment.

§ 5.1.3 Provided that an Application for Payment is received not later than the 5th day of the following month, the Owner shall make payment to the Design-Builder not later than the 25th day of the month in which the billing is received by the Owner. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Owner receives the Application for Payment.

§ 5.1.4 If requested by Owner in writing, with each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM (Intentionally omitted)

§ 5.2.1 Intentionally omitted

§ 5.2.2
(Paragraphs deleted)
Intentionally omitted

§ 5.2.3 Intentionally omitted.
(Paragraphs deleted)

§ 5.2.4
(Paragraphs deleted)
Intentionally omitted

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Intentionally omitted.

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§ 5.3.2
(Paragraphs deleted)
Intentionally omitted.
(Paragraphs deleted)

§ 5.3.3 Intentionally omitted.

§ 5.3.4 Intentionally omitted.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. When the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, elect not to withhold additional retainage. In such event, there will be a total of five percent (5%) retainage held by the Owner at the time of Substantial Completion of the Work. Nevertheless, any reduction or release of retainage, or a portion thereof, shall not be a waiver of (i) any of the rights to retainage in connection with other payments to the Design-Builder or (ii) any other right or remedy that the Owner has under any Design-Build Documents, at law or in equity.

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§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1
(Paragraphs deleted)
Intentionally omitted.

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:
(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)
(Check one.)

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:
(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:
(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

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§ 7.4 The Owner's Designated Representative is:
(Insert name, address and other information.)

Tom Robinson
Naturally Advanced Technologies U.S., Inc.
6188 Old Ironworks Road
Greensboro, North Carolina 27455Telephone: (336) 549-7873

COPY TO:
Guy Prevost
Naturally Advanced Technologies U.S., Inc.
305-4420 Chatterton Way
Victoria, BC, Canada V8X 5J2

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

J. Barry Hennings
Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

(Office) 336-368-5156 (Fax) 336-368-2277; (email) barryh@omegaconstruction.com

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

Insurance Requirements

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

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

percent (%)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

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§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Document	Title	Pages
Insurance Requirements		1 - 3

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title	Date

§ 8.1.4 The Design-Builder's Proposal, dated , consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Number	Date	Pages

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

N/A

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Insurance Requirements

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ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

Facility Description

Facility construction to consist of renovations and upfit of an existing 145,800 sf industrial building to manufacturing/warehousing space with associated mechanical and office spaces.

The existing building space will be divided into two bale storage areas of 9,900 sf and 11,900 sf (Please note that the 11,900 sf area will be reduced to ~3,300 sf per local building official requirements. This change was made too late to be included in this GMP. Once the revised pricing for this change is developed, the GMP will be amended). The remaining production floor area is to be used initially for a decortications line consisting of 3 pre-opener stages, 1 fine opener line, and 2 balers. An on-grade bale unloading area will be added to the north end of the building adjacent to the 9,900 sf bale storage area. 3 existing docks will be refurbished at bale storage (2) and at the maintenance area (1). The rear office area (~1,800 sf) will be refurbished with paint, new carpet and new acoustical ceilings. New ADA compliant bathrooms will be installed and two existing bathrooms will be refurbished with new fixtures

Mechanical systems to be provided will include a refurbished compressed air system with new compressors, refurbishment of an existing air washer (#4), re-work of the existing building fire sprinkler system (through separate contract with facility owner) and re-work of the existing site water system (also through a separate contract with the facility owner). New heating and ventilation systems are included for refurbished office space. Modifications to the existing building plumbing system are included to accommodate revised restroom layouts and abatement activities.

The electrical systems include new 4160 V to 480 V electrical service to the building, new lighting in the production / warehousing areas, renovation of electrical systems in refurbished office / support areas, power wiring for new mechanical equipment, and convenience receptacles in production / warehousing areas. Low voltage systems provided include fire alarm system, and stub-ups for Owner's communications system in office areas.

Site improvements include clearing and grading for new pads and plant roads, a patch for the cut out area in existing plant asphalt roads, modifications to existing storm drainage system, re-commissioning/ modifications to the existing sanitary sewer system, re-commissioning /modifications to the existing site water system and removal/installation of site fencing.

SCOPE OF SUPPLY – SITE & BUILDING

Labor, materials, equipment and supervision is included for the following scope of work:

1000 – General Conditions

The following items are included:

1. Building permits/ fees / local licenses

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

2. Builder's risk insurance and Contractor's General liability insurance
3. Field office facilities
4. Field supervision
5. Temporary storage facilities
6. Temporary toilets
7. Temporary power and lighting inside building and job trailers.
8. Temporary telephone.
9. Equipment and tool rental
10. Fuel for project
11. Project Management
12. Project Executive
13. Employee lodging and subsistence
14. Site and Building design services including civil, architectural, structural, plumbing, mechanical, and electrical design. Sealed drawings will be provided in all the above disciplines. Structural steel, mechanical and electrical design will be via design-build subcontractor packages.
15. Drawing reproduction
16. Office shipping and postage costs

2000 – Sitework

1. Project Testing
2. Surveying and layout
3. As-built site drawings
4. Clearing and grubbing.
5. Erosion control measures, including, inlet protection at storm drain structures, swale sediment tubes and temporary seeding.
6. Earthwork including stripping and stockpiling topsoil, onsite cut/fill.
7. Storm drain system for area drainage at new plant roads and docks:
    - Installation of 1 new yard inlet structures
    - Installation of ~50 lf of 18" RCP storm drain pipe
8. Sanitary Sewer system:
    - Sanitary sewer tie-in for new restrooms.
    - Replace existing sanitary sewer manhole at northeast corner of existing building with pumping station, cap connection to gravity sewer serving other building on site.
    - Installation of ~500 lf of 2" force main sewer piping from pumping station to new septic system.
    - Installation of new septic system (~780 lf of tail lines) located northwest of existing building.
9. Site domestic / process water system:
    - Re-commission existing well pump systems (via contract with property owner)
10. Site fire water system:
    - Re-commissioning of existing fire pump system. (via contract with

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property owner)

11. Asphalt paving and gravel drives for site roads and parking areas:
    - Installation of ~700 sy of new heavy duty paving at shive loading area. Heavy duty paving to consist of 8" of base coarse, 2" of binder course, and 1.5" of type C surface course.
    - Installation of ~2,700 SY of 10" gravel drive at the north side of the existing building for bale unloading.
    - Installation of ~2,800 SY of 6" gravel drive around the west side of the existing building for fire road access.
12. Concrete paving:
    - Installation of concrete truck apron at on-grade bale unloading area. Pad dimensions are approximately 70' x 85' of 8" wire mesh reinforced concrete.
    - Installation of concrete truck apron at shive loading area. Pad dimensions are approximately 85' x 25' of 8" wire mesh reinforced concrete.
13. ~525 lf of new barbed wire fencing and new electric gate.
14. Demolition of ~250 lf of existing fencing.
15. $10,000 allowance for site cleanup and landscaping.
16. $5,000 allowance for permanent seeding of disturbed areas.
17. $3,600 allowance for pest control treatment for existing building

3000 – Concrete Work

1. Allowance for the installation of spread-type column footings for the shive loading canopy. (Note: this allowance will be revised once the final design is determined for this canopy).
2. Installation of concrete pads for 2 compressor pads.
3. Installation of concrete pad for the new transformer.
4. Patching of ~500 sf of floor slab for the new office area for the new bathroom areas.
5. Installation of 1 new 5'x5' concrete pad at the new door on the south end of the building.
6. Patching for ~360 floor openings in the existing floor slab.
7. Addition of concrete stairs and ADA compliant ramp in the rear of the existing building to the existing exterior door.

4000 – Masonry

1. Repair allowance of ~$5,000 to patch damage to existing masonry walls.
2. All masonry accessories required for wall construction including sand, mortar, reinforcing, and CMU block.
3. Provide new CMU wall at existing nurses station/restroom to expand the restroom area to be compliant with ADA requirements.
4. Provide new masonry walls to expand existing "Engineer's Room" for conversion of the space to a control cabinet room.

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5. Demolish CMU and Brick Veneer in areas needed for new openings (12 places)
6. Install new steel lintels at new masonry openings where necessary (6 places).
7. Provide temporary shoring to support masonry walls while new openings are being installed.
8. Patch openings left after shoring is removed.
9. Pressure wash brick on the building exterior.

5000 – Structural Steel

1. Provide structural steel and roof framing for Air washer air intake / exhaust penthouse with additional bump out to direct exhaust vertical.
2. Provide new dividing wall below penthouse to separate the intake/exhaust air plenum.
3. Provide new structural columns along North wall needed in order to cut holes in the north wall.
4. Erection of steel package.
5. An allowance has been included for the structural steel and erection of the shive handling canopies. (Note: this allowance will be revised once the final design is determined for the shive loading canopy)
6. Provide and erect new stell lintels for the new masonry wall openings
7. Provide welding and structural steel for metal support plates for the concrete slab hole patching

5040 – Miscellaneous Metals

1. Replace existing roof ladder on existing building with code compliant ladder.
2. Guardrail at refurbished rear offices area (60 lf)
3. Provide and install handrails at new entrance ramp and stairs.
4. (44) ea. pipe bollards
5. Provide 2 Frames for roof mounted HVAC equipment.
6. Provide angle embeds for the conveyor transfer pits.
7. Bent plate jambs / lintels for new overhead door openings in masonry walls.
8. Erection of miscellaneous steel package.
9. Anchor bolts for canopy footers.

6000 – Carpentry

1. Roof nailers for roof tie in at new penthouse.
2. Provide misc wood for blocking and concrete patching.

7000 – Thermal and Moisture Protection

1. $2,000 repair allowance for existing building roof.
2. ~42 sqs of Exterior 2" thick x 42" wide insulated foam metal panels for new partition walls and penthouse enclosure. Exterior facing to be 26 gauge G90 galvanized steel with a planked profile and a Kynar finish. Interior facing to be 26

gauge G90 galvanized steel with a planked profile and a Polyester finish. The texture will be stucco embossed and the color will be the manufacturers standard white.

3. ~5 sqs of interior liner R-Panel roll formed from 26 gauge galvalume steel with a Polyester finish, smooth texture for penthouse bump out liner paneling.
4. Installation one layer of 2" polyisocyanurate rigid roof insulation mechanically fastened.
5. Installation of a mechanically fastened white 45 mil TPO roofing system by Firestone with 15 yr "NDL" material and labor warranty by Firestone.
6. Install prefinished (standard color) 24 gauge gravel stop, gutter and downspouts.
7. Install tapered polyisocyanurate crickets around new penthouse and one layer of ½" high density wood fiber rigid insulation over new crickets – set in a solid mopping of hot asphalt. Install 3 plies of type IV felt over new crickets set in a solid mopping of hot asphalt. Install new SBS flashing at tie-in to new penthouse.
8. Install new flashing as relocated roof drains.
9. Install new flashing as new roof top HVAC units.
10. Caulking and sealants as required.
11. Floor joint caulking using polyurea materials for new exterior floor slabs.
12. Provide allowance for new shive loading canopies roof membrane, gutters, and downspouts to include 2" polyisocyanurate rigid roof insulation mechanically attached with a mechanically fastened white 45 mil TPO roofing system by Firestone with prefinished (std color) 24 gauge counter flashings, gravel stop, gutter and downspouts.
13. Provide sheetmetal cover for exterior access doors to replace damaged door louvers.
14. Provide 3'-11" wide dock canopy over bale unloading doors.

8000 – Doors and Windows

1. Hollow metal door frames, doors, and hardware for all new interior and exterior personnel doors.
2. Refurbishment of existing hollow metal doors, frame and hardware for existing interior and exterior personnel doors in reworked areas.
3. Refurbish 10 existing mechanical/electrical room doors to include wire brushing and new paint.
4. New aluminum storefront doors for rear office areas,
5. Overhead doors, dock seals, on-grade access openings, partition wall openings as follows (also see dock door markup drawing "NAT OH Door Markup - Pamplico 5-2-12.pdf":

Location	Qty	Size	Description
Receiving Docks	2	8' x 10'	Manual Operator, insulated vertical lift sectional, new dock seals
Dry Area Bale Unloading	2	10' x 10'	Electric Operator, insulated vertical lift sectional

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Dry Area Bale Unloading	1	12' x 12'	Electric Operator, insulated High lift sectional
Shive Loading	2	8' x 10'	Refurbish existing rolling steel door
Bale Unloading Storage access to Bale Storage	1	12' x 12'	Electric Operator - Rolling Steel door with 3 hr fire rating and fusible link
Bale Unloading Storage access to Bale Storage to Dry Area	2	10 x 10	Electric Operator - Rolling Steel door with 3 hr fire rating and fusible link.
Bale Storage access to Dry Area	1	12' x 12'	Electric Operator - Rolling Steel door with 1 hr fire rating and fusible link
Bale Storage access to Dry Area	1	10 x 10	Electric Operator - Rolling Steel door with fire rating and fusible link.
Maintenance Shop Exterior	1	8 x 10	Refurbish existing rolling steel door, new dock seals.

9000 – Finishes

1. The office finishes refurbishment package includes replacing acoustical ceilings, replacing floor coverings (carpet, asbestos tile), re-painting walls, and cleaning for 1,800 sf rear office area and 500 sf of office area near shive loading.
2. New tile floors and walls in new ADA bathrooms.
3. Allowance for gypsum wall board for new storage area. (Note: This area to be resized per local building officials. Pricing will be adjusted to this new size).
4. Painting per markup drawing "NAT Painting Markup - Pamplico 4-30-12.pdf" to generally include as follows:
    i. Painting of all exposed roof deck, roof steel, columns, existing CMU walls, joists, beams, conduits in existing building for Bale Storage and Production Area.
    ii. Painting of exposed steel and existing CMU walls in Maintenance Room, and Electrical Room.
    iii. Painting of all exposed new misc steel in plant areas.
    iv. Painting of existing wood paneling, CMU, trim, and wood base in rear office area.
    v. Painting of all hollow metal doors and frames that in production, rear offices, maintenance area, and air washer #4.
    vi. Paint existing and new railings, new roof ladder.
    vii. Paint Pipe Bollards.
    viii. Paint New opening lintels.
    ix. Repaint exterior metal doors.

10000 - Specialties

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1. Signage allowance of $6,000.
2. Fire protection cabinets (2 ea.) and fire extinguishers (50 ea.) for Office and plant areas.
3. Re-use of partitions in existing restrooms being refurbished.
4. Replace toilet accessories in all restrooms being refurbished.

11000 - Equipment

1. Refurbishment of existing loading dock levelers,
2. Two (2) new manual truck restraints.
3. New dock bumpers for existing 5 docks
4. Three new dock seals for shipping docks and maintenance area.

15010 – Plumbing

1. Provide new plumbing fixtures for existing refurbished bathrooms. An allowance has been made in case the new fixture bolt patterns do not line up with the existing bolts.
2. Provide two new ADA compliant bathrooms for the rear offices.
3. Provide a new hot water heater to serve the refurbished bathrooms.
4. Reroute existing Roof Drain line in Air Washer #6 beyond new penthouse perimeter.
5. Re-insulate existing water lines after abatement.
6. Re-insulate existing roof drains after abatement.
7. Installation of new eyewash/shower station in production area near rear offices.
8. Chlorination of existing system.
9. Installation of new roof drain in penthouse bump out.

15020 – HVAC

Reference attached Bahnson proposal "NAT – Flax Processing Project Budget Phase I" dated 5/17/12 for description of mechanical scope of work for the following:

Phase 1 Scope:

1. Compressed air system (two compressors – fixed drive 25 HP each). New compressors to be tied into existing receiver tanks in mechanical room.
2. Production Machine exhaust & filtration requirements (for 1 decortication line, 2 stage design expandable to 3 stage)
3. Air washer humidity control system (refurbish 1 existing air washer, with air distribution ductwork). Provision to be made for 2nd air washer to be brought online in the future.
4. Seismic restraints for piping, ductwork and mechanical equipment

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5. Patching of existing wall openings on the East and West walls left after the demolition of the existing ductwork.
6. Bahnson general services for Phase 1 Scope

Office/Control Room HVAC package:

Reference attached Bahnson proposal "NAT – Office and Control Room AC Systems"

1. Furnish and Install new air conditioning equipment, ductwork, and related components.

15030 – Fire Protection – (to be handled under separate contract with the property owner)

1. Renovate the existing building fire sprinkler system in the production area to relocate the existing sprinkler heads from the pendent position to an upright position after the existing suspended ceiling is removed.
2. Demolish and replace existing sprinkler system in new bale storage areas.
3. Provide a new fire sprinkler system freeze protection for the shive loading canopy.
4. Replace the existing fire pump and backup with new equipment and controls
5. Seismic restraints for new fire protection piping.
6. (Included in the GMP) Add Argus fire suppression and detection to the two filter houses.
7. (Included in the GMP) Add Argus fire suppression system to the dust filters.
8. (Included in the GMP) Add Argus fire suppression system to each HiVac system.
9. (Included in the GMP) Add Argus spark detection to the three bale openers.
10. (Included in the GMP) Install two reconditioned Argus Xtra Control Panels.
11. The equipment fire suppression system includes reconditioned components. See alternates at the end of this document for an adder for new components.

16010 – Electrical

1. Reference attached Adams Electric Proposal received on 5/18/12 for description of electrical scope of work included.

18000 – Cleanup and Dumpsters

1. Weekly project clean-up and waste disposal.
2. Final building clean-up prior to turnover
3. Dumpster rental, haul charges, and tipping fees for all waste generated by Omega Construction scope of work.

19000 – Building Demolition

1. Demolish existing building wall panels, masonry walls, and steel structure as

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OUTLINE SCOPE OF SUPPLY
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necessary to construct new wall openings.
2. Demolish sections of the interior floor slab of the existing building to new plumbing.
3. Core drill the existing building slab in 38 places for pipe bollard installation.
4. Demolish existing roof to allow construction of the new air washer intake penthouse.
5. Demolish carpet, ceiling, and CMU wall at women's bathroom for refurbished rear office area.
6. Perform selective demolition, asbestos abatement, and lead paint stabilization as specified in the Selective Demolition Scope of Work document dated 2-28-12, its associated markup drawings, the 3-5-12 NAT Abatement and Demolition Work Scope Addendum #1, and the 3-5-12 NAT Abatement and Demolition - Bid Form
7. Demolish welding room and tool storage room in Maintenance Area. Demolish air handling unit the welding room and its associated ductwork with the maintenance room.
8. Demolish two CMU wall between Air Washer # 4 and Air Washer #6 to install next insulated wall panel barriers with framed openings.
9. Demolish large duct over the old Engineer's office to prepare the area for the new control cabinets.

Additional Pricing Items :

1. Baler and Briquetter for waste and dust compaction – **Add $144,200.00**
2. 3rd stage air filtering for (2) process filters in Phase 1 scope – **Add 90,720.00**
3. Bale Storage Unit heaters for fire sprinkler system freeze protection. – **Add $12.453.00**
4. Spare "used" Vacuum Pump – **Add $20,685.00**
5. Use new components for equipment fire suppression system – **Add $24,307.00**
6. 1 month temporary fire pump with installation and removal – **Add $18,000.00**
7. Change manual truck restraints to fully hydraulic – **Add $3,475.00**

Clarifications and Exclusions

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
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May 22, 2012

The following items are exclusions and clarifications that apply to the base scope of work:

General Clarifications and Exclusions:

1. Fire Protection design is preliminary and must be reviewed and approved by NAT's insurance underwriter. Significant revisions to the design assumptions required by NAT, the property Owner or their insurers or officials having jurisdiction may affect pricing.
2. No excavation or replacement of rock or unsuitable soils is included.
3. We have not included any allowance for potential dewatering.
4. Omega Construction standard safety program is included in general conditions cost.
5. No smoke vents or draft curtains are included in this scope.
6. Furnishings, cubicles, vending equipment, and window treatments are assumed to be provided by Owner
7. No Vapor Barrier is provided on the existing production area roof in the base estimate
8. Well water is assumed to not need water treatment before use in the process equipment.
9. Asphalt paving is based on the April 1, 2012 asphalt index price of $636.67/ton. Asphalt paving will be priced at time of placement. Any deviation up or down from this index price will result in adjustment to the asphalt paving pricing.
10. Site storm drainage system is assumed to be adequate for the additional storm drainage off the new building and new pavement.
11. This pricing is contingent on acceptance of the project design by NAT, the Property Owner, NAT's insurer and any authority having jurisdiction. Any material change required by these parties could affect this work scope and the GMP.
12. See Clarifications and Exclusions listed in the attached Bahnson proposal "NAT – Flax Processing Project Budget Phase I" dated 5-17-12.
13. See Clarifications and Exclusions listed in the attached Bahnson proposal "NAT – Office & Control Room AC Systems" dated 5-17-12.
14. See Clarifications and Exclusions listed in the attached Adams proposal dated 5-18-12.
15. Backflow preventers are not included in this GMP proposal.
16. Except as listed above, all fire protection system costs have been excluded from this GMP. It is assumed that these costs will be paid by the Property Owner "Colony Square Investment Company".
17. Except as listed above, all site water system costs have been excluded from this GMP. It is assumed that these costs will be paid by the Property Owner "Colony Square Investment Company".
18. Proof of project financing must be provided before contracts associated with this GMP can be issued.
19. Any item not specifically listed in this Outline Scope of Supply is excluded.

Addendum B
NAT Guarrenteed Maximum Price (GMP)
Date: 5-18-12 revision

Division	Description	GMP 5/10/2012	Division Total
1000 - General Conditions			
	Permits	$ 22,070	
	Insurance	$ 27,360	
	Supervision	$ 65,000	
	Project Management	$ 81,000	
	Safety Requirements	$ 4,368	
	Tools and Equip	$ 27,874	
	Temp Services	$ 22,606	
			$ 251,078
1000 - Design			
	Civil Design	$ 12,200	
	Architectural/Strucutral Design	$ 80,300	
	LEED Management	exc	
	LEED Comissioning	exc	
			$ 92,500
2000 - Sitework			
	Site Investigation and Layout	Inc	
	Site Demo and Clearing	Inc	
	Erosion Control	Inc	
	Grading	$ 166,990	
	Storm Drainage	Inc	
	Site Water System - Domestic	$ 1,045	
	Site Water System - Fire Loop	exc	
	Site Sewer System	exc	
	Asphalt Paving and Gravel Roads	Inc	
	Concrete Paving	$ 49,804	
	Temporary Roads	n/a	
	Landscaping Allowance	$ 10,000	
	Seeding Allowance	$ 5,000	
	Fencing	$ 26,211	
	Termite Treatment	$ 3,600	
			$ 252,650
3000 - Concrete Work			
	Foundations	$ 20,854	
	Door and Equipment Pads	Inc	
	Floor and Mezzanine Slab	exc	
	Sidewalks	exc	
	Reinforcing	Inc	
	Slab Hole Patching	$ 73,956	
	Formed Stairs, Equip pads	$ 22,814	
	Testing Allowance	$ 5,000	
	Pipe Bollards	$ 22,704	
			$ 145,328
4000 - Masonry			
	Masonry Cleaning - Exterior	$ 10,000	
	Shoring	$ 20,000	
	Masonry Walls	$ 49,046	
			$ 79,046
5000 - Metals			
	Waste Handling Canopies Allowance	$ 66,600	
	Penthouse Material and Erection	$ 65,300	
	Misc Steel and Erection	$ 44,920	
	Framed Openings	$ 56,547	
			$ 233,367

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Addendum B
NAT Guarrenteed Maximum Price (GMP)
Date: 5-18-12 revision

Division	Description	GMP 5/18/2012	Division Total
6000 - Carpentry			
	Roof Nailers and Misc Wood	$ 2,180	
			$ 2,180
7000 - Thermal and Moisture Protection			
	Roofing - Existing	$ 7,000	
	Roofing - Penthouse	$ 29,000	
	Dock Canopy	$ 25,000	
	Wall Siding and Insulation	$ 63,800	
	Caulking and Sealants	$ 2,000	
	Floor Joint Caulking	$ 2,500	
			$ 129,300
8000 - Doors and Windows			
	Hollow Metal Doors Allowance	$ 32,700	
	Overhead Doors	$ 33,799	
	High Speed Doors	n/a	
			$ 66,499
9000 - Finishes			
	Painting	$ 112,195	
	Storage Wall Allowance	$ 54,320	
	Office Finishes	$ 45,128	
			$ 211,643
10000 - Specialties			
	Toilet Partitions and Accessories	$ 1,970	
	Office Entryway Canopy Allowance	n/a	
	Signage Allowance	$ 6,000	
			$ 7,970
11000 - Equipment			
	Dock Equipment	$ 26,085	
			$ 26,085
15010 - Plumbing			
	Plumbing - Domestic	$ 48,350	
			$ 48,350
15020 - Mechanical Systems			
	Mechanical Package	$ 1,816,216	
	Remove and Patch for Roof top vents	$ 13,930	
	Patching Duct Openings	$ 29,580	
	Office Area/Control Room HVAC System	$ 84,700	
	Production/Filtering Equipment Fire Suppression Systems	$ 71,000	
			$ 2,016,426
15030 - Fire Protection			
	Fire Extinguishers	$ 2,500	
	Fire Protection - Building	exc	
			$ 2,500
16010 - Electrical			
	Revised Electrical Scope	$ 1,122,700	
			$ 1,122,700
18000 - Clean up			
	Clean up	$ 29,000	
	Dumpster Charges	$ 16,900	
			$ 45,900

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Addendum B

NAT Guarenteed Maximum Price (GMP)

Date: 5-18-12 revision

Division	Description	GMP 5/18/2012	Division Total
19000 - Demolition			
	Concrete Demo	$ 5,500	
	Masonry Demo	Inc	
	Metals Demo	Inc	
	Production Area\Office Area Demo	$ 86,259	
	Abestos Abatement Design/Air Monitoring	$ 19,100	
	Asbestos\Hazardous Materials Abatement	$ 131,674	
			$ 242,533
Subtotal		$ 4,975,055	
General Constractors Fee			
	Major Subcontractors - Fee 5%	$ 156,906	
	All Other Construction Costs - Fee 5%	$ 91,846	
GMP - Omega Construction Contract		$ 5,223,808	
	JSC Billing	$ 127,167	
Grand Total		$ 5,350,975	
Additional Alternate Pricing Items			
	Alternate for 3rd Stage Air Filtering	$ 90,720	
	Alternate for Bale Storage Unit Heaters	$ 12,453	
	Alternate for "used" spare Vacuum Pump	$ 20,685	
	Alternate for new components in fire suppression system	$ 24,307	
	1 month temp fire pump	$ 18,000	
	Change to fully hydraulic truck restraint	$ 3,475	
Items to be Priced to the Property Owner			
	Replacement of Vertical Shaft Electric Fire Pump, motor, and controller	TBD	
	Replacement of Vertical Shaft Diesel Fire Pump, motor, and controller	TBD	
	Misc Additional Fire Pump System Refurbishment	TBD	
	Silo Fire Loop Checkout	TBD	
	Upgraded Fire Protection System	TBD	
	New Well Pump and Storage Tank Refurbish	TBD	
Placeholders for NAT Issued Contracts			
	Rigging and Millwright Package	$ 100,000	
	Provide conveyor equipment	TBD	
			$ 269,640
Grand Total with Add'l Pricing Items		$ 5,620,615	

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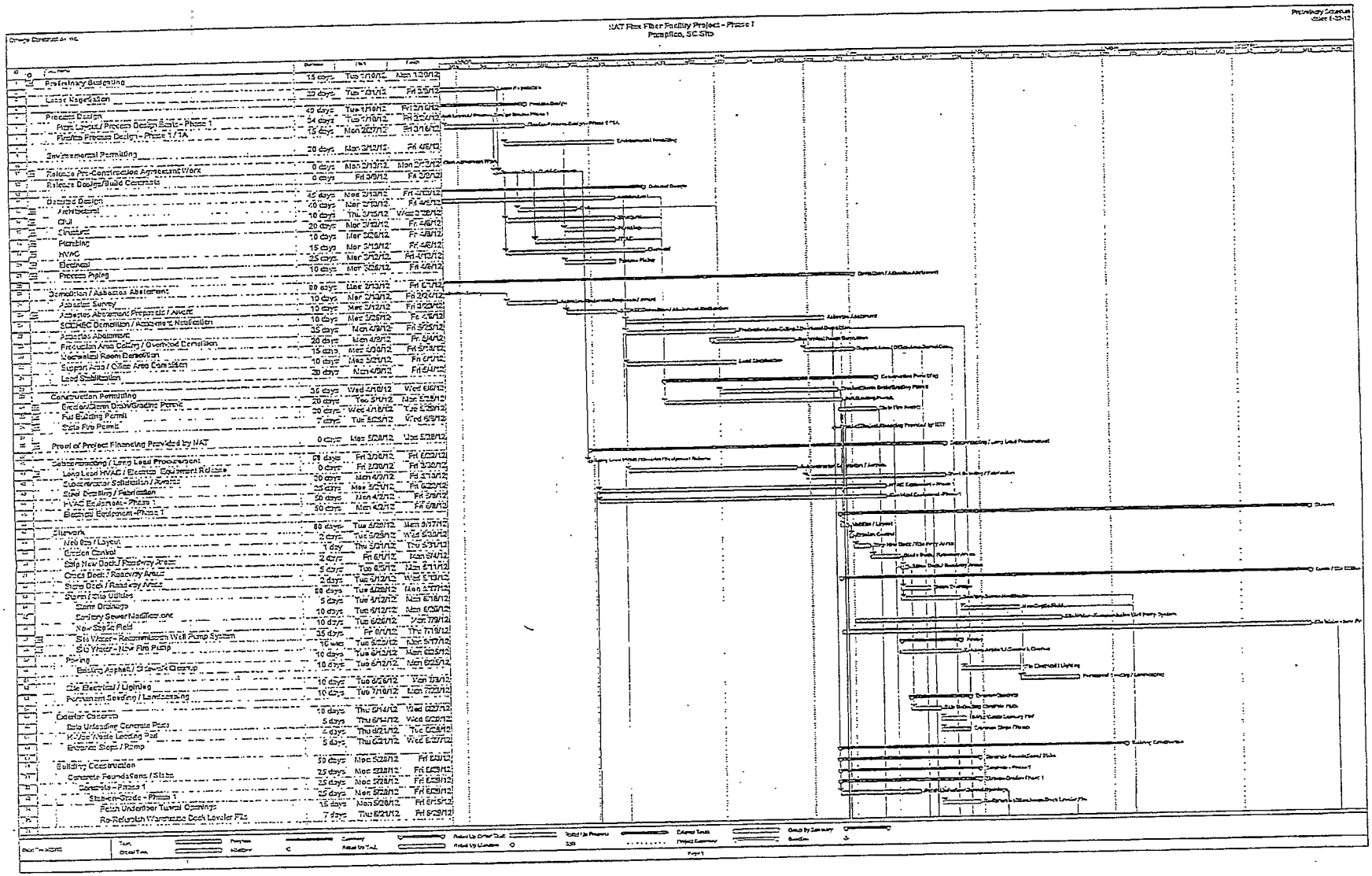

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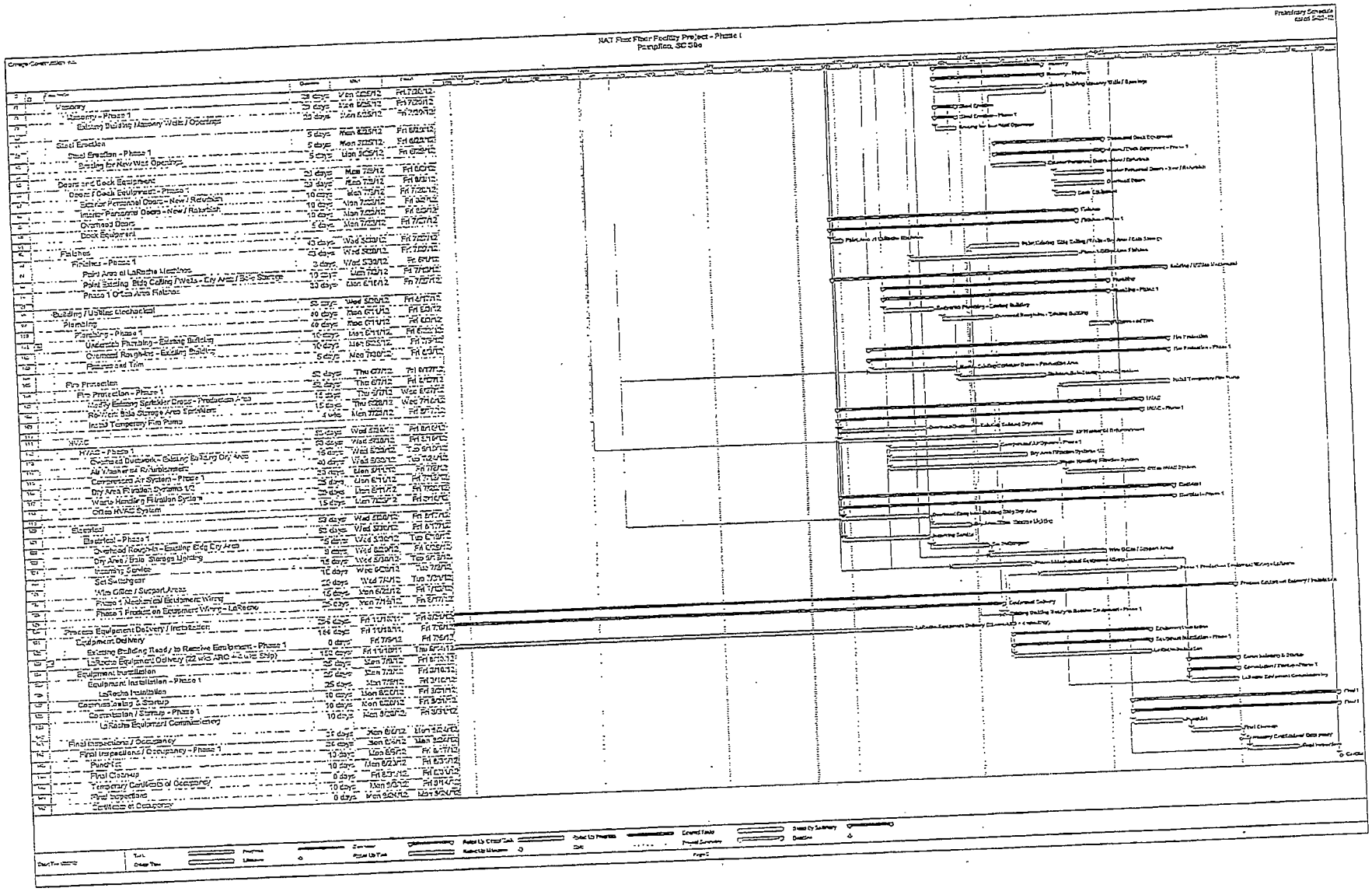

RECORD 000143

AIA® Document A141™ – 2004 Exhibit A

Terms and Conditions

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

NAT Flax Fiber Facility
Pamplico, South Carolina

THE OWNER:
(Name, legal status and address)

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

THE DESIGN-BUILDER:
(Name, legal status and address)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria shall be set forth in Amendment 1and shall describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents or reasonably inferable therefrom, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

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

§ A.1.1.8 NEUTRAL

Intentionally omitted.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 Owner makes no representations regarding the compliance of the Project with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes and may request a Change Order in accordance with the terms of the Design-Build Documents. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

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§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build 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.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 So long as Owner complies with its pay obligations hereunder, drawings, specifications, and any and all other documents and instruments prepared by the Design-Builder, Design-Builder's Architect or consultant's hired by either of them, including those in electronic form, shall, upon receipt by the Owner, become and remain the property (including copyright and other intellectual property rights) of the Owner, and may be used by the Owner for any purpose relating to the Project, or any renovation, modification, or use of the Project. Except for use in connection with completing or correcting the Work, any use of such documents and instruments without the written agreement of the Design-Builder will be at the Owner's risk and without liability or legal exposure to the Design-Builder or Design Builder's Architect; and the owner shall indemnify and hold harmless the Design-Builder or Design-Builder's Architect from any and all claims, damages, losses, expenses arising out of or resulting from re-use or modification by the Owner. Upon termination of this Agreement for any reason, the Design-Builder shall furnish Owner with all design documents the Owner may request, including documents in electronic format, if requested by Owner.

§ A.1.6.2 Intentionally omitted.

§ A.1.6.3 Intentionally omitted.

§ A.1.6.4 Intentionally omitted.

§ A.1.6.5 Intentionally omitted.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such

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information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services necessary to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services, unless Owner has a reasonable objection to providing such information.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 If requested in writing by Design-Builder, the Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. Such independent review shall not affect the obligations of Owner or Design-Builder under the Design-Build Contract.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in connection with Design-Builder's responsibility to secure building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is specifically excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 With the exception of the asbestos survey and other environmental surveys, the services, information, surveys and reports provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense. The Owner, however, shall have no responsibility for the accuracy and completeness thereof, and the Design-Builder waives any claim against the Owner arising out of or relating to such items. Design-Builders shall rely on such information at its own risk, but Design-Builder shall provide prompt written notice to Owner of any errors, omissions or inconsistencies in such information.

§ A.2.2.7 If the Owner becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are reasonably necessary to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of

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soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW

§ A.2.3.1 The Owner shall review the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of such submittals, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2
(Paragraphs deleted)
Intentionally omitted.
(Paragraphs deleted)

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding anything else in Section A.2.3.2 or the Design-Build Documents, the Owner's review and/or approval of the Design-Builder's documents or submittals shall not impose any obligation on the Owner, nor relieve the Design-Builder of responsibility to ensure that such documents comply with the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, such site visits and any actions taken or not taken by Owner during such site visits shall in no way relieve, change or modify Design-Builder's responsibilities with respect to the quality or quantity of the Work, nor waive any rights or claims the Owner may have with respect to the Design-Builder. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the 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 Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

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§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten (10) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions in performing their respective portion of the Work.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall, before starting each portion of the Work, carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner, in writing, any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

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§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

.1 be consistent with the approved design documents;

.2 provide sufficient information for the use of those in the building trades; and

.3 include all documents required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically or as requested by Owner to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has completed its review and approval of each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's review and/or approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner 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 Owner shall not incur any responsibility and the Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's review and/or approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or

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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 professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 Unless otherwise directed by Owner in writing, the Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.3.9 The Design-Builder and each Designer and Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout, and nature of the Project site and the existing facility; (2) generally prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools, and equipment; and (5) other similar issues. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Design-Builder or any Subcontractor to comply with the requirements of this Section A.3.3.9. Subject to the conditions of Section A.4.1.4, Design-Builder shall be entitled to a Change Order, including adjustments to the Guaranteed Maximum Price and/or Contract Time arising out of concealed conditions that would not be evident from Design-Builder's customary investigation of the site.

§ A3.3.10 Design-Builder is responsible for notification and protection of all known or identified utilities in connection with the Work. In the event that utility services are interrupted during the course of Design-Builder's Work, Design-Builder will take whatever actions are appropriate to ensure that utility services are restored in the shortest possible time and will hold Owner harmless and indemnify Owner from any claims related to damages or interruption to such utility service.

§ A3.3.11 Design-Builder shall make the Work available to Owner for review, inspection or investigation at any time and shall provide Owner reasonable access to all parts of the Work upon request.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, 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. This provision does not include special fees or assessments including, but not limited to, transportation assessments, impact fees, federal and state right of way fees, mitigation assessments, utility assessments/charges, environmental impact fees, penalties and/or costs incurred that are outside the normal costs of performing the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the written consent of the Owner and, if appropriate, in accordance with a Change Order, but such consent

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shall not relieve Design-Builder of any responsibility under the Design-Build Contract, or impose any responsibility on the Owner with respect to such materials.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.4.4 The Design-Builder shall, as soon as practicable, furnish the Owner with copies or certificates of all permits, fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are legally enacted at the time the Design-Build documents are executed, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Work.

§ A.3.7.3 It is the Design-Builder's sole and exclusive responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear all costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

.1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

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§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information a critical path schedule for the Work as provided in the Design-Build Documents. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.9.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any invitees thereof. The Design-Builder shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section may be grounds for an extension of the Contract Time and an adjustment to the contract Sum for any resulting increase in costs and/or additional costs including costs of delay.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. All parties understand that the actual finished work product may vary slightly from the color, texture, etc. exhibited in samples due to printing variations, different lot numbers, field construction techniques, manufacturing process, weather conditions, etc. Design-Builder is responsible for constructing the Work in accordance with acceptable industry standards and subject to limitations inherent in the product.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents 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.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and

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field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder 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 Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may, after written notice do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required specifically in writing by the Owner or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, including, but not limited to, claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the willful, negligent acts, omissions or breach of contract of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.1.1 The Design-Builder's indemnity obligations shall also include, but are not be limited to, all claims and judgments which may be made against the Owner, its respective agents and employees, arising out of or resulting from the violation by Design-Builder or any Subcontractor of any applicable statute, law, rule, regulation, ordinance, or law.

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§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ A.3.17.3 So long as Owner is in compliance with its payment obligations hereunder, the Design-Builder shall also hold the Owner harmless from any costs and damages, including, but not limited to, attorneys' fees and litigation-related costs, incurred by the Owner as a result of the filing of any mechanics' liens, materialmen's liens, notice of claim of lien, or any litigation arising out of such liens. If any lien or notice of claim of lien of any type is filed on the Project or against funds owed by the Owner to the Design-Builder, the Owner shall be entitled to withhold 1 and 1/3 times the amount of the lien from any payments thereafter requested by Design-Builder until such lien is discharged, removed or bonded off, and, upon demand by the Owner, the Design-Builder shall file with the appropriate public registry, within seven days after receipt of notice of demand from the Owner, such funds or bonds as are required to cancel such liens or notice of claims of lien.

§ A.3.18 After executing a Scope of Work Addendum, the Design-Builder shall prepare and provide to Owner, the Design-Builder's Personnel Chart, which lists by name, job category, and responsibility, the Design-Builder's primary employees who will work on the Project. The Design-Builder shall promptly inform the Owner in writing of any proposed replacements, the reasons therefor, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Intentionally omitted.
Intentionally omitted.

§ A.4.1.3 Continuing Performance. Pending final resolution of any claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which were not discovered or could not have been discovered by the reasonable diligence of the Design-Builder, and which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give written notice to the other party promptly before conditions are disturbed and in no event later than seven (7) business days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall attempt to negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made in writing within 21 days after the Owner has given notice of the decision.

§ A.4.1.5 Claims for Additional Cost.

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§ A4.1.5.1 If the Design-Builder wishes to make any Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work for which additional compensation is being sought. Such notice shall include, to the extent then known by Design-builder, full details and substantiating data to permit evaluation by the Owner. If further or other information subsequently becomes known to the Contractor, it shall be immediately furnished to the Owner in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising hereunder.

§ A4.1.5.2 Any claim for adjustment to the Contract Sum shall not include any overhead costs, home office costs, indirect costs or any costs or expenses.

§ A4.1.5.3 In the event that Design-Builder believes that it is entitled to an increase in the Contract Sum or some other compensation for extra Work, it shall inform the Owner in writing of the reason for the claim and the estimated amount of the claim within ten (10) days of the latter of either the commencement of the event giving rise to the claim or Design-Builder's first knowledge of the event. Such written notice shall include the date on which notice of the claim is provided to Owner. Unless Design-Builder complies with this paragraph, it shall not be entitled to any increase in the Contract Sum or other additional compensation for extra Work.

§ A4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, such Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 In the event that Design-Builder believes that it has been delayed in the prosecution of the Work for reasons over which it has no reasonable control, then Design-Builder shall inform the Owner in writing of the reason for such delay and the estimated amount of such delay within ten (10) days after the commencement of the event giving rise to the delay. Such written notice shall include the date on which notice of the claim is provided to Owner. Unless Design-Builder complies with the requirements of this Article, it shall not be entitled to any claim for delay, extension of the Contract Time, or additional compensation for its claim. If Design-Builder makes any claim for delay, Design-Builder shall specifically set forth how and why the delay in question affected the critical path.

§ A.4.1.7.2 As a precondition to Design-Builder making a claim for a delay arising out of abnormal weather conditions, Design-Builder shall submit data from the National Oceanic Atmospheric Administration (NOAA) showing the number of days where precipitation or other inclement weather occurred during the period for which the claim is made along with daily weather logs which must be kept at the job site and which must indicate that adverse or abnormal weather or site conditions precluded Work. Design-Builder agrees that a comparison of: (1) the number of days of precipitation for the month or months in question during the Project; and (2) the average number of days where precipitation for the month or months in question during the previous five years is a proper comparison by which to determine Design-Builder's entitlement for extension of time for weather delays. Design-Builder acknowledges that it has taken weather conditions into account in agreeing to meet the Substantial Completion and Final Completion Dates under the Design-Build Documents, and that the Design-Builder shall only be allowed an extension of time in accordance with the Design-Build Documents based upon the comparison set forth in this Article. Notwithstanding anything else contained in this Article or the Design-Build Documents, Design-Builder shall not be entitled to an extension of time unless it can show that the abnormal weather or site conditions specifically affected the critical path, and it meets all of the requirements for such a claim under the Design-Build Documents.

§ A.4.1.7.3 A basis exists for an extension of the Contract Time if the Design-Builder is delayed in performing the Work, but only to the extent that delays are not reasonably foreseeable, avoidable, beyond the control and without fault or negligence of the Design-Builder, and its designers, subcontractors, sub-subcontractors, and suppliers at every tier, and to the extent that the delays directly impact the Design-Builder's ability to achieve completion of the Work in accordance with the time requirements established by the Design-Build Documents (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents). Assessment of the existence of the basis for a time extension shall be determined by an examination of whether the delay event affects the critical path of the Project. A basis exists for an extension of time only if (a) the aforesaid criteria are met, (b) the delays cannot be made up by reasonable efforts which otherwise do not increase the cost of the Work, and (c) said delays stem from the following causes:

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.1 Class 1 causes: an act or failure to act on the part of the Owner or Owner's separate contractors constituting a breach of Owner's obligations under the Design-Build Documents, undiscoverable and unanticipated environmental contamination, actions or inactions of the landlord, or an injunction against Owner;

.2 Class 2 causes: All causes of delay other than an act or failure to act on the part of the Owner or Owner's separate contractors, including but not limited to, adverse weather, acts of God, riots, civil commotions, acts of War, unavoidable casualties to Work in progress, epidemics, quarantine restrictions, organized labor disputes, freight embargoes, abnormal material shortages, actions or inaction of Owner's Landlord, or solvencies of subcontractors, sub-subcontractors or suppliers, or the solvency of the design consultants retained by the Contractor or other cause traditionally defined as a *force majeure*.

§ A4.1.7.4 If the basis exists for an extension of time under subparagraph A4.1.7.3, and the Design-Builder has timely submitted a written claim documenting the basis for such extension in accordance with the Design-Build Documents, Owner may either:

.1 Accept a reasonable and appropriate time extension to cover the actual delay to the critical path of the Work, and, in the case of a Class 1 cause, grant a corresponding adjustment in the Contract Sum in accordance with the Design-Build Documents;

.2 Accept a reasonable and appropriate time extension to cover the actual delay to the critical path of the Work, and in the case of a Class 2 cause, there will be no corresponding adjustment in the Contract Sum; and the sole recourse of Design-Builder will be an entitlement to a time extension regardless of actual sources or cause of delay;

.3 Submit a written Change Order to the Design-Builder to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, after a submission to Owner of a good faith estimate of the costs of such acceleration and adjusting the Contract Sum in accordance with the Design-Build Documents to compensate Design-Builder for such directed acceleration; however, direct costs used in determining such compensation shall be limited to properly substantiated and document premium or overtime labor costs. The Design-Builder shall not be entitled to receive any compensation for such acceleration of construction activities, unless the acceleration is performed pursuant to a written Change Order from the Owner; or

.4 Employ a combination of the above remedies.

§ A4.1.7.5 Owner will not be obligated or liable to Design-Builder for, and Design-Builder hereby expressly waives claims against Owner on account of, damages, costs, expenses, or related impacts which Design-Builder, or its designers, subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause enumerated in A4.1.7.4.2; Design-Builder's sole and exclusive remedy and full compensation in such event shall be extension of Contract Time in accordance with the provisions of the Design-Build Documents. Design-Builder likewise waives claims for damages, costs or expenses incurred by it or its subcontractors, and suppliers, due to a delay resulting from a Class 1 cause except and solely to the extent of costs allowed under A4.1.7.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build 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 Design-Builder, the applicable unit prices shall be equitably adjusted.

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§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.1.12 Review of the Design-Builder's claims by the Owner shall not constitute waiver of the Owner's right to deny the claim on the grounds that the claim was not timely made or that Design-Builder waived its right to make such a claim, nor shall such a review (regardless of whether the issue of timeliness or waiver by the Design-Builder is made at the time of the claim) prevent Owner from asserting such defects in the Design-Builder's claim.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Intentionally omitted.

§ A.4.2.2 Intentionally omitted.

§ A.4.2.3 Intentionally omitted.

§ A.4.2.4 Intentionally omitted.

§ A.4.2.5 Intentionally omitted.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute. The Owner's decision or failure to reject any of the persons or entities referred to in this

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Section A.5.4 shall not cause the Owner to be responsible for the performance of the Work, and shall not affect the obligations of the Owner or the Design-Builder under the Design-Build Contract.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

.1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

.3 each subcontract shall specifically provide that in the event of termination, the Owner shall only be responsible to the Contractor, Designer or Subcontractor for those obligations of the Design-Builder that accrue subsequent to the Owner's exercise of any rights of conditional assignment as provided in the Design-Build Documents.

§ A.5.5.2 Intentionally omitted.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1. Owner shall indemnify Design-Builder to the extent that such additional costs are the result of the actions or omissions of Owner's Separate Contractors.

§ A.6.1.2 The term "separate contractor" shall mean any contractor or equipment supplier retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 Design-Builder shall coordinate its Work with the Work of the Owner's separate contractors, equipment suppliers, and installers to ensure timely and proper completion of the entire Project. Owner shall provide Design-Builder with contact information regarding such separate contractors, and in the event Design-Builder requires any other information from Owner regarding such separate contractors, Design-Builder shall give Owner written notice of the information needed. However, the Design-Builder shall not be responsible for the means, methods and quality of the Work of the Owner's separate contractor and the Design-Builder shall not be responsible for the Owner's separate contractors' compliance with the construction schedule.

§ A.6.1.4 Design-Builder acknowledges that Owner and its agents, separate contractors, and suppliers may require access to and use of the Work during the performance of the Work for various purposes. Design-Builder specifically acknowledges that it has accounted for this fact in agreeing to the dates of Substantial and Final Completion under this Design-Build Contract.

§ A.6.1.5 While on site, Owner's separate contractors shall comply with all applicable OSHA guidelines.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results, and, if possible, such notifications shall be made in time to

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take such corrective action as necessary to avoid delay in completion of the Work. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may, after written notice, clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

.1 a change in the Work;

.2 the amount of the adjustment, if any, in the Contract Sum; and

.3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 Intentionally omitted.

§ A.7.2.3 Notwithstanding anything contained in the Design-Build Documents, Design-Builder shall not make any change in the Work or deviate from the Design-Build Documents unless Design-Builder receives written approval for such change from the Owner in the form of an executed Change Order or Construction Change Directive. Every Change Order shall be preceded by a written change order proposal from the Design-Builder, which shall describe the physical nature of the proposed change and information (including supporting documentation) necessary to determine whether there is a change, and the proposed amount of the adjustment, if any, in the Contract Sum and/or Contract Time. The Owner shall promptly review and make decisions on proposed change orders so as to not delay the project schedule. If Design-Builder performs any change in the Work without following the requirements of this Section, then Design-Builder shall not be entitled to any additional compensation or time related to such Work.

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§ A.7.2.4 Agreement on any Change Order shall constitute a final settlement of all Design-Builders' potential claims relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

.1 additional costs of professional services;

.2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

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

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 See Article 4.1.7

§ A.8.3.2 Intentionally omitted.

§ A.8.3.3 Intentionally omitted.

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ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may reasonably require, such as copies of requisitions from Contractors and material suppliers, provided any request for such data will not delay timely payment, and reflecting retainage if provided for in the Design-Build Documents.

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Each Application for Payment shall include partial lien waivers from Design-Builder, Architect, and 30-day arrear lien waivers from Suppliers and Subcontractors whose contracts are in excess of $25,000 for any pay period. All such lien waivers shall be in the form required by Owner. Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay. Design-Builder shall also include an updated Schedule of Values and Construction Progress Schedule with each Application for Payment.

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

§ A.9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work except for retainage, if any, being held by the Owner.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within the ten (10) days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for

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Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss, or anticipated loss, resulting from acts and omissions, because of the following:

.1 defective Work not remedied;

.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;

.3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld, except that payment shall not be required to the extent of any amount withheld pursuant to A.9.5.1 in connection with any other Application for Payment.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to Architect, designers, Subcontractor, or material supplier.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

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

§ A.9.6.8 Upon request by Owner, prior to any progress payment or final payment, Contractor shall be required to provide all documents, including, but not limited to, waivers, lien waivers, releases, and bonds, which are necessary to clear title to the Project and to waive, cancel, discharge, and void all claims or liens by subcontractors or suppliers against the Project and/or the Owner.

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§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete. If possible, all items of Work identified pursuant to this Section shall be completed or corrected by the Design-Builder within thirty (30) days after the items are identified.

§ A.9.8.4 Intentionally omitted.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion, or the Design-Build Documents

(Paragraph deleted)

§ 9.8.6 The Design-Builder shall not be deemed to have achieved Substantial Completion under the Contract Documents unless (1) Design-Builder has completed the Work in accordance with the Design-Build Documents, (2) Design-Builder has completed the Work to such an extent that any equipment to be installed by Owner is able to be properly and completely installed, and (3) Approvals from all required authorities and a formal Certificate of Occupancy have been obtained.

§ A.9.8.7 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.8 Acknowledgement of Substantial Completion may be withdrawn by the Owner based on subsequently discovered information that would have otherwise permitted Owner to determine that the Work was not Substantially Complete if known at the time of the issuance of the Acknowledgement of Substantial Completion.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.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 Design-Builder, provided such occupancy or use is

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consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder 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 completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder 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 Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

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

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) submission of all manufacturers' warranties to be transferred to Owner, together with evidence of such transfer, all maintenance and operating manuals and any special guaranties or warranties required by the Contract Documents; (6) assignment of all guaranties and warranties from Contractors, Subcontractors, vendors, suppliers or manufacturers; (7) provision of all necessary certifications from Design-Builder or its Consultants; and (8) 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 Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder 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 Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4
(Paragraphs deleted)
Intentionally omitted.

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

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§ A.9.11 The Design-Builder agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ A.9.12 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (2) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.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 Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

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§ A.10.2.8 The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

§ A10.2.9 Until final acceptance of the Work by Owner in accordance with the Design-Build Documents, the Design-Builder shall have full responsibility for, and shall take every precaution necessary to prevent injury or damage to any part of the Work and shall rebuild, repair, restore or make good, all injuries or damages to any portion of the Work prior to final acceptance by Owner.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder 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 Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Design-Build Contract, is not disclosed in the Design-Build Documents, was not discoverable by the reasonable diligence of the Design-Builder, and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

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ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Design-Build Contract or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor 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 which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder'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 Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 Owner, its directors, officers, employees, agents, subsidiaries, representatives and affiliates shall be named as additional insureds on the policies, except Workers' Compensation Statutory Coverage, set forth in Sections A.11.1.1.1, A11.1.1.2, A11.1.1.3, A11.1.1.4, and A11.1.1.6. If these policies do not contain a standard Insurance Services Office separation of insured provision, they shall be endorsed to provide cross-liability coverage. These policies shall have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.

§ A.11.2.3 Design-Builder hereby waives any and all rights of recovery, claim, action, or cause of action against the Owner and its, employees, officers, directors, subsidiaries, affiliates, agents or representatives for any damages, whether insured or not by any of the foregoing policies. For all of the foregoing policies set forth in this Section 11.2, the Design-Builder shall obtain a waiver of subrogation from their respective insurers and each policy must be endorsed to reflect the insurer's acceptance of this waiver of subrogation. In addition, this waiver of subrogation applies whether or not there is insurance, any deductibles, or any self-insured retentions.

§ A.11.2.4 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Minimum Insurance Requirements.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build 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 A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 Intentionally omitted.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.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 Design-Builder 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.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build 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, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 Intentionally omitted.

§ A.11.4.5 Intentionally omitted.

§ A.11.4.6 Intentionally omitted.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and

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employees, each of the other, and any of their contractors, Subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, 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, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 Intentionally omitted.

§ A.11.4.9 Intentionally omitted.

§ A.11.4.10 Intentionally omitted.

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build 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 Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner or separate contractor, as the case may be, shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if at any time within one (1) year after Final Completion, Owner discovers Work not in accordance with the Design-Build Documents, it shall give Design-Builder written notice of such defective Work. Within seven (7) days of receiving such notice, Design-Builder shall commence repair of the Work and proceed with diligence to complete the repair at no cost to Owner. The rights described in this Article 12 shall be in addition to all of Owner's other rights under the Design-Build Documents or the law, and nothing herein shall limit Owner's rights in any way. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner

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waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

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

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2, except as provided in Section A.12.2.2.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project, or to a person or entity who purchases the Project. In such event, the lender or purchaser shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice or if sent by electronic mail to the other party's representative.

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§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build 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, except to the extent that the Design-Build contract expressly limits such duties, obligations, or rights.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. No waiver of a right or duty be either party on one or more occasions shall constitute a waiver of such rights or duties on other occasions.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

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

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

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

Intentionally omitted

§ A.13.6.1

(Paragraphs deleted)

Intentionally omitted.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

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.3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or

.4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

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

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and Design-Builder's fee for such Work through the date of termination and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery.

§ A.14.1.4 If all of the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.1.5 The Design-Builder shall not stop Work nor terminate the Contract due to refusal of the Owner to issue payment for any of the reasons listed in Article A9.5.1.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreement between the Design-Builder and the Architect and Contractors;

.3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is in breach of a material provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

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

.2 accept assignment of contracts pursuant to Section A.5.5.1; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit on costs actually incurred as a result of work suspensions, delay, or interruption. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed in accordance with the Contract Documents and costs incurred by reason of such termination, along with Design-Builder's fee thereon. Regardless of whether termination is with or without cause, Owner shall not be liable to Design-Builder for consequential damages, incidental damages, special damages or lost profits for such termination.

§ A.14.4.4 Upon a determination by a court of competent jurisdiction that termination pursuant to Section A14.2 was wrongful or otherwise improper, such termination shall be deemed a termination for convenience pursuant to Section A14.4 and the provisions of Section A14.4.3 shall apply.

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AIA® Document A141™ – 2004 Exhibit B

Determination of the Cost of the Work

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

NAT Flax Fiber Facility
Pamplico, South Carolina

THE OWNER:
(Name, legal status and address)

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

THE DESIGN-BUILDER:
(Name, legal status and address)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE B.1 CONTROL ESTIMATE

§ B.1.1 Intentionally omitted.

§ B.1.2
(Paragraphs deleted)
Intentionally omitted

§ B.1.3 Intentionally omitted

§ B.1.4 Intentionally omitted.

ARTICLE B.2 COSTS TO BE REIMBURSED

§ B.2.1 COST OF THE WORK

The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

§ B.2.2 LABOR COSTS

§ B.2.2.1 Wages of construction workers and an on-site field superintendant directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval, and for Design-Builder's Project Manager when engaged in the Work.

§ B.2.2.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

§ B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or

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others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, photographs, facsimile transmissions and long-distance telephone calls, data transmissions, postage and parcel delivery charges, telephone service and computer-related costs at the site and necessary and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the necessary and reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work, including, but not limited to, reasonable transportation, travel, hotel, and per diem expenses.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in writing in advance by the Owner.

§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents .

§ B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums required by the Design-Build Documents that can be directly attributed to this Design-Build Contract, including any additional premiums required as a result of approved change Orders increasing the Guaranteed Maximum Price .

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, .

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Intentionally omitted.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or breach of this Agreement.

§ B.2.7.8 Intentionally omitted.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in advance in writing by the Owner.

§ B.2.7.10 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

§ B.2.7.11 All water, power and fuel costs necessary for the Work.

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§ B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions, so long as such costs do not result from the negligence or breach of contract by Design-Builder or a subcontractor or designer employed by Design-Builder.

§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Article B.2;

.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in SectionB.2;

.3 Overhead and general expenses, except as may be expressly included in Article B.2;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.7 Bonuses, incentive compensation, contributions (other than Workmen's Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, Federal Unemployment Insurance), gratuities and entertainment expense. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Article B.2;

.9 Expenses for travel, including Design-Builder-supplied vehicles used for personal use, incurred by Design-Builder's employees while traveling for purposes other than the direct execution of the Work;

.10 Fines other than those due to the acts or omissions of Owner or its agents;

.11 Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines and work stoppages or slowdowns, except where such costs are due to circumstances beyond the control of the Design-Builder;

.12 Consultants to the Design-Builder not approved, in writing, by Owner;

.13 Corporate accounting, check and accounting processing cost shall not be reimbursed; and

.14 Other costs, damages, or expenses specifically excluded elsewhere in the Design-Build Documents.

(Paragraphs deleted)

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

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§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Design-Builder shall then determine, with the advice of the Owner, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 When a specific bidder (1) is recommended in writing to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ B.5.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Design-Builder 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 Design-Builder.

§ B5.4 All Subcontractors shall be pre-qualified by the Design-Builder. The Owner shall have the opportunity and right to disapprove of any proposed subcontractor. However, to the extent there is an increase in cost due to the Owner disapproving of a proposed subcontractor, the Design-Builder shall be due a Change Order as provided for under Section b.5.2 above.

§ B5.5 Design-Builder may self-perform any of the work. Owner, however, reserves the right to require the Design-Builder to seek competitive pricing for such portions of the Work from other qualified contractors.

§ B5.6 All Subcontractors shall conform and be subject to the requirements of the Design-Build Documents. Subcontracts awarded on the basis of the cost of such work plus a fee shall require Owner's prior written approval.

§ B5.7 Subcontractor agreements shall, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Design-Builder is terminated by the Owner.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be in accordance with generally accepted accounting procedures. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's final accounting of the Cost of the Work.

§ B.6.3 Upon the Owner's direction, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after delivery of the final accounting by the Design-Builder. Based upon the Cost of

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the Work as acknowledged by the Owner, or, if the Owner has directed its auditors to report thereon, based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions for payment under the Design-Build Documents have been met, the Owner will, within forty (40) days after receipt of the Design-Builder's final accounting, issue final payment or notify the Design-Builder in writing of its reasons for withholding final payment.

§ B.6.4 If the Owner disputes the Cost of the Work as set forth in the Design-Builder's final accounting, the Design-Builder shall be entitled to assert a Claim in accordance with Article A.4, as modified. The Owner shall, pending resolution of any such dispute, pay the Design-Builder all sums otherwise payable and not in dispute.

§ B.6.5 Intentionally omitted.

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MINIMUM INSURANCE REQUIREMENTS

Design-Builder, from the time of commencement of Services until one year after completion of Services, shall provide and maintain in force with responsible companies with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger and licensed by the South Carolina Insurance Commissioner to transact the business of insurance in the State of South Carolina for the applicable line of Insurance, and satisfactory to the Owner the following minimum insurance coverage.

1.0 Professional Liability Insurance

Errors and Omissions Professional Liability Insurance having minimum limits of $1,000,000 per claim and $2,000,000 in the aggregate to be provided by the Architect hired by the Design-Builder. Owner shall be named as an intended third-party beneficiary to Design-Builder's Contract with Architect.

2.0 Commercial General Liability Insurance

Occurrence form including premises and operations coverage, products and completed operations coverage, coverage for independent contractors, personal injury coverage and blanket contractual liability.

Limits of Liability

Bodily Injury/Property Damage Liability	$1,000,000
Personal Injury Liability	$1,000,000
General Aggregate Limit	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000

Coverage must include:

2.1 Policy to be endorsed to provide policy limits "per project".

2.2 Policy must name Owner as an additional insured as its interests may appear.

2.3 Policy must be endorsed to provide a 60-day notice of cancellation.

2.4 There shall be no endorsement or modification of coverage for liability due to "explosion", "collapse" or "underground property damage".

3.0 Worker's Compensation

Limits of Liability

Worker's Compensation	statutory
Employer's Liability	
Each accident	$500,000
Policy Limit – Disease	$500,000
Each Employee – Disease	$500,000

Coverage Must Include

3.1 Coverage for all states in which operations are conducted.

3.2 Policy must be endorsed to provide a 30-day notice of cancellation.

4.0 Business Automobile Liability

(Owned, non-owned, and hired vehicles on an occurrence basis)

Limits of Liability

Combined Single Limit (BI & PD)	$1,000,000 per accident

Coverage must include:

4.1 Policy must be endorsed to provide a 60-day notice of cancellation or substantial change to Owner.

4.2 Policy must name Owner as an additional insured as its interests may appear.

5.0 Umbrella Insurance

Limits of Liability

Annual aggregate	$10,000,000
Per Occurrence Limit	$10,000,000

Coverage must include:

5.1 Coverage must be "following form" coverage for all underlying coverages set forth above.

5.2 Policy must be endorsed to provide a 60-day notice of cancellation or substantial change to Owner.

5.2 Policy must name Owner as an additional insured as its interests may appear.

6.0 Waiver of Subrogation:

Design-Builder waives all right of recovery of damage against Owner, its agents and employees to the extent covered by insurance, and Design-Builder shall obtain from its insurers a waiver of subrogation against Owner and its agents and employees for all insurance coverage except Worker's Compensation and Professional Liability.

7.0 Consultants and Subcontractors

Unless otherwise approved by Owner, Design-Builder shall require all of its design consultants and/or subcontractors to provide the aforementioned coverage, except that the Umbrella Insurance limit may be reduced to $5,000,000. Any deficiency in the coverage or policy limits of the consultants and/or Subcontractor will be the sole responsibility of Design-Builder.

8.0 The insurance provisions set out above in no way affect the liability of Design-Builder as stated elsewhere in this Agreement.

9.0 Miscellaneous

9.1 The Commercial General Liability and Umbrella Excess Liability policies shall cover the contractual liability assumed by Design-Builder under the Design-Build Documents. The Commercial General and Umbrella Excess Liability policies shall include endorsements naming the Owner and their officers, members, agents and employees, as additional insureds. The policies of the Design-Builder shall be primary and non-contributing with any insurance carried by Owner.

9.2 The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Design-Builder and its representatives who may be engaged in performing any of the work, services or activities in connection with the Project.

10.0 Certificates of Insurance:

Before commencing performance of the Services, Design-Builder and its consultants and/or subcontractors must furnish certificate(s) of insurance evidencing:

10.1 Insurance coverage acceptable to Owner.

10.2 Effective expiration dates of policies.

10.3 Owner must be given sixty (60) days written notice of all cancellation, non-renewable, or material changes in policy.

10.4 A waiver of subrogation endorsement has been attached to all policies.

10.5 Any deductible and/or self-insured retention.

10.6 Any exclusions to the policy which are not part of the standard form.

10.7 Certificate of Insurance title block format is as follows:

Naturally Advanced Technologies US, Inc.
c/o Tom Robinson
305-4420 Chatterton Way
Victoria, BC, Canada V8X 5J2

Amendment #1
Naturally Advanced Technologies
Flax Fiber Processing Facility – Pamplico SC

Re: Guaranteed Maximum Price

Pursuant to Article 4.4.3.1 of the AIA A141-2004 Owner/Deign Builder Agreement, The Guaranteed Maximum Price (GMP) per the for the Work as described in the Agreement and detailed in Addendum A and Addendum B is: **$ 5,223,808.00**

Accepted by: GP Prevost

Naturally Advanced Technologies

GUY PREVOST
Name

CFO
Title

June 15, 2012
Date

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

for

OWNER *(Signature)*

GUY PREVOST CFO
(Printed name and title)

DESIGN-BUILDER *(Signature)*

PAUL R. SAUVAGEAU PRESIDENT
(Printed name and title)

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User Notes:

CONVERTIBLE DEBENTURE INDENTURE

Made as of February 25, 2013

Between

CRAILAR TECHNOLOGIES INC.

and

COMPUTERSHARE TRUST COMPANY OF CANADA

mcmillan

EXHIBIT 2

SCHEDULE A

SECURED ASSETS

The following equipment located at the Guarantor's facility in Pamplico, South Carolina, U.S.A. or to be acquired using part of the proceeds of the Offering and installed at the Guarantor's facility in Pamplico, South Carolina, U.S.A.:

Shive handling system, including:
Conveyor - Roach Model, Basic System (Handling Solutions)

Decortication system, including:
One Decortication Line for Flax Straw (LaRoche S.A.), including:
-Two bale openers – 1.6m wide
-Two conveyors with electronic metal detectors
-Two fine openers type "EXEL 2000"
-Two diverters
-Two blowers VT 540
-Two condensers type "FC 1400"
-Two step cleaners – 2m wide
-One blower VT 540
-One condenser "FC 1400"
-One Fine opener "EXEL 2000" with chute feed
-One blower VT 540
-One condenser "FC 1400"
-One step cleaner – 2m wide
-One fine opener "EXEL 2000"
-One double flap diverter
-One dust blower VT 540
-One floor conveyor for collection of shives
-Collection of shives under 3 "EXEL 2000" openers with conveyor, blower and cyclone
-One electrical control panel

One Opening Line for Flax Fibres (LaRoche S.A.), including:
-One bale opener – 1.6m wide
-One conveyor with electronic metal detector
-One fine opener type "EXEL 2000"
-One blower VT 540
-Two diverters
-Extension of control panel

Additional Equipment for Decortication Line (LaRoche S.A.), including:
-One Blower VT 540
-One Condenser "FC 1400"
-One fine opener "EXEL 2000" with chute feed

RECORD 000190

-One Blower VT 540
-One Condenser "FC 1400" to feed the bale press
-Extension of electrical control panel

Harvesting equipment, including:

6 - Shelborn Stripper Head (Stuckey Farm Supply)
2 - Kuhn Drum Mowers with Hydraulic Cylinders (Adam Coastal Farm
2 – Shelbourne 24' Stripper Head (Sparrow & Kennedy Tractor Company)

HVAC, Humidifier, Electrical systems and mechanical systems

CONVERTIBLE DEBENTURE INDENTURE

Made as of July 26, 2013

Between

CRAILAR TECHNOLOGIES INC.

and

COMPUTERSHARE TRUST COMPANY OF CANADA

mcmillan

RECORD 000192

SCHEDULE F – SECURED ASSETS

The following equipment located at Crailar US's facility in Pamplico, South Carolina, U.S.A., having an aggregate acquisition cost of no less than $5,000,000:

3,789,100 × 1.37 = $5,191,067.

Crailar Inc.

Erbatech Invoice Summary

	Summary				
Inv#	Total invoice (€)		Rate	Total Invoice ($)	
121210-1-3	€	1,703,300	1.323	$	2,253,125
121210-4	€	1,104,800	1.322	$	1,460,546
121210-2	€	492,000	1.317	$	647,767
300113-2	€	139,000	1.345	$	186,927
300113-1	€	350,000	1.336	$	467,670
Subtotal	€	3,789,100		$	5,016,035
Shipping				$	283,877.84
Total				$	5,299,913.08

Proforma invoice#	Container Type	Qty	Description	Total invoice (€)		Rate	Total Invoice ($)	
121210-1-3	40' Flat Rack	1	Material carrier	€	1,703,300	1.3228	$	2,253,125
		1	Filling cylinder for hydraulic press					
		6	Lifting lids					
		6	Lifting plates					
	40' Flat Rack	1	Material carrier					
		1	Filling cylinder for hydraulic press					
		6	Lifting lids					

RECORD 000193

	6	Lifting plates
40' OT Container	1	Cake ejector
	1	Guide block
	1	Guide rail with 2 carriages
	1	Frame for chute
40' OT Container	1	Cake ejector
	1	Guide block
	1	Guide rail with 2 carriages
	1	Frame for chute
40' OT Container	1	Condenser
	1	Transverse traverse
	1	Condenser
	1	Transverse traverse
	4	Columns
	1	Frame (5.1)
40' OT Container	2	Control cabinets for press including:
		2 - emergency stop housing
		2 - control cabinet base
		2 - flashlight
		4 can bus cable
		various spare parts
	2	Consoles
	1	Control cabinet for centrifuge including:
		1 - emergency stop housing
		1 - acknowledge housing
		4 - pressure regulators
	1	Control cabinet for centrifuge
	2	Consoles
	1	Control cabinet for cake ejector including:
		1 - emergency stop housing
		various spare parts

RECORD 000194

1 Control cabinet for cake ejector including:
1 - emergency stop housing
2 Hydraulic unit for cake ejector
2 Hydraulic unit
2 Pallets with pipe connections
2 Pallet including:
4 - stop cylinder
2 - toothed belt No. 1
2 - toothed belt No. 2
4 - pre-assembled air pipes
4 - pneumatic hoses (8 x 1.25)
2 - shim for cylinder
2 - carton with various screws
2 - shim for printing plate
4 - m edge protection
36 - spring pins 6 x 30
2 - distributing unit
12 - hydraulic hoses, large
12 - hydraulic hoses, small
4 - cable channels
6 - hydraulic pipes
2 cartons including:

14 screws M 30x100 DIN 933
14 screws M 30x120 DIN 933
14 screws M 30x130 DIN 933
40 discs - 31 DN 933

2 cartons including:

40 screws 30x140 DIN 933
40 screws DIN 985
80 discs - 31 DIN 125
40 screws M 30x80 DIN 933

RECORD 000195

			40 discs - 31 DIN 125					
		2 cartons including:	8 guiding units for printing plate					
		2 cartons including:	various connectors					
		1 Pallet including:						
		120 - shear connector M 23						
		120 - threaded rod M 24x300						
		40 - shear connector M16						
		40 - threaded rod M 16x165						
	40' OT Container	1 Base Frame						
		1 Transport basket						
		1 Frame						
		1 Printing plate						
		1 Dome						
		2 Traverse						
		2 Inlet funnel						
		2 Grabber						
	40' OT Container	2 Frame with chute						
		2 Blower						
		3 Transport basket						
		2 Guide rail						
	40' OT Container	4 Columns						
		2 Transport basket						
		1 Printing plate						
		2 Cylinders						
		1 Dome						
121210-4	40' HC Container	2 Control cabinet		€	1,104,800	1.322	$	1,460,546
		72 Lifting plates						
		2 Turn table						

RECORD 000196

			Various cable					
			Frames for control cabinets					
		1	wooden box containing:					
			6 - control boxes					
			13 - Obermaier labels, small					
			14 - PVG labels, blue small					
			4 - pressure springs					
			2 - effectors					
			various nameplates					
			various rivets for labels					
			10 - detectors					
			30 - Obermaier labels, big					
			30 - PVG labels, big					
			10 - converters, type 6111					
			4 - press buttons					
			2 - document boxes					
			22 - set earth cable					
			1 - workbench					
			1 - mobile tool case with content					
			1 - tool case with content					
			1 - assortment mounting accessories					
			2 - indicators					
			2 - assembly levers					
			10 - open-end wrench simple, different sizes					
			various pneumatic parts					
			4 - effectors 01.D100					
			1 - bench vice					
			1 - bench vice fixing					
121210-2	40' HC Container	3	Drying chamber	€	492,000	1.3166	$	647,767
		3	Fan					
		7	Pipe pieces in galvanized steel for suction					

RECORD 000197

		1	Pack with plate for lateral panels in galvanized steel				
		8	Packs of cable passage				
		2	Packs of drying filters				
		6	Motors HP 15				
		12	Side covers				
		3	Base for gear motors				
		4	Motors HP 15				
		36	Rolls of chain p.100 r.40				
	40' HC Container	3	Drying chambers				
		2	Fan				
		1	Pack with front panels, side frames, box, front plates				
		2	Pipes in galvanized steel for suction				
		12	Side frame in/out				
		12	Cover plate externals				
	40' HC Container	2	Fine opener				
		2	Emptier group				
		1	Feeding belt inclined with accessories				
			Gear motors				
300113-2	40' HC Container	2	Control cabinets	€	139,000	1.3448	$ 186,927
		72	Lifting plates				
		2	Turn tables				
			Various cable				
			Frames for control cabinet				
		1	wooden box containing:				
			6 - control boxes				
			13 - Obermaier labels, small				
			14 - PVG labels, blue small				
			4 - pressure springs				
			2 - effectors				
			various nameplates				
			various rivets for labels				

RECORD 000198

			10 - detectors					
			30 - Obermaier labels, big					
			30 - PVG labels, big					
			10 - converters, type 6111					
			4 - press buttons					
			2 - document boxes					
			22 - set earth cable					
			1 - workbench					
			1 - mobile tool case with content					
			1 - tool case with content					
			1 - assortment mounting accessories					
			2 - indicators					
			2 - assembly levers					
			10 - open-end wrench simple, different sizes					
			various pneumatic parts					
			4 - effectors 01.D100					
			1 - bench vice					
			1 - bench vice fixing					
300113-1	40' HC Container	2	Fine opener mod. AST-200	€	350,000	1.3362	$	467,670
		2	Silo Mod SE-190					
		3	Spare drums					
		2	Right side holding frames for feeding					
		2	left side holding frames for feeding					
		2	tensioning cylinders for conveyor belts					
		2	holding plates for conveyor belt					
		2	head frames					
		2	panels on conveyor belt					
		2	right fixing plates for control box					
		2	left fixing plates for control box					
		2	left plates					
		2	right plates					

RECORD 000199

2	feeding chutes
2	right safety protection for conveyor belt
2	left safety protections for conveyor belt
2	electric channel gamma-P, complete of lid
2	Holding frames for motor fans
2	chutes 60x2000
2	channels for suction 1500x90x985
2	curves 1500x90, 90 degrees
2	condenser chutes 1850x150
6	pipes of 350x2000
2	pipes of 350x1386 with flange
2	pipes of 350x675
2	pipes of 250x2000
2	pipes of 250x1145
2	pipes of 250x815
2	curves of 250 @ 90 degrees
2	curves of 350 @ 90 degrees
2	curves of 350 at 15 degrees
4	small chutes of 250 x 140 at 250 degrees
2	deviator of 350 at 250-250 with curves at 45 degrees
17	collar, di 250
20	collar, di 350
1	wooden box containing
	30 - carton boxes with bolts
	7 - carton boxes accessories for erection
	1 - carton box with plate thickness (for machine leveling)
	2 - carton boxes with silicon strips for doors
	1 - carton box with Teflon strips
	various equipment for erection.

RECORD 000200

CONVERTIBLE DEBENTURE INDENTURE

Made as of the 20th day of September, 2012

Between

NATURALLY ADVANCED TECHNOLOGIES INC.

and

COMPUTERSHARE TRUST COMPANY OF CANADA

mcmillan

RECORD 000201

SCHEDULE A

SECURED ASSETS

The following equipment located at NAT US's facility in Pamplico, South Carolina, U.S.A. or to be acquired using part of the proceeds of the Offering and installed at NAT US's facility in Pamplico, South Carolina, U.S.A., having an aggregate acquisition cost of no less than $5,500,000:

Shive handling system, including:
Conveyor - Roach Model, Basic System (Handling Solutions)

Decortication system, including:
One Decortication Line for Flax Straw (LaRoche S.A.), including:
-Two bale openers – 1.6m wide
-Two conveyors with electronic metal detectors
-Two fine openers type "EXEL 2000"
-Two diverters
-Two blowers VT 540
-Two condensers type "FC 1400"
-Two step cleaners – 2m wide
-One blower VT 540
-One condenser "FC 1400"
-One Fine opener "EXEL 2000" with chute feed
-One blower VT 540
-One condenser "FC 1400"
-One step cleaner – 2m wide
-One fine opener "EXEL 2000"
-One double flap diverter
-One dust blower VT 540
-One floor conveyor for collection of shives
-Collection of shives under 3 "EXEL 2000" openers with conveyor, blower and cyclone
-One electrical control panel

One Opening Line for Flax Fibres (LaRoche S.A.), including:
-One bale opener – 1.6m wide
-One conveyor with electronic metal detector
-One fine opener type "EXEL 2000"
-One blower VT 540
-Two diverters
-Extension of control panel

Additional Equipment for Decortication Line (LaRoche S.A.), including:
-One Blower VT 540
-One Condenser "FC 1400"

RECORD 000202

-One fine opener "EXEL 2000" with chute feed
-One Blower VT 540
-One Condenser "FC 1400" to feed the bale press
-Extension of electrical control panel

Harvesting equipment, including:
6 - Shelborn Stripper Head (Stuckey Farm Supply)
2 - Kuhn Drum Mowers with Hydraulic Cylinders (Adam Coastal Farm
2 – Shelbourne 24' Stripper Head (Sparrow & Kennedy Tractor Company)

HVAC, Humidifier, Electrical systems and mechanical systems

RECORD 000203

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No. 2013-CP-21-2722
	)	
Omega Construction, Inc.,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF THOMAS ROBINSON**
	)	
vs.	)	
	)	
Crailar, Inc., d/b/a Crailar Technologies, Inc. f/k/a Naturally Advanced Technologies US, Inc.,	)	
	)	
Defendants.	)	

THOMAS ROBINSON, being duly sworn, deposes and says:

1. I am over the age of eighteen and am under no disability which would render me incompetent to make this affidavit. I have personal knowledge of all the matters stated in this affidavit, except where stated upon information and belief, and all statements made are true and correct.

2. I am the Chief Operating Officer for Crailar Technologies, Inc.

3. Crailar, Inc. ("Crailar") is the United States subsidiary of Crailar Technologies, Inc.

4. In my duties as Chief Operating Officer, I oversee the management staff and production operations of Crailar.

5. Under the Agreement between Crailar and Plaintiff (the "Agreement") for the Design-Build of the Crailar facility located in Pamplico, South Carolina (the "Pamplico Facility"), Plaintiff agreed to take certain actions related to the design, construction, and improvement of the Pamplico Facility.

6. At the Pamplico Facility, Crailar processes raw flax to produce an output fiber known as decorticated flax fiber.

EXHIBIT B

7. The process of the Crailar fiber involves both a dry and a wet process.

8. The Phase 1 work performed at the Pamplico Facility by Plaintiff primarily involved work related to the dry process.

9. There were several deficiencies in Plaintiff's performance of its work under the Agreement. Upon information and belief, as of August 16, 2013, Plaintiff was the primary contributor to several performance deficiencies, including, but not limited to:

a. Crailar's operation was intended to be on a continuous 24 hour per day, 7 day per week schedule, and Plaintiff was to design and construct the improvements to meet that schedule. As designed and constructed, Crailar could not operate even one shift without shutting down every four hours. Additionally, Crailar was only operating at roughly 36% capacity when the Pamplico Facility was up and running, and the air handling system did not meet even the most basic safety standards at that greatly reduced level of operation.

b. Crailar's unscheduled downtime assignable to filtration issues alone was approximately 49%, and Crailar's equipment manufacturer has taken the position that the inconsistent performance of the air handling system was a contributing factor to the equipment shutdowns.

c. Crailar is unable to meet even the most basic OSHA dust standards because the system, as designed and constructed by Plaintiff, allows for unacceptable build-up of material in a very short time period. Plaintiff informed Crailar that the point of the expensive rotary drum system provided by Plaintiff was to minimize the amount of labor and downtime to maintain the system and handle that material, but it has proven to be unreliable.

RECORD 000205

d. Piping and fan housing provided and installed by Plaintiff's subcontractor Bahnson have failed due to premature wear. Though some of the components have been replaced, no corrective action or reassurances that repairs will address this condition have been provided.

10. Upon information and belief, Plaintiff was provided written notice of each of the deficiencies listed in Paragraph 8 in a letter dated August 16, 2013, which is attached hereto as Exhibit 1.

11. The deficiencies listed in Paragraph 8 remain concerns of Crailar as of the date of this affidavit.

Further this Affiant sayeth not.

This the 30th day of October, 2013.

THOMAS ROBINSON

SWORN to and subscribed before me
this the 30th day of October, 2013.

Notary Public Lisa L. Reittinger

My Commission expires: Jan. 10, 2013

LISA L. REITTINGER NOTARY PUBLIC GUILFORD COUNTY, NC

CRA LAR

August 16, 2013

Mr. D. Greg Marshall, CPA
Chief Financial Officer
Omega Construction, Inc.
344 Shelleybrook Dr.
Pilot Mountain, NC 27041

Dear Greg,

This note is to acknowledge receipt of your e-mail and let you know that I am more than willing to meet face to face to discuss your and Bahnson's letters and find a mutual path forward. As you may not be aware I am currently in Europe on a project for the next two weeks and cannot meet until my return. I happy to work with you to confirm a date, time and meeting location mutually agreeable upon my return.

In both your letter and Bahnson's letter you reference legal recourse as a means of remedy. We sincerely believe that the plan we outlined in our earlier meetings is a much shorter path to resolving our differences. We are confident that all items necessary to ready the plant for an independent 3rd party review of the air handling system (assuming that those improvements do not resolve the issues) could be completed within a few weeks. This of course assumes good faith efforts by Omega and Bahnson to work diligently on delivering their responsible tasks in a timely manner.

Based on your letter, there is apparently a misunderstanding about the scope and nature of our concerns because our concerns are much broader than what is represented in your letter. Please consider the following:

- Our operation was intended to be on a continuous 24x7 schedule, and Omega was to design and construct the improvements to meet that schedule. As currently designed and constructed, we cannot operate even ONE shift without shutting down every four (4) hours. Additionally, we are only operating at 36% capacity when we are running, and our air handling system still does not meet even the most basic standards at that greatly reduced level of operation;

- Our unscheduled downtime assignable to filtration issues alone is approximately 49%, and our equipment manufacturer has taken the position that the inconsistent performance of the air handling system is the cause of the equipment shutdowns and substandard performance;

- We take strong exception to the assertion that the lack of system performance is directly related to operator practices. As stated earlier we are unable to meet even the most basic OSHA dust standards because the system, as designed and constructed, allows for unacceptable build-up of material in a very short time period. We were led to believe that the point of our expensive rotary drum

EXHIBIT 1

system was to minimize the amount of labor and downtime to maintain the system and handle that material, but that is not the case;

- Though Bahnson has agreed to replace piping and fan housings due to premature wear, the current proposal is to replace like for like material. Does this make sense and where does that leave CRAiLAR a few months from now or sooner if we ramp production to the intended capacity?

- Though consideration and approval were given to proposals to contain costs thru prudent and educated design changes from the original estimate, we would never have considered nor accepted these proposals if we had been made aware that the proposed changes fundamentally sacrificed our required environmental and operational standards;

- Finally, prior to us electing to move forward with this as a design-build project, Omega and Bahnson represented Bahnson as experts in the field of air handling/mechanical systems with additional assertions of expertise in flax. Likewise, Bahnson and Omega knew all of our plans for the project, had access to other site, contact with our manufacturers, meetings with engineers from Haines to assist you with the design of this facility.

As you have pointed out, it is in everyone's best interest that CRAiLAR be successful. To that end, we are committed to doing our part to reach a fair and comprehensive solution to these problems. We are also committed to ensuring that Omega is paid pursuant to the terms of our agreement once Omega has met its contractual obligations with respect to the work. As we have said before, the most responsible way to move this process forward is for Omega to take immediate action to install the wall, commission the cyclones and address the list of warranty items. We are prepared and willing to commission a 3rd party to assess the design and performance of the air handling system (assuming the above initiatives do not resolve the problem) once these projects are completed. We believe that it is not feasible to attempt to determine the cause(s) of the unacceptable downtime/conditions until these tasks are completed.

Sincerely,

Ted Sanders
Chief Financial Officer

RECORD 000208

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS C.A. No. 2013-CP-21-2722
Omega Construction, Inc., Plaintiff, vs. Crailar, Inc., d/b/a Crailar Technologies, Inc. f/k/a Naturally Advanced Technologies US, Inc., Defendants.	**MOTION TO DISMISS, OR IN THE ALTERNATIVE TO COMPEL MEDIATION AND ARBITRATION AND TO STAY**

FILED
2013 NOV 26 PM 1:
CONNIE REEL-SPIVEY
CCP & GS
FLORENCE COUNTY

YOU WILL PLEASE TAKE NOTICE that Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc. f/k/a Naturally Advanced Technologies US, Inc. ("Crailar"), by and through its undersigned counsel, moves for an Order dismissing Plaintiff's Complaint pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks jurisdiction over the subject matter of this action. In particular, (1) in blatant disregard of the clear and unambiguous dispute resolution clause set forth in the underlying contract requiring mediation as a condition precedent to arbitration, Plaintiff commenced this lawsuit, and (2) Plaintiff waived its right to litigate in this Court and agreed to submit its claims to binding arbitration. The relevant agreement is attached hereto as Exhibit 1. (The mediation and arbitration requirements are in Section 4.3 of Exhibit A thereto.) In addition, Crailar moves to dismiss Plaintiff's second cause of action for quantum meruit pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because the Plaintiff alleges and admits in its Complaint that an express contract exists; therefore, any claim for quantum meruit is barred under South Carolina law.

In the alternative, Crailar moves for an Order compelling mediation as agreed to by Plaintiff and staying all further proceedings in this action pending the results of the mediation. If

mediation proves unsuccessful in resolving the dispute between the parties, Crailar moves for an Order compelling arbitration as agreed to by Plaintiff and staying all further proceedings in this action pending the results of the arbitration. In the interim, this Court should retain jurisdiction of the matter.

This motion is made pursuant to the South Carolina Rules of Civil Procedure, all applicable statutory and common law, is made in good faith and may be supported by a Memorandum of Law and affidavits to be submitted unto the Court and parties prior to a hearing hereon.

Lawrence M. Hershon
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, South Carolina 29202
Telephone: 803-255-8000
Facsimile: 803-255-8017
lawrencehershon@parkerpoe.com

Attorneys for Defendant

November 20, 2013
Columbia, South Carolina

AIA® Document A141™ – 2004

Standard Form of Agreement Between Owner and Design-Builder

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

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

Naturally Advanced Technology
1728 North Old River Road
Pamplico, South Carolina 29583

and the Design-Builder:
(Name, legal status, address and other information)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041
Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

NAT Flax Fiber Facility
Pamplico, South Carolina

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

EXHIBIT 1

Init.
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ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents (which may also be referred to as the Design-Build Documents) consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontractors, purchase orders, and other agreements between the Design-Builder and third parties. The Design-Builder shall incorporate the obligations of this Design-Build Contract into its respective subcontracts, supply agreements, and purchase orders.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Design-Build Documents, other than a Modification, is inconsistent with this Agreement, this Agreement will govern.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

§ 1.4 The Design-Builder accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Design-Builder agrees to furnish the architectural, engineering, and construction services set forth herein and agrees to furnish efficient business administration and superintendence, and to use its best efforts to

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complete the Project in the best, most expeditious, and economical manner consistent with the interests of the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the latter of the date of the issuance of the building permit or the date the Owner provides reasonable documentation of project financing as required by Article A.2.2.8 of Exhibit A. If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

(Insert Owner's time requirements.)

N/A

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.

(Paragraph deleted)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than days from the date of commencement, or as follows:

(Paragraph deleted)

Design-Builder achieving Substantial Completion within 100 days from commencement is contingent upon (1) The agreement of the local building authority to issue a Temporary Certificate of Occupancy allowing machine commissioning before the Permanent Fire Pump is active and (2) NAT electing to install a temporary fire pump until the Permanent Fire Pump; System is active (see Additional Pricing Item #6 in Addendum A (NAT Outline Scope of Work) for pricing). If either of these 2 conditions are not satisfied, Substantial Completion shall be achieved not later than 130 days from date of Commencement. The Design-Builder understands and acknowledges that time is of the essence in the execution of the work in accordance with the schedule as noted herein and that any delay in completion of the Work beyond the Substantial Completion date will materially affect the Owner by causing among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages.

Portion of Work	Substantial Completion Date

§ 3.4 Within ten (10) days of the award of the Contract, the Progress Schedule shall be prepared by Design-Builder utilizing the critical path method and submitted to Owner. The Progress Schedule shall be detailed to a degree which will permit proper coordination of all trades for the Work, including all design elements of the Work. The Design-Builder shall be required to update the status of the Work according to the Progress Schedule on a monthly basis or as reasonably requested by Owner. The Progress Schedule shall show the amount of Work constructed and comparing the Work in place to the progress required by the Progress Schedule. Failure to provide such updates to the Progress Schedule shall be a material breach of this Agreement. In addition, if, at any time, the progress of the Work is such that the Design-Builder will not be able to meet the Substantial Completion date in the Progress Schedule (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents), Design-Builder shall inform Owner of this potential delay as required by the Design-Build Documents. At that time, Design-Builder shall also present a recovery schedule and plan for such overtime work or other measures that may be required to recover the schedule. Failure to provide the Owner with notice in accordance with the Design-Build Documents of a potential delay to one or more of the completion dates and a plan of corrective action shall be deemed a waiver of the Design-Builder's right to claim any extension of time for delay caused by that activity.

§ 3.6 Should the Design-Builder fail to progress with the Work in accordance with the Progress Schedule (taking into account extensions of the Contract Time approved in accordance with the Design-Build Documents), it shall, without being entitled to any increase in the Contract Sum or other compensation or extension in the Contract Times, work

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RECORD 000213

overtime, increase his force, or take other such action as may be necessary or appropriate to recover the Schedule and complete the activity by the dates shown on the Progress Schedule.

§ 3.7 The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Design-Build Documents. In the event that Design-Builder does not achieve Substantial Completion of the Work as set forth in Article 3.3 of this Agreement, Design-Builder shall pay Owner liquidated damages in the amount of Five hundred dollars ($500.00) per day for each day after the date for substantial Completion that Design-Builder fails to properly complete the Work. If the Design-Builder is more than ten (10) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the tenth (10th) day that Design-Builder fails to properly complete the Work. If Design-Builder is more than thirty (30) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the thirtieth (30th) day that Design-Builder fails to properly complete the Work. Design-Builder acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:

(Check the appropriate box)

[ ] Stipulated Sum in accordance with Section 4.2 below;

[ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

[X] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM (Intentionally omitted.)

§ 4.2.1 Intentionally omitted.

§ 4.2.2 Intentionally omitted.

§ 4.2.3 Intentionally omitted.

Description	Units	Price ($0.00)

§ 4.2.4 Intentionally omitted.

Allowance	Amount ($0.00)	Included Items

§ 4.2.5 Intentionally omitted.

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 Intentionally omitted.

§ 4.3.2
(Paragraphs deleted)
Intentionally omitted.

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

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§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

Five percent (5%) of the Cost of the Work.

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 No later than May 18, 2012, the Design-Builder shall propose a Guaranteed Maximum Price for the Work. If accepted by the Owner in writing, this proposal shall become Amendment 1 to this Agreement and shall establish the Guaranteed Maximum Price for the Work. The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The Guaranteed Maximum Price shall include the cost of all design, labor, equipment, supplies, materials, services and allowances required to complete the Project pursuant to the Design-Build Documents.
(Insert specific provisions if the Design-Builder is to participate in any savings.)

To the extent the Cost of the Work plus the Design-Builder's fee is less than the Guaranteed Maximum Price (minus any remaining contingencies and allowances), the Owner and Design-Builder shall share such savings with the Owner receiving eighty percent (80%) of such savings and the Design-Builder receiving twenty percent (20%) of such savings.

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price ($0.00)

§ 4.4.3.4 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount ($0.00)	Included Items

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:
(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Intentionally omitted.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Design-Builder shall submit monthly Applications for Payment.

§ 5.1.3 Provided that an Application for Payment is received not later than the 5th day of the following month, the Owner shall make payment to the Design-Builder not later than the 25th day of the month in which the billing is received by the Owner. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Owner receives the Application for Payment.

§ 5.1.4 If requested by Owner in writing, with each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM (Intentionally omitted)

§ 5.2.1 Intentionally omitted

§ 5.2.2
(Paragraphs deleted)
Intentionally omitted

§ 5.2.3 Intentionally omitted.
(Paragraphs deleted)

§ 5.2.4
(Paragraphs deleted)
Intentionally omitted

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Intentionally omitted.

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§ 5.3.2
(Paragraphs deleted)
Intentionally omitted.
(Paragraphs deleted)

§ 5.3.3 Intentionally omitted.

§ 5.3.4 Intentionally omitted.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. When the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, elect not to withhold additional retainage. In such event, there will be a total of five percent (5%) retainage held by the Owner at the time of Substantial Completion of the Work. Nevertheless, any reduction or release of retainage, or a portion thereof, shall not be a waiver of (i) any of the rights to retainage in connection with other payments to the Design-Builder or (ii) any other right or remedy that the Owner has under any Design-Build Documents, at law or in equity.

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§ 5.3 FINAL PAYMENT

§ 5.3.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1
(Paragraphs deleted)
Intentionally omitted.

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:
(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)
(Check one.)

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:
(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:
(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

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§ 7.4 The Owner's Designated Representative is:
(Insert name, address and other information.)

Tom Robinson
Naturally Advanced Technologies U.S., Inc.
6188 Old Ironworks Road
Greensboro, North Carolina 27455Telephone: (336) 549-7873

COPY TO:
Guy Prevost
Naturally Advanced Technologies U.S., Inc.
305-4420 Chatterton Way
Victoria, BC, Canada, V8X 5J2

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

T. Barry Hennings
Omega Construction, Inc.
P. O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

(Office) 336-368-5156 (Fax) 336-368-2277; (email) barryh@omegaconstruction.com

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

Insurance Requirements

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

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

percent (%)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

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§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Document	Title	Pages
Insurance Requirements		1 - 3

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title	Date

§ 8.1.4 The Design-Builder's Proposal, dated , consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Number	Date	Pages

§ 8.1.7 Exhibit A; Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

N/A

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Insurance Requirements

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ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

Facility Description

Facility construction to consist of renovations and upfit of an existing 145,800 sf industrial building to manufacturing/warehousing space with associated mechanical and office spaces.

The existing building space will be divided into two bale storage areas of 9,900 sf and 11,900 sf (Please note that the 11,900 sf area will be reduced to ~3,300 sf per local building official requirements. This change was made too late to be included in this GMP. Once the revised pricing for this change is developed, the GMP will be amended). The remaining production floor area is to be used initially for a decortications line consisting of 3 pre-opener stages, 1 fine opener line, and 2 balers. An on-grade bale unloading area will be added to the north end of the building adjacent to the 9,900 sf bale storage area. 3 existing docks will be refurbished at bale storage (2) and at the maintenance area (1). The rear office area (~1,800 sf) will be refurbished with paint, new carpet and new acoustical ceilings. New ADA compliant bathrooms will be installed and two existing bathrooms will be refurbished with new fixtures

Mechanical systems to be provided will include a refurbished compressed air system with new compressors, refurbishment of an existing air washer (#4), re-work of the existing building fire sprinkler system (through separate contract with facility owner) and re-work of the existing site water system (also through a separate contract with the facility owner). New heating and ventilation systems are included for refurbished office space. Modifications to the existing building plumbing system are included to accommodate revised restroom layouts and abatement activities.

The electrical systems include new 4160 V to 480 V electrical service to the building, new lighting in the production / warehousing areas, renovation of electrical systems in refurbished office / support areas, power wiring for new mechanical equipment, and convenience receptacles in production / warehousing areas. Low voltage systems provided include fire alarm system, and stub-ups for Owner's communications system in office areas.

Site improvements include clearing and grading for new pads and plant roads, a patch for the cut out area in existing plant asphalt roads, modifications to existing storm drainage system, re-commissioning/ modifications to the existing sanitary sewer system, re-commissioning /modifications to the existing site water system and removal/installation of site fencing.

SCOPE OF SUPPLY – SITE & BUILDING

Labor, materials, equipment and supervision is included for the following scope of work:

1000 – General Conditions

The following items are included:

1. Building permits/ fees / local licenses

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
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May 22, 2012

2. Builder's risk insurance and Contractor's General liability insurance
3. Field office facilities
4. Field supervision
5. Temporary storage facilities
6. Temporary toilets
7. Temporary power and lighting inside building and job trailers.
8. Temporary telephone.
9. Equipment and tool rental
10. Fuel for project
11. Project Management
12. Project Executive
13. Employee lodging and subsistence
14. Site and Building design services including civil, architectural, structural, plumbing, mechanical, and electrical design. Sealed drawings will be provided in all the above disciplines. Structural steel, mechanical and electrical design will be via design-build subcontractor packages.
15. Drawing reproduction
16. Office shipping and postage costs

2000 – Sitework

1. Project Testing
2. Surveying and layout
3. As-built site drawings
4. Clearing and grubbing.
5. Erosion control measures, including, inlet protection at storm drain structures, swale sediment tubes and temporary seeding.
6. Earthwork including stripping and stockpiling topsoil, onsite cut/fill.
7. Storm drain system for area drainage at new plant roads and docks:
    - Installation of 1 new yard inlet structures
    - Installation of ~50 lf of 18" RCP storm drain pipe
8. Sanitary Sewer system:
    - Sanitary sewer tie-in for new restrooms.
    - Replace existing sanitary sewer manhole at northeast corner of existing building with pumping station, cap connection to gravity sewer serving other building on site.
    - Installation of ~500 lf of 2" force main sewer piping from pumping station to new septic system.
    - Installation of new septic system (~780 lf of tail lines) located northwest of existing building.
9. Site domestic / process water system:
    - Re-commission existing well pump systems (via contract with property owner)
10. Site fire water system:
    - Re-commissioning of existing fire pump system. (via contract with

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property owner)

11. Asphalt paving and gravel drives for site roads and parking areas:
    - Installation of ~700 sy of new heavy duty paving at shive loading area. Heavy duty paving to consist of 8" of base coarse, 2" of binder course, and 1.5" of type C surface course.
    - Installation of ~2,700 SY of 10" gravel drive at the north side of the existing building for bale unloading.
    - Installation of ~2,800 SY of 6" gravel drive around the west side of the existing building for fire road access.
12. Concrete paving:
    - Installation of concrete truck apron at on-grade bale unloading area. Pad dimensions are approximately 70' x 85' of 8" wire mesh reinforced concrete.
    - Installation of concrete truck apron at shive loading area. Pad dimensions are approximately 85' x 25' of 8" wire mesh reinforced concrete.
13. ~525 lf of new barbed wire fencing and new electric gate.
14. Demolition of ~250 lf of existing fencing.
15. $10,000 allowance for site cleanup and landscaping.
16. $5,000 allowance for permanent seeding of disturbed areas.
17. $3,600 allowance for pest control treatment for existing building

3000 – Concrete Work

1. Allowance for the installation of spread-type column footings for the shive loading canopy. (Note: this allowance will be revised once the final design is determined for this canopy).
2. Installation of concrete pads for 2 compressor pads.
3. Installation of concrete pad for the new transformer.
4. Patching of ~500 sf of floor slab for the new office area for the new bathroom areas.
5. Installation of 1 new 5'x5' concrete pad at the new door on the south end of the building.
6. Patching for ~360 floor openings in the existing floor slab.
7. Addition of concrete stairs and ADA compliant ramp in the rear of the existing building to the existing exterior door.

4000 – Masonry

1. Repair allowance of ~$5,000 to patch damage to existing masonry walls.
2. All masonry accessories required for wall construction including sand, mortar, reinforcing, and CMU block.
3. Provide new CMU wall at existing nurses station/restroom to expand the restroom area to be compliant with ADA requirements.
4. Provide new masonry walls to expand existing "Engineer's Room" for conversion of the space to a control cabinet room.

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5. Demolish CMU and Brick Veneer in areas needed for new openings (12 places)
6. Install new steel lintels at new masonry openings where necessary (6 places).
7. Provide temporary shoring to support masonry walls while new openings are being installed.
8. Patch openings left after shoring is removed.
9. Pressure wash brick on the building exterior.

5000 – Structural Steel

1. Provide structural steel and roof framing for Air washer air intake / exhaust penthouse with additional bump out to direct exhaust vertical.
2. Provide new dividing wall below penthouse to separate the intake/exhaust air plenum.
3. Provide new structural columns along North wall needed in order to cut holes in the north wall.
4. Erection of steel package.
5. An allowance has been included for the structural steel and erection of the shive handling canopies. (Note: this allowance will be revised once the final design is determined for the shive loading canopy)
6. Provide and erect new stell lintels for the new masonry wall openings
7. Provide welding and structural steel for metal support plates for the concrete slab hole patching

5040 – Miscellaneous Metals

1. Replace existing roof ladder on existing building with code compliant ladder.
2. Guardrail at refurbished rear offices area (60 lf)
3. Provide and install handrails at new entrance ramp and stairs.
4. (44) ea. pipe bollards
5. Provide 2 Frames for roof mounted HVAC equipment.
6. Provide angle embeds for the conveyor transfer pits.
7. Bent plate jambs / lintels for new overhead door openings in masonry walls.
8. Erection of miscellaneous steel package.
9. Anchor bolts for canopy footers.

6000 – Carpentry

1. Roof nailers for roof tie in at new penthouse.
2. Provide misc wood for blocking and concrete patching.

7000 – Thermal and Moisture Protection

1. $2,000 repair allowance for existing building roof.
2. ~ 42 sqs of Exterior 2" thick x 42" wide insulated foam metal panels for new partition walls and penthouse enclosure. Exterior facing to be 26 gauge G90 galvanized steel with a planked profile and a Kynar finish. Interior facing to be 26

gauge G90 galvanized steel with a planked profile and a Polyester finish. The texture will be stucco embossed and the color will be the manufacturers standard white.

3. ~5 sqs of interior liner R-Panel roll formed from 26 gauge galvalume steel with a Polyester finish, smooth texture for penthouse bump out liner paneling.
4. Installation one layer of 2" polyisocyanurate rigid roof insulation mechanically fastened.
5. Installation of a mechanically fastened white 45 mil TPO roofing system by Firestone with 15 yr "NDL" material and labor warranty by Firestone.
6. Install prefinished (standard color) 24 gauge gravel stop, gutter and downspouts.
7. Install tapered polyisocyanurate crickets around new penthouse and one layer of ½" high density wood fiber rigid insulation over new crickets – set in a solid mopping of hot asphalt. Install 3 plies of type IV felt over new crickets set in a solid mopping of hot asphalt. Install new SBS flashing at tie-in to new penthouse.
8. Install new flashing as relocated roof drains.
9. Install new flashing as new roof top HVAC units.
10. Caulking and sealants as required.
11. Floor joint caulking using polyurea materials for new exterior floor slabs.
12. Provide allowance for new shive loading canopies roof membrane, gutters, and downspouts to include 2" polyisocyanurate rigid roof insulation mechanically attached with a mechanically fastened white 45 mil TPO roofing system by Firestone with prefinished (std color) 24 gauge counter flashings, gravel stop, gutter and downspouts.
13. Provide sheetmetal cover for exterior access doors to replace damaged door louvers.
14. Provide 3'-11" wide dock canopy over bale unloading doors.

8000 – Doors and Windows

1. Hollow metal door frames, doors, and hardware for all new interior and exterior personnel doors.
2. Refurbishment of existing hollow metal doors, frame and hardware for existing interior and exterior personnel doors in reworked areas.
3. Refurbish 10 existing mechanical/electrical room doors to include wire brushing and new paint.
4. New aluminum storefront doors for rear office areas,
5. Overhead doors, dock seals, on-grade access openings, partition wall openings as follows (also see dock door markup drawing "NAT OH Door Markup - Pamplico 5-2-12.pdf":

Location	Qty	Size	Description
Receiving Docks	2	8' x 10'	Manual Operator, insulated vertical lift sectional, new dock seals
Dry Area Bale Unloading	2	10' x 10'	Electric Operator, insulated vertical lift sectional

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Dry Area Bale Unloading	1	12' x 12'	Electric Operator, insulated High lift sectional
Shive Loading	2	8' x 10'	Refurbish existing rolling steel door
Bale Unloading Storage access to Bale Storage	1	12' x 12'	Electric Operator - Rolling Steel door with 3 hr fire rating and fusible link
Bale Unloading Storage access to Bale Storage to Dry Area	2	10 x 10	Electric Operator - Rolling Steel door with 3 hr fire rating and fusible link.
Bale Storage access to Dry Area	1	12' x 12'	Electric Operator - Rolling Steel door with 1 hr fire rating and fusible link
Bale Storage access to Dry Area	1	10 x 10	Electric Operator - Rolling Steel door with fire rating and fusible link.
Maintenance Shop Exterior	1	8 x 10	Refurbish existing rolling steel door, new dock seals.

9000 – Finishes

1. The office finishes refurbishment package includes replacing acoustical ceilings, replacing floor coverings (carpet, asbestos tile), re-painting walls, and cleaning for 1,800 sf rear office area and 500 sf of office area near shive loading.
2. New tile floors and walls in new ADA bathrooms.
3. Allowance for gypsum wall board for new storage area. (Note: This area to be resized per local building officials. Pricing will be adjusted to this new size).
4. Painting per markup drawing "NAT Painting Markup - Pamplico 4-30-12.pdf" to generally include as follows:
   i. Painting of all exposed roof deck, roof steel, columns, existing CMU walls, joists, beams, conduits in existing building for Bale Storage and Production Area.
   ii. Painting of exposed steel and existing CMU walls in Maintenance Room, and Electrical Room.
   iii. Painting of all exposed new misc steel in plant areas.
   iv. Painting of existing wood paneling, CMU, trim, and wood base in rear office area.
   v. Painting of all hollow metal doors and frames that in production, rear offices, maintenance area, and air washer #4.
   vi. Paint existing and new railings, new roof ladder.
   vii. Paint Pipe Bollards.
   viii. Paint New opening lintels.
   ix. Repaint exterior metal doors.

10000 - Specialties

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1. Signage allowance of $6,000.
2. Fire protection cabinets (2 ea.) and fire extinguishers (50 ea.) for Office and plant areas;
3. Re-use of partitions in existing restrooms being refurbished.
4. Replace toilet accessories in all restrooms being refurbished.

11000 - Equipment

1. Refurbishment of existing loading dock levelers,
2. Two (2) new manual truck restraints.
3. New dock bumpers for existing 5 docks
4. Three new dock seals for shipping docks and maintenance area. .

15010 – Plumbing

1. Provide new plumbing fixtures for existing refurbished bathrooms. An allowance has been made in case the new fixture bolt patterns do not line up with the existing bolts.
2. Provide two new ADA compliant bathrooms for the rear offices.
3. Provide a new hot water heater to serve the refurbished bathrooms.
4. Reroute existing Roof Drain line in Air Washer #6 beyond new penthouse perimeter.
5. Re-insulate existing water lines after abatement.
6. Re-insulate existing roof drains after abatement.
7. Installation of new eyewash/shower station in production area near rear offices.
8. Chlorination of existing system.
9. Installation of new roof drain in penthouse bump out.

15020 – HVAC

Reference attached Bahnson proposal "NAT – Flax Processing Project Budget Phase I" dated 5/17/12 for description of mechanical scope of work for the following:

Phase 1 Scope:

1. Compressed air system (two compressors – fixed drive 25 HP each). New compressors to be tied into existing receiver tanks in mechanical room.
2. Production Machine exhaust & filtration requirements (for 1 decortication line, 2 stage design expandable to 3 stage)
3. Air washer humidity control system (refurbish 1 existing air washer, with air distribution ductwork). Provision to be made for 2nd air washer to be brought online in the future.
4. Seismic restraints for piping, ductwork and mechanical equipment

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5. Patching of existing wall openings on the East and West walls left after the demolition of the existing ductwork.
6. Babnson general services for Phase 1 Scope

Office/Control Room HVAC package:

Reference attached Babuson proposal "NAT – Office and Control Room AC Systems"
1. Furnish and Install new air conditioning equipment, ductwork, and related components.

15030 – Fire Protection - (to be handled under separate contract with the property owner)

1. Renovate the existing building fire sprinkler system in the production area to relocate the existing sprinkler heads from the pendent position to an upright position after the existing suspended ceiling is removed.
2. Demolish and replace existing sprinkler system in new bale storage areas.
3. Provide a new fire sprinkler system freeze protection for the shive loading canopy.
4. Replace the existing fire pump and backup with new equipment and controls
5. Seismic restraints for new fire protection piping.
6. (Included in the GMP) Add Argus fire suppression and detection to the two filter houses.
7. (Included in the GMP) Add Argus fire suppression system to the dust filters.
8. (Included in the GMP) Add Argus fire suppression system to each HiVac system.
9. (Included in the GMP) Add Argus spark detection to the three bale openers.
10. (Included in the GMP) Install two reconditioned Argus Xtra Control Panels.
11. The equipment fire suppression system includes reconditioned components. See alternates at the end of this document for an adder for new components.

16010 – Electrical

1. Reference attached Adams Electric Proposal received on 5/18/12 for description of electrical scope of work included.

18000 – Cleanup and Dumpsters

1. Weekly project clean-up and waste disposal.
2. Final building clean-up prior to turnover
3. Dumpster rental, haul charges, and tipping fees for all waste generated by Omega Construction scope of work.

19000 – Building Demolition

1. Demolish existing building wall panels, masonry walls, and steel structure as

ADDENDUM A
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necessary to construct new wall openings.
2. Demolish sections of the interior floor slab of the existing building to new plumbing.
3. Core drill the existing building slab in 38 places for pipe bollard installation.
4. Demolish existing roof to allow construction of the new air washer intake penthouse.
5. Demolish carpet, ceiling, and CMU wall at women's bathroom for refurbished rear office area.
6. Perform selective demolition, asbestos abatement, and lead paint stabilization as specified in the Selective Demolition Scope of Work document dated 2-28-12, its associated markup drawings, the 3-5-12 NAT Abatement and Demolition Work Scope Addendum #1, and the 3-5-12 NAT Abatement and Demolition - Bid Form
7. Demolish welding room and tool storage room in Maintenance Area. Demolish air handling unit the welding room and its associated ductwork with the maintenance room.
8. Demolish two CMU wall between Air Washer # 4 and Air Washer #6 to install next insulated wall panel barriers with framed openings.
9. Demolish large duct over the old Engineer's office to prepare the area for the new control cabinets.

Additional Pricing Items :

1. Baler and Briquetter for waste and dust compaction – Add $144,200.00
2. 3rd stage air filtering for (2) process filters in Phase 1 scope – Add 90,720.00
3. Bale Storage Unit heaters for fire sprinkler system freeze protection. – Add $12,453.00
4. Spare "used" Vacuum Pump – Add $20,685.00
5. Use new components for equipment fire suppression system – Add $24,307.00
6. 1 month temporary fire pump with installation and removal – Add $18,000.00
7. Change manual truck restraints to fully hydraulic – Add $3,475.00

Clarifications and Exclusions

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
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May 22, 2012

The following items are exclusions and clarifications that apply to the base scope of work:

General Clarifications and Exclusions:

1. Fire Protection design is preliminary and must be reviewed and approved by NAT's insurance underwriter. Significant revisions to the design assumptions required by NAT, the property Owner or their insurers or officials having jurisdiction may affect pricing.
2. No excavation or replacement of rock or unsuitable soils is included.
3. We have not included any allowance for potential dewatering.
4. Omega Construction standard safety program is included in general conditions cost.
5. No smoke vents or draft curtains are included in this scope.
6. Furnishings, cubicles, vending equipment, and window treatments are assumed to be provided by Owner
7. No Vapor Barrier is provided on the existing production area roof in the base estimate
8. Well water is assumed to not need water treatment before use in the process equipment.
9. Asphalt paving is based on the April 1, 2012 asphalt index price of $636.67/ton. Asphalt paving will be priced at time of placement. Any deviation up or down from this index price will result in adjustment to the asphalt paving pricing.
10. Site storm drainage system is assumed to be adequate for the additional storm drainage off the new building and new pavement.
11. This pricing is contingent on acceptance of the project design by NAT, the Property Owner, NAT's insurer and any authority having jurisdiction. Any material change required by these parties could affect this work scope and the GMP.
12. See Clarifications and Exclusions listed in the attached Bahnson proposal "NAT – Flax Processing Project Budget Phase I" dated 5-17-12.
13. See Clarifications and Exclusions listed in the attached Bahnson proposal "NAT – Office & Control Room AC Systems" dated 5-17-12.
14. See Clarifications and Exclusions listed in the attached Adams proposal dated 5-18-12.
15. Backflow preventers are not included in this GMP proposal.
16. Except as listed above, all fire protection system costs have been excluded from this GMP. It is assumed that these costs will be paid by the Property Owner "Colony Square Investment Company".
17. Except as listed above, all site water system costs have been excluded from this GMP. It is assumed that these costs will be paid by the Property Owner "Colony Square Investment Company".
18. Proof of project financing must be provided before contracts associated with this GMP can be issued.
19. Any item not specifically listed in this Outline Scope of Supply is excluded.

Addendum 8
NAT Guaranteed Maximum Price (GMP)
Date: 5-18-12 revision

Division	Description	GMP 5/18/2012	Division Total
1000 - General Conditions			
	Permits	$ 22,070	
	Insurance	$ 27,360	
	Supervision	$ 65,000	
	Project Management	$ 81,000	
	Safety Requirements	$ 4,368	
	Tools and Equip	$ 27,874	
	Temp Services	$ 22,606	
			$ 251,070
1000 - Design			
	Civil Design	$ 12,200	
	Architectural/Strucutral Design	$ 80,300	
	LEED Management	exc	
	LEED Comissioning	exc	
			$ 92,500
2000 - Sitework			
	Site Investigation and Layout	Inc	
	Site Demo and Clearing	Inc	
	Erosion Control	Inc	
	Grading	$ 156,990	
	Storm Drainage	Inc	
	Site Water System - Domestic	$ 1,045	
	Site Water System - Fire Loop	exc	
	Site Sewer System	exc	
	Asphalt Paving and Gravel Roads	Inc	
	Concrete Paving	$ 49,804	
	Temporary Roads	n/a	
	Landscaping Allowance	$ 10,000	
	Seeding Allowance	$ 5,000	
	Fencing	$ 26,211	
	Termite Treatment	$ 3,600	
			$ 252,650
3000 - Concrete Work			
	Foundations	$ 20,854	
	Door and Equipment Pads	Inc	
	Floor and Mezzanine Slab	exc	
	Sidewalks	exc	
	Reinforcing	Inc	
	Slab Hole Patching	$ 73,956	
	Formed Stairs, Equip pads	$ 22,814	
	Testing Allowance	$ 5,000	
	Pipe Bollards	$ 22,704	
			$ 145,328
4000 - Masonry			
	Masonry Cleaning - Exterior	$ 10,000	
	Shoring	$ 20,000	
	Masonry Walls	$ 49,046	
			$ 79,046
5000 - Metals			
	Waste Handling Canopies Allowance	$ 66,600	
	Penthouse Material and Erection	$ 65,300	
	Misc Steel and Erection	$ 44,920	
	Framed Openings	$ 56,547	
			$ 233,367

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Addendum B
NAT Guaranteed Maximum Price (GMP)
Date: 6-18-12 revision

Division	Description	GMP 5/18/2012	Division Total
6000 - Carpentry			
	Roof Nailers and Misc Wood	$ 2,180	$ 2,180
7000 - Thermal and Moisture Protection			
	Roofing - Existing	$ 7,000	
	Roofing - Penthouse	$ 29,000	
	Dock Canopy	$ 26,000	
	Wall Siding and Insulation	$ 63,800	
	Caulking and Sealants	$ 2,000	
	Floor Joint Caulking	$ 2,500	$ 129,300
8000 - Doors and Windows			
	Hollow Metal Doors Allowance	$ 32,700	
	Overhead Doors	$ 33,799	
	High Speed Doors	n/a	$ 66,499
9000 - Finishes			
	Painting	$ 112,195	
	Storage Wall Allowance	$ 54,320	
	Office Finishes	$ 45,128	$ 211,643
10000 - Specialties			
	Toilet Partitions and Accessories	$ 1,970	
	Office Entryway Canopy Allowance	n/a	
	Signage Allowance	$ 6,000	$ 7,970
11000 - Equipment			
	Dock Equipment	$ 26,085	$ 26,085
15010 - Plumbing			
	Plumbing - Domestic	$ 48,350	$ 48,350
15020 - Mechanical Systems			
	Mechanical Package	$ 1,816,216	
	Remove and Patch for Roof top vents	$ 13,930	
	Patching Duct Openings	$ 29,580	
	Office Area/Control Room HVAC System	$ 84,700	
	Production/Filtering Equipment Fire Suppression Systems	$ 71,000	$ 2,016,426
15030 - Fire Protection			
	Fire Extinguishers	$ 2,500	
	Fire Protection - Building	exc	$ 2,500
16010 - Electrical			
	Revised Electrical Scope	$ 1,122,700	$ 1,122,700
16000 - Clean up			
	Clean up	$ 29,000	
	Dumpster Charges	$ 16,900	$ 45,900

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Addendum B
NAT Guarenteed Maximum Price (GMP)
Date: 5-18-12 revision

Division	Description	GMP 5/18/2012	Division Total
19000 - Demolition			
	Concrete Demo	$ 5,600	
	Masonry Demo	Inc	
	Metals Demo	Inc	
	Production Area\Office Area Demo	$ 86,259	
	Abestos Abatement Design/Air Monitoring	$ 19,100	
	Asbestos\Hazardous Materials Abatement	$ 131,674	
			$ 242,533
Subtotal		$ 4,976,055	
General Contractors Fee			
	Major Subcontractors - Fee 6%	$ 156,906	
	All Other Construction Costs - Fee 5%	$ 91,846	
GMP - Omega Construction Contract		$ 5,223,808	
	JSC Billing	$ 127,167	
Grand Total		$ 5,350,975	
Additional Alternate Pricing Items			
	Alternate for 3rd Stage Air Filtering	$ 90,720	
	Alternate for Bale Storage Unit Heaters	$ 12,453	
	Alternate for "used" spare Vacuum Pump	$ 20,686	
	Alternate for new components in fire suppression system	$ 24,307	
	1 month temp fire pump	$ 18,000	
	Change to fully hydraulic truck restraint	$ 3,475	
Items to be Priced to the Property Owner			
	Replacement of Vertical Shaft Electric Fire Pump, motor, and controller	TBD	
	Replacement of Vertical Shaft Diesel Fire Pump, motor, and controller	TBD	
	Misc Additonal Fire Pump System Refurbishment	TBD	
	Site Fire Loop Checkout	TBD	
	Upgraded Fire Protection System	TBD	
	New Well Pump and Storage Tank Refurbish	TBD	
Placeholders for NAT Issued Contracts			
	Rigging and Millwright Package	$ 100,000	
	Provide conveyor equipment	TBD	
			$ 269,640
Grand Total with Add'l Pricing Items		$ 5,620,615	

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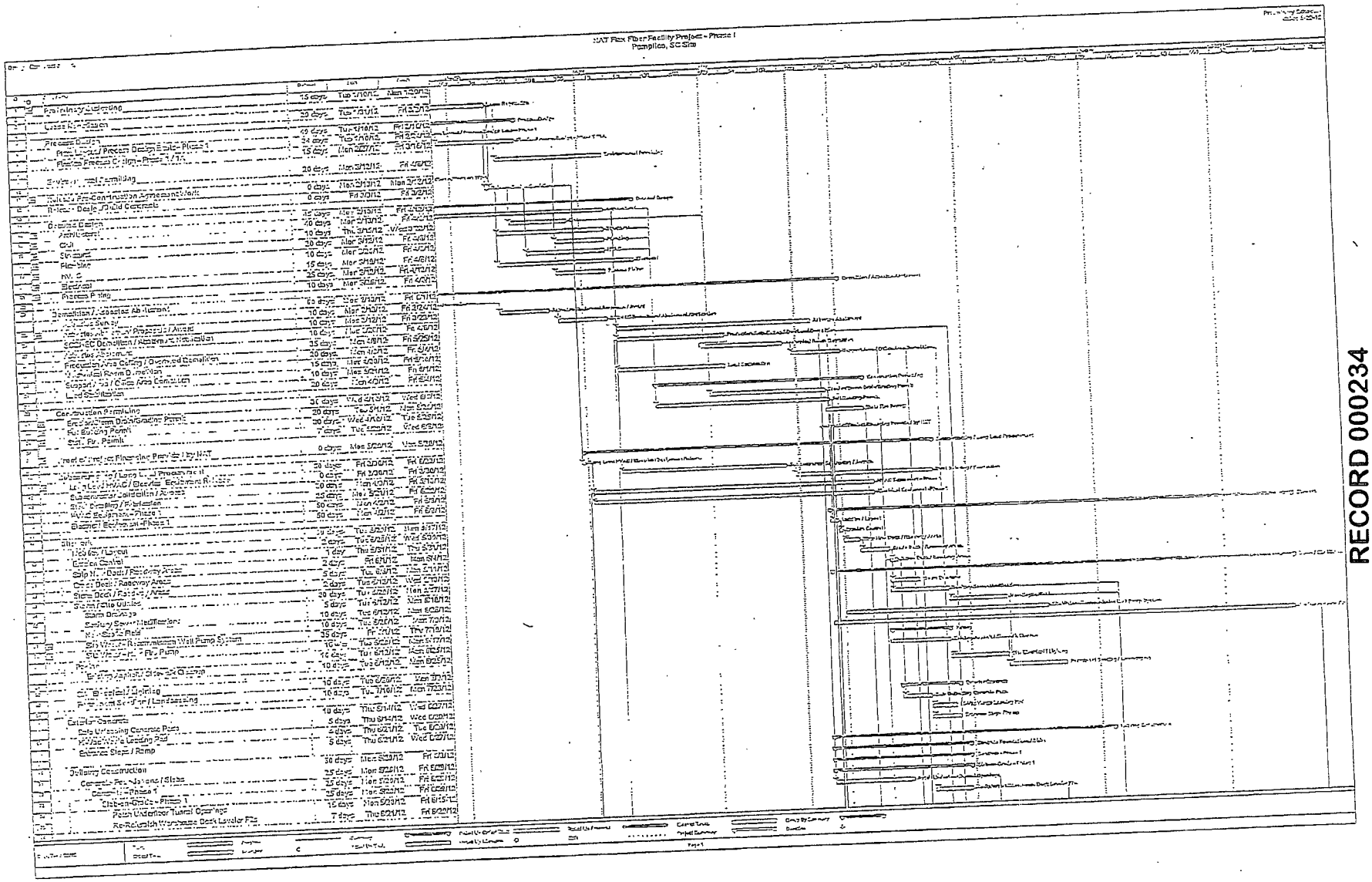

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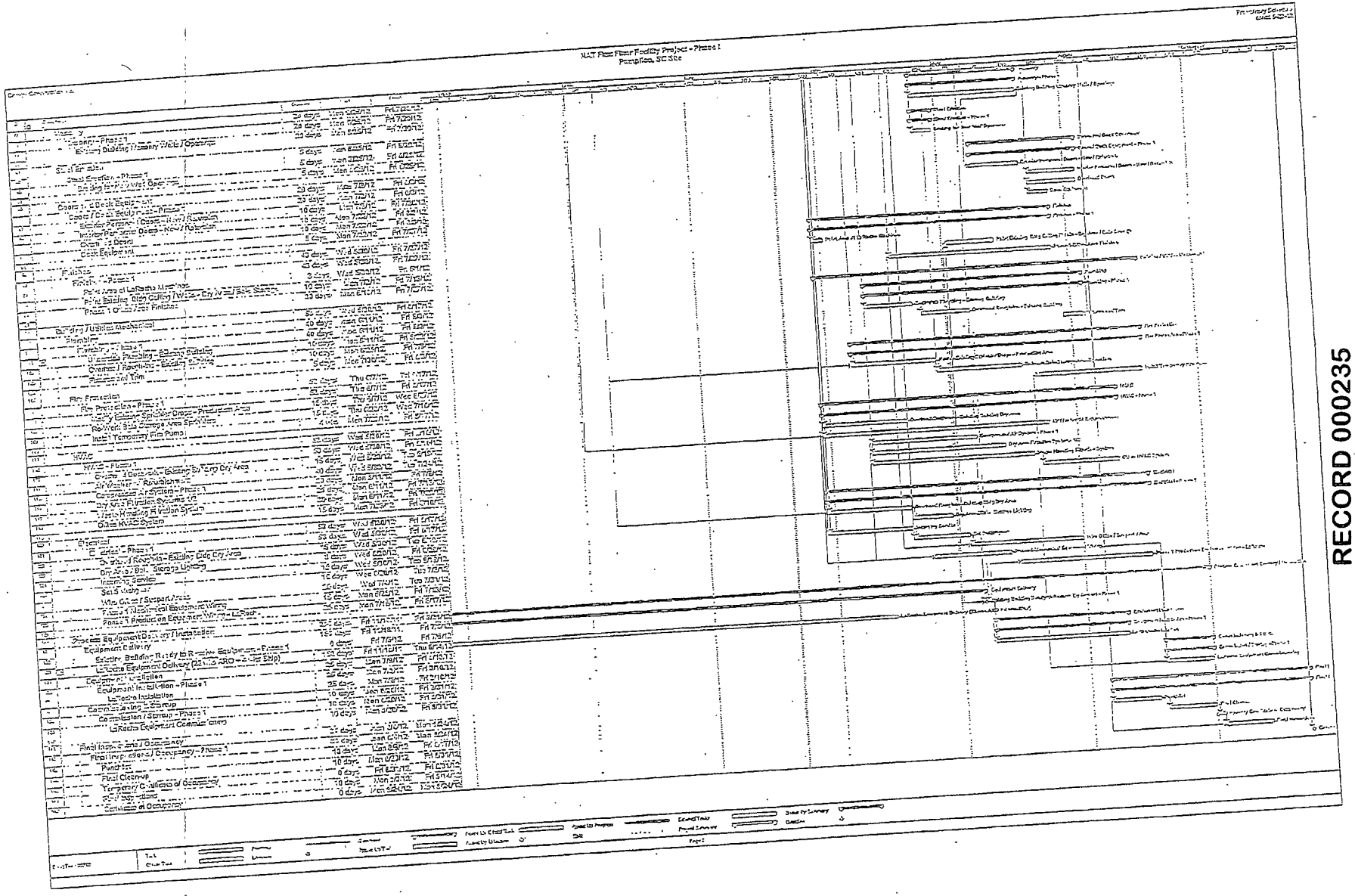

RECORD 000235

AIA® Document A141™ – 2004 Exhibit A

Terms and Conditions

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

NAT Flax Fiber Facility
Pamplico, South Carolina.

THE OWNER:
(Name, legal status and address)

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

THE DESIGN-BUILDER:
(Name, legal status and address)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria shall be set forth in Amendment 1 and shall describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents or reasonably inferable therefrom, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

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

§ A.1.1.8 NEUTRAL

Intentionally omitted.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 Owner makes no representations regarding the compliance of the Project with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes and may request a Change Order in accordance with the terms of the Design-Build Documents. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

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§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build 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.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 So long as Owner complies with its pay obligations hereunder, drawings, specifications, and any and all other documents and instruments prepared by the Design-Builder, Design-Builder's Architect or consultant's hired by either of them, including those in electronic form, shall, upon receipt by the Owner, become and remain the property (including copyright and other intellectual property rights) of the Owner, and may be used by the Owner for any purpose relating to the Project, or any renovation, modification, or use of the Project. Except for use in connection with completing or correcting the Work, any use of such documents and instruments without the written agreement of the Design-Builder will be at the Owner's risk and without liability or legal exposure to the Design-Builder or Design Builder's Architect; and the owner shall indemnify and hold harmless the Design-Builder or Design-Builder's Architect from any and all claims, damages, losses, expenses arising out of or resulting from re-use or modification by the Owner. Upon termination of this Agreement for any reason, the Design-Builder shall furnish Owner with all design documents the Owner may request, including documents in electronic format, if requested by Owner.

§ A.1.6.2 Intentionally omitted.

§ A.1.6.3 Intentionally omitted.

§ A.1.6.4 Intentionally omitted.

§ A.1.6.5 Intentionally omitted.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such

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information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services necessary to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services, unless Owner has a reasonable objection to providing such information.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 If requested in writing by Design-Builder, the Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. Such independent review shall not affect the obligations of Owner or Design-Builder under the Design-Build Contract.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in connection with Design-Builder's responsibility to secure building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is specifically excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 With the exception of the asbestos survey and other environmental surveys, the services, information, surveys and reports provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense. The Owner, however, shall have no responsibility for the accuracy and completeness thereof, and the Design-Builder waives any claim against the Owner arising out of or relating to such items. Design-Builders shall rely on such information at its own risk, but Design-Builder shall provide prompt written notice to Owner of any errors, omissions or inconsistencies in such information.

§ A.2.2.7 If the Owner becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are reasonably necessary to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of

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soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.14 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW

§ A.2.3.1 The Owner shall review the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of such submittals, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2
(Paragraphs deleted)
Intentionally omitted.
(Paragraphs deleted)

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding anything else in Section A.2.3.2 or the Design-Build Documents, the Owner's review and/or approval of the Design-Builder's documents or submittals shall not impose any obligation on the Owner, nor relieve the Design-Builder of responsibility to ensure that such documents comply with the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, such site visits and any actions taken or not taken by Owner during such site visits shall in no way relieve, change or modify Design-Builder's responsibilities with respect to the quality or quantity of the Work, nor waive any rights or claims the Owner may have with respect to the Design-Builder. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the 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 Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

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§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten (10) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions in performing their respective portion of the Work.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall, before starting each portion of the Work, carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner, in writing, any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

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§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall;

.1 be consistent with the approved design documents;

.2 provide sufficient information for the use of those in the building trades; and

.3 include all documents required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically or as requested by Owner to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has completed its review and approval of each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's review and/or approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner 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 Owner shall not incur any responsibility and the Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's review and/or approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or

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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 professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 Unless otherwise directed by Owner in writing, the Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.3.9 The Design-Builder and each Designer and Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout, and nature of the Project site and the existing facility; (2) generally prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools, and equipment; and (5) other similar issues. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Design-Builder or any Subcontractor to comply with the requirements of this Section A.3.3.9. Subject to the conditions of Section A.4.1.4, Design-Builder shall be entitled to a Change Order, including adjustments to the Guaranteed Maximum Price and/or Contract Time arising out of concealed conditions that would not be evident from Design-Builder's customary investigation of the site.

§ A3.3.10 Design-Builder is responsible for notification and protection of all known or identified utilities in connection with the Work. In the event that utility services are interrupted during the course of Design-Builder's Work, Design-Builder will take whatever actions are appropriate to ensure that utility services are restored in the shortest possible time and will hold Owner harmless and indemnify Owner from any claims related to damages or interruption to such utility service.

§ A3.3.11 Design-Builder shall make the Work available to Owner for review, inspection or investigation at any time and shall provide Owner reasonable access to all parts of the Work upon request.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, 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. This provision does not include special fees or assessments including, but not limited to, transportation assessments, impact fees, federal and state right of way fees, mitigation assessments, utility assessments/charges, environmental impact fees, penalties and/or costs incurred that are outside the normal costs of performing the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the written consent of the Owner and, if appropriate, in accordance with a Change Order, but such consent

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shall not relieve Design-Builder of any responsibility under the Design-Build Contract, or impose any responsibility on the Owner with respect to such materials.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.4.4 The Design-Builder shall, as soon as practicable, furnish the Owner with copies or certificates of all permits, fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are legally enacted at the time the Design-Build documents are executed, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Work.

§ A.3.7.3 It is the Design-Builder's sole and exclusive responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear all costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

.1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

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§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information a critical path schedule for the Work as provided in the Design-Build Documents. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.9.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any invitees thereof. The Design-Builder shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section may be grounds for an extension of the Contract Time and an adjustment to the contract Sum for any resulting increase in costs and/or additional costs including costs of delay.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. All parties understand that the actual finished work product may vary slightly from the color, texture, etc. exhibited in samples due to printing variations, different lot numbers, field construction techniques, manufacturing process, weather conditions, etc. Design-Builder is responsible for constructing the Work in accordance with acceptable industry standards and subject to limitations inherent in the product.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents 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.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and

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field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder 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 Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may, after written notice do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required specifically in writing by the Owner or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, including, but not limited to, claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the willful, negligent acts, omissions or breach of contract of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.1.1 The Design-Builder's indemnity obligations shall also include, but are not be limited to, all claims and judgments which may be made against the Owner, its respective agents and employees, arising out of or resulting from the violation by Design-Builder or any Subcontractor of any applicable statute, law, rule, regulation, ordinance, or law.

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§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ A.3.17.3 So long as Owner is in compliance with its payment obligations hereunder, the Design-Builder shall also hold the Owner harmless from any costs and damages, including, but not limited to, attorneys' fees and litigation-related costs, incurred by the Owner as a result of the filing of any mechanics' liens, materialmen's liens, notice of claim of lien, or any litigation arising out of such liens. If any lien or notice of claim of lien of any type is filed on the Project or against funds owed by the Owner to the Design-Builder, the Owner shall be entitled to withhold 1 and 1/3 times the amount of the lien from any payments thereafter requested by Design-Builder until such lien is discharged, removed or bonded off, and, upon demand by the Owner, the Design-Builder shall file with the appropriate public registry, within seven days after receipt of notice of demand from the Owner, such funds or bonds as are required to cancel such liens or notice of claims of lien.

§ A.3.18 After executing a Scope of Work Addendum, the Design-Builder shall prepare and provide to Owner, the Design-Builder's Personnel Chart, which lists by name, job category, and responsibility, the Design-Builder's primary employees who will work on the Project. The Design-Builder shall promptly inform the Owner in writing of any proposed replacements, the reasons therefor, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Intentionally omitted.
Intentionally omitted

§ A.4.1.3 Continuing Performance. Pending final resolution of any claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which were not discovered or could not have been discovered by the reasonable diligence of the Design-Builder, and which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give written notice to the other party promptly before conditions are disturbed and in no event later than seven (7) business days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall attempt to negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made in writing within 21 days after the Owner has given notice of the decision.

§ A.4.1.5 Claims for Additional Cost.

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§ A4.1.5.1 If the Design-Builder wishes to make any Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work for which additional compensation is being sought. Such notice shall include, to the extent then known by Design-builder, full details and substantiating data to permit evaluation by the Owner. If further or other information subsequently becomes known to the Contractor, it shall be immediately furnished to the Owner in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising hereunder.

§ A4.1.5.2 Any claim for adjustment to the Contract Sum shall not include any overhead costs, home office costs, indirect costs or any costs or expenses.

§ A4.1.5.3 In the event that Design-Builder believes that it is entitled to an increase in the Contract Sum or some other compensation for extra Work, it shall inform the Owner in writing of the reason for the claim and the estimated amount of the claim within ten (10) days of the latter of either the commencement of the event giving rise to the claim or Design-Builder's first knowledge of the event. Such written notice shall include the date on which notice of the claim is provided to Owner. Unless Design-Builder complies with this paragraph, it shall not be entitled to any increase in the Contract Sum or other additional compensation for extra Work.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, such Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 In the event that Design-Builder believes that it has been delayed in the prosecution of the Work for reasons over which it has no reasonable control, then Design-Builder shall inform the Owner in writing of the reason for such delay and the estimated amount of such delay within ten (10) days after the commencement of the event giving rise to the delay. Such written notice shall include the date on which notice of the claim is provided to Owner. Unless Design-Builder complies with the requirements of this Article, it shall not be entitled to any claim for delay, extension of the Contract Time, or additional compensation for its claim. If Design-Builder makes any claim for delay, Design-Builder shall specifically set forth how and why the delay in question affected the critical path.

§ A.4.1.7.2 As a precondition to Design-Builder making a claim for a delay arising out of abnormal weather conditions, Design-Builder shall submit data from the National Oceanic Atmospheric Administration (NOAA) showing the number of days where precipitation or other inclement weather occurred during the period for which the claim is made along with daily weather logs which must be kept at the job site and which must indicate that adverse or abnormal weather or site conditions precluded Work. Design-Builder agrees that a comparison of: (1) the number of days of precipitation for the month or months in question during the Project; and (2) the average number of days where precipitation for the month or months in question during the previous five years is a proper comparison by which to determine Design-Builder's entitlement for extension of time for weather delays. Design-Builder acknowledges that it has taken weather conditions into account in agreeing to meet the Substantial Completion and Final Completion Dates under the Design-Build Documents, and that the Design-Builder shall only be allowed an extension of time in accordance with the Design-Build Documents based upon the comparison set forth in this Article. Notwithstanding anything else contained in this Article or the Design-Build Documents, Design-Builder shall not be entitled to an extension of time unless it can show that the abnormal weather or site conditions specifically affected the critical path, and it meets all of the requirements for such a claim under the Design-Build Documents.

§ A.4.1.7.3 A basis exists for an extension of the Contract Time if the Design-Builder is delayed in performing the Work, but only to the extent that delays are not reasonably foreseeable, avoidable, beyond the control and without fault or negligence of the Design-Builder, and its designers, subcontractors, sub-subcontractors, and suppliers at every tier, and to the extent that the delays directly impact the Design-Builder's ability to achieve completion of the Work in accordance with the time requirements established by the Design-Build Documents (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents). Assessment of the existence of the basis for a time extension shall be determined by an examination of whether the delay event affects the critical path of the Project. A basis exists for an extension of time only if (a) the aforesaid criteria are met, (b) the delays cannot be made up by reasonable efforts which otherwise do not increase the cost of the Work, and (c) said delays stem from the following causes:

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.1 Class 1 causes: an act or failure to act on the part of the Owner or Owner's separate contractors constituting a breach of Owner's obligations under the Design-Build Documents, undiscoverable and unanticipated environmental contamination, actions or inactions of the landlord, or an injunction against Owner;

.2 Class 2 causes: All causes of delay other than an act or failure to act on the part of the Owner or Owner's separate contractors, including but not limited to, adverse weather, acts of God, riots, civil commotions, acts of War, unavoidable casualties to Work in progress, epidemics, quarantine restrictions, organized labor disputes, freight embargoes, abnormal material shortages, actions or inaction of Owner's Landlord, or solvencies of subcontractors, sub-subcontractors or suppliers, or the solvency of the design consultants retained by the Contractor or other cause traditionally defined as a *force majeure*.

§ A4.1.7.4 If the basis exists for an extension of time under subparagraph A4.1.7.3, and the Design-Builder has timely submitted a written claim documenting the basis for such extension in accordance with the Design-Build Documents, Owner may either:

.1 Accept a reasonable and appropriate time extension to cover the actual delay to the critical path of the Work, and, in the case of a Class 1 cause, grant a corresponding adjustment in the Contract Sum in accordance with the Design-Build Documents;

.2 Accept a reasonable and appropriate time extension to cover the actual delay to the critical path of the Work, and in the case of a Class 2 cause, there will be no corresponding adjustment in the Contract Sum, and the sole recourse of Design-Builder will be an entitlement to a time extension regardless of actual sources or cause of delay;

.3 Submit a written Change Order to the Design-Builder to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, after a submission to Owner of a good faith estimate of the costs of such acceleration and adjusting the Contract Sum in accordance with the Design-Build Documents to compensate Design-Builder for such directed acceleration; however, direct costs used in determining such compensation shall be limited to properly substantiated and document premium or overtime labor costs. The Design-Builder shall not be entitled to receive any compensation for such acceleration of construction activities; unless the acceleration is performed pursuant to a written Change Order from the Owner; or

.4 Employ a combination of the above remedies.

§ A4.1.7.5 Owner will not be obligated or liable to Design-Builder for, and Design-Builder hereby expressly waives claims against Owner on account of, damages, costs, expenses, or related impacts which Design-Builder, or its designers, subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause enumerated in A4.1.7.4.2; Design-Builder's sole and exclusive remedy and full compensation in such event shall be extension of Contract Time in accordance with the provisions of the Design-Build Documents. Design-Builder likewise waives claims for damages, costs or expenses incurred by it or its subcontractors, and suppliers, due to a delay resulting from a Class 1 cause except and solely to the extent of costs allowed under A4.1.7.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build 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 Design-Builder, the applicable unit prices shall be equitably adjusted.

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§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.1.12 Review of the Design-Builder's claims by the Owner shall not constitute waiver of the Owner's right to deny the claim on the grounds that the claim was not timely made or that Design-Builder waived its right to make such a claim, nor shall such a review (regardless of whether the issue of timeliness or waiver by the Design-Builder is made at the time of the claim) prevent Owner from asserting such defects in the Design-Builder's claim.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Intentionally omitted.

§ A.4.2.2 Intentionally omitted.

§ A.4.2.3 Intentionally omitted.

§ A.4.2.4 Intentionally omitted.

§ A.4.2.5 Intentionally omitted.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute. The Owner's decision or failure to reject any of the persons or entities referred to in this

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Section A.5.4 shall not cause the Owner to be responsible for the performance of the Work, and shall not affect the obligations of the Owner or the Design-Builder under the Design-Build Contract.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

.1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

.3 each subcontract shall specifically provide that in the event of termination, the Owner shall only be responsible to the Contractor, Designer or Subcontractor for those obligations of the Design-Builder that accrue subsequent to the Owner's exercise of any rights of conditional assignment as provided in the Design-Build Documents.

§ A.5.5.2 Intentionally omitted.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1. Owner shall indemnify Design-Builder to the extent that such additional costs are the result of the actions or omissions of Owner's Separate Contractors.

§ A.6.1.2 The term "separate contractor" shall mean any contractor or equipment supplier retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 Design-Builder shall coordinate its Work with the Work of the Owner's separate contractors, equipment suppliers, and installers to ensure timely and proper completion of the entire Project. Owner shall provide Design-Builder with contact information regarding such separate contractors, and in the event Design-Builder requires any other information from Owner regarding such separate contractors, Design-Builder shall give Owner written notice of the information needed. However, the Design-Builder shall not be responsible for the means, methods and quality of the Work of the Owner's separate contractor and the Design-Builder shall not be responsible for the Owner's separate contractors' compliance with the construction schedule.

§ A.6.1.4 Design-Builder acknowledges that Owner and its agents, separate contractors, and suppliers may require access to and use of the Work during the performance of the Work for various purposes. Design-Builder specifically acknowledges that it has accounted for this fact in agreeing to the dates of Substantial and Final Completion under this Design-Build Contract.

§ A.6.1.5 While on site, Owner's separate contractors shall comply with all applicable OSHA guidelines.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results, and, if possible, such notifications shall be made in time to

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take such corrective action as necessary to avoid delay in completion of the Work. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may, after written notice, clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

.1 a change in the Work;

.2 the amount of the adjustment, if any, in the Contract Sum; and

.3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 Intentionally omitted.

§ A.7.2.3 Notwithstanding anything contained in the Design-Build Documents, Design-Builder shall not make any change in the Work or deviate from the Design-Build Documents unless Design-Builder receives written approval for such change from the Owner in the form of an executed Change Order or Construction Change Directive. Every Change Order shall be preceded by a written change order proposal from the Design-Builder, which shall describe the physical nature of the proposed change and information (including supporting documentation) necessary to determine whether there is a change, and the proposed amount of the adjustment, if any, in the Contract Sum and/or Contract Time. The Owner shall promptly review and make decisions on proposed change orders so as to not delay the project schedule. If Design-Builder performs any change in the Work without following the requirements of this Section, then Design-Builder shall not be entitled to any additional compensation or time related to such Work.

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§ A.7.2.4 Agreement on any Change Order shall constitute a final settlement of all Design-Builders' potential claims relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

.1 additional costs of professional services;

.2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

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

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 See Article 4.1.7

§ A.8.3.2 Intentionally omitted.

§ A.8.3.3 Intentionally omitted.

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ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may reasonably require, such as copies of requisitions from Contractors and material suppliers, provided any request for such data will not delay timely payment, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Each Application for Payment shall include partial lien waivers from Design-Builder, Architect; and 30-day arrear lien waivers from Suppliers and Subcontractors whose contracts are in excess of $25,000 for any pay period. All such lien waivers shall be in the form required by Owner. Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay. Design-Builder shall also include an updated Schedule of Values and Construction Progress Schedule with each Application for Payment.

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

§ A.9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work except for retainage, if any, being held by the Owner.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within the ten (10) days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for

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Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss, or anticipated loss, resulting from acts and omissions, because of the following:

.1 defective Work not remedied;

.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;

.3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld, except that payment shall not be required to the extent of any amount withheld pursuant to A.9.5.1 in connection with any other Application for Payment.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to Architect, designers, Subcontractor, or material supplier.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

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

§ A.9.6.8 Upon request by Owner, prior to any progress payment or final payment, Contractor shall be required to provide all documents, including, but not limited to, waivers, lien waivers, releases, and bonds, which are necessary to clear title to the Project and to waive, cancel, discharge, and void all claims or liens by subcontractors or suppliers against the Project and/or the Owner.

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§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete. If possible, all items of Work identified pursuant to this Section shall be completed or corrected by the Design-Builder within thirty (30) days after the items are identified.

§ A.9.8.4 Intentionally omitted.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion, or the Design-Build Documents

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§ 9.8.6 The Design-Builder shall not be deemed to have achieved Substantial Completion under the Contract Documents unless (1) Design-Builder has completed the Work in accordance with the Design-Build Documents, (2) Design-Builder has completed the Work to such an extent that any equipment to be installed by Owner is able to be properly and completely installed, and (3) Approvals from all required authorities and a formal Certificate of Occupancy have been obtained.

§ A.9.8.7 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.8 Acknowledgement of Substantial Completion may be withdrawn by the Owner based on subsequently discovered information that would have otherwise permitted Owner to determine that the Work was not Substantially Complete if known at the time of the issuance of the Acknowledgement of Substantial Completion.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.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 Design-Builder, provided such occupancy or use is

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consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder 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 completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder 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 Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

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

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) submission of all manufacturers' warranties to be transferred to Owner, together with evidence of such transfer, all maintenance and operating manuals and any special guaranties or warranties required by the Contract Documents; (6) assignment of all guaranties and warranties from Contractors, Subcontractors, vendors, suppliers or manufacturers; (7) provision of all necessary certifications from Design-Builder or its Consultants; and (8) 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 Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder 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 Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4
(Paragraphs deleted)
Intentionally omitted.

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

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§ A.9.11 The Design-Builder agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ A.9.12 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (2) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.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 Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

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§ A.10.2.8 The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

§ A.10.2.9 Until final acceptance of the Work by Owner in accordance with the Design-Build Documents, the Design-Builder shall have full responsibility for, and shall take every precaution necessary to prevent injury or damage to any part of the Work and shall rebuild, repair, restore or make good, all injuries or damages to any portion of the Work prior to final acceptance by Owner.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder 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 Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Design-Build Contract, is not disclosed in the Design-Build Documents, was not discoverable by the reasonable diligence of the Design-Builder, and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

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ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Design-Build Contract or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor 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 which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder'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 Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 Owner, its directors, officers, employees, agents, subsidiaries, representatives and affiliates shall be named as additional insureds on the policies, except Workers' Compensation Statutory Coverage, set forth in Sections A.11.1.1.1, A.11.1.1.2, A.11.1.1.3, A.11.1.1.4, and A.11.1.1.6. If these policies do not contain a standard Insurance Services Office separation of insured provision, they shall be endorsed to provide cross-liability coverage. These policies shall have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.

§ A.11.2.3 Design-Builder hereby waives any and all rights of recovery, claim, action, or cause of action against the Owner and its, employees, officers, directors, subsidiaries, affiliates, agents or representatives for any damages, whether insured or not by any of the foregoing policies. For all of the foregoing policies set forth in this Section 11.2, the Design-Builder shall obtain a waiver of subrogation from their respective insurers and each policy must be endorsed to reflect the insurer's acceptance of this waiver of subrogation. In addition, this waiver of subrogation applies whether or not there is insurance, any deductibles, or any self-insured retentions.

§ A.11.2.4 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Minimum Insurance Requirements.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build 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 A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 Intentionally omitted.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.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 Design-Builder 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.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build 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, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 Intentionally omitted.

§ A.11.4.5 Intentionally omitted.

§ A.11.4.6 Intentionally omitted.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and

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employees, each of the other, and any of their contractors, Subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, 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, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 Intentionally omitted.

§ A.11.4.9 Intentionally omitted.

§ A.11.4.10 Intentionally omitted.

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build 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 Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner or separate contractor, as the case may be, shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if at any time within one (1) year after Final Completion, Owner discovers Work not in accordance with the Design-Build Documents, it shall give Design-Builder written notice of such defective Work. Within seven (7) days of receiving such notice, Design-Builder shall commence repair of the Work and proceed with diligence to complete the repair at no cost to Owner. The rights described in this Article 12 shall be in addition to all of Owner's other rights under the Design-Build Documents or the law, and nothing herein shall limit Owner's rights in any way. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner

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waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

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

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2, except as provided in Section A.12.2.2.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project, or to a person or entity who purchases the Project. In such event, the lender or purchaser shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice or if sent by electronic mail to the other party's representative.

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§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build 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, except to the extent that the Design-Build contract expressly limits such duties, obligations, or rights.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. No waiver of a right or duty be either party on one or more occasions shall constitute a waiver of such rights or duties on other occasions.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

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

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

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

Intentionally omitted

§ A.13.6.1

(Paragraphs deleted)

Intentionally omitted.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

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.3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or

.4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

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

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and Design-Builder's fee for such Work through the date of termination and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery.

§ A.14.1.4 If all of the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.1.5 The Design-Builder shall not stop Work nor terminate the Contract due to refusal of the Owner to issue payment for any of the reasons listed in Article A9.5.1.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreement between the Design-Builder and the Architect and Contractors;

.3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is in breach of a material provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

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

.2 accept assignment of contracts pursuant to Section A.5.5.1; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit on costs actually incurred as a result of work suspensions, delay, or interruption. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed in accordance with the Contract Documents and costs incurred by reason of such termination, along with Design-Builder's fee thereon. Regardless of whether termination is with or without cause, Owner shall not be liable to Design-Builder for consequential damages, incidental damages, special damages or lost profits for such termination.

§ A.14.4.4 Upon a determination by a court of competent jurisdiction that termination pursuant to Section A14.2 was wrongful or otherwise improper, such termination shall be deemed a termination for convenience pursuant to Section A14.4 and the provisions of Section A14.4.3 shall apply.

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Determination of the Cost of the Work

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

NAT Flax Fiber Facility
Pamplico, South Carolina

THE OWNER:
(Name, legal status and address)

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

THE DESIGN-BUILDER:
(Name, legal status and address)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE B.1 CONTROL ESTIMATE

§ B.1.1 Intentionally omitted.

§ B.1.2
(Paragraphs deleted)
Intentionally omitted

§ B.1.3 Intentionally omitted

§ B.1.4 Intentionally omitted.

ARTICLE B.2 COSTS TO BE REIMBURSED

§ B.2.1 COST OF THE WORK

The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

§ B.2.2 LABOR COSTS

§ B.2.2.1 Wages of construction workers and an on-site field superintendant directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval, and for Design-Builder's Project Manager when engaged in the Work.

§ B.2.2.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

§ B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or

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others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, photographs, facsimile transmissions and long-distance telephone calls, data transmissions, postage and parcel delivery charges, telephone service and computer-related costs at the site and necessary and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the necessary and reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work, including, but not limited to, reasonable transportation, travel, hotel, and per diem expenses.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in writing in advance by the Owner.

§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents.

§ B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums required by the Design-Build Documents that can be directly attributed to this Design-Build Contract, including any additional premiums required as a result of approved change Orders increasing the Guaranteed Maximum Price.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, .

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Intentionally omitted.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or breach of this Agreement.

§ B.2.7.8 Intentionally omitted.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in advance in writing by the Owner.

§ B.2.7.10 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

§ B.2.7.11 All water, power and fuel costs necessary for the Work.

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§ B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions, so long as such costs do not result from the negligence or breach of contract by Design-Builder or a subcontractor or designer employed by Design-Builder.

§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Article B.2;

.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in SectionB.2;

.3 Overhead and general expenses, except as may be expressly included in Article B.2;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.7 Bonuses, incentive compensation, contributions (other than Workmen's Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, Federal Unemployment Insurance), gratuities and entertainment expense. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Article B.2;

.9 Expenses for travel, including Design-Builder-supplied vehicles used for personal use, incurred by Design-Builder's employees while traveling for purposes other than the direct execution of the Work;

.10 Fines other than those due to the acts or omissions of Owner or its agents;

.11 Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines and work stoppages or slowdowns, except where such costs are due to circumstances beyond the control of the Design-Builder;

.12 Consultants to the Design-Builder not approved, in writing, by Owner;

.13 Corporate accounting, check and accounting processing cost shall not be reimbursed; and

.14 Other costs, damages, or expenses specifically excluded elsewhere in the Design-Build Documents.

(Paragraphs deleted)

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

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§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Design-Builder shall then determine, with the advice of the Owner, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 When a specific bidder (1) is recommended in writing to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ B.5.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Design-Builder 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 Design-Builder.

§ B6.4 All Subcontractors shall be pre-qualified by the Design-Builder. The Owner shall have the opportunity and right to disapprove of any proposed subcontractor. However, to the extent there is an increase in cost due to the Owner disapproving of a proposed subcontractor, the Design-Builder shall be due a Change Order as provided for under Section b.5.2 above.

§ B6.5 Design-Builder may self-perform any of the work. Owner, however, reserves the right to require the Design-Builder to seek competitive pricing for such portions of the Work from other qualified contractors.

§ B6.6 All Subcontractors shall conform and be subject to the requirements of the Design-Build Documents. Subcontracts awarded on the basis of the cost of such work plus a fee shall require Owner's prior written approval.

§ B5.7 Subcontractor agreements shall, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Design-Builder is terminated by the Owner.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be in accordance with generally accepted accounting procedures. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's final accounting of the Cost of the Work.

§ B.6.3 Upon the Owner's direction, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after delivery of the final accounting by the Design-Builder. Based upon the Cost of

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the Work as acknowledged by the Owner, or, if the Owner has directed its auditors to report thereon, based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions for payment under the Design-Build Documents have been met, the Owner will, within forty (40) days after receipt of the Design-Builder's final accounting, issue final payment or notify the Design-Builder in writing of its reasons for withholding final payment.

§ B.6.4 If the Owner disputes the Cost of the Work as set forth in the Design-Builder's final accounting, the Design-Builder shall be entitled to assert a Claim in accordance with Article A.4, as modified. The Owner shall, pending resolution of any such dispute, pay the Design-Builder all sums otherwise payable and not in dispute.

§ B.6.5 Intentionally omitted.

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MINIMUM INSURANCE REQUIREMENTS

Design-Builder, from the time of commencement of Services until one year after completion of Services, shall provide and maintain in force with responsible companies with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger and licensed by the South Carolina Insurance Commissioner to transact the business of insurance in the State of South Carolina for the applicable line of insurance, and satisfactory to the Owner the following minimum insurance coverage.

1.0 Professional Liability Insurance

Errors and Omissions Professional Liability Insurance having minimum limits of $1,000,000 per claim and $2,000,000 in the aggregate to be provided by the Architect hired by the Design-Builder. Owner shall be named as an intended third-party beneficiary to Design-Builder's Contract with Architect.

2.0 Commercial General Liability Insurance

Occurrence form including premises and operations coverage, products and completed operations coverage, coverage for independent contractors, personal injury coverage and blanket contractual liability.

Limits of Liability

Bodily Injury/Property Damage Liability	$1,000,000
Personal Injury Liability	$1,000,000
General Aggregate Limit	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000

Coverage must include:

2.1 Policy to be endorsed to provide policy limits "per project".

2.2 Policy must name Owner as an additional insured as its interests may appear.

2.3 Policy must be endorsed to provide a 60-day notice of cancellation.

2.4 There shall be no endorsement or modification of coverage for liability due to "explosion", "collapse" or "underground property damage".

3.0 Worker's Compensation

Limits of Liability

Worker's Compensation	statutory
Employer's Liability	
Each accident	$500,000
Policy Limit – Disease	$500,000
Each Employee – Disease	$500,000

Coverage Must Include

3.1 Coverage for all states in which operations are conducted.

3.2 Policy must be endorsed to provide a 30-day notice of cancellation.

4.0 Business Automobile Liability

(Owned, non-owned, and hired vehicles on an occurrence basis)

Limits of Liability	
Combined Single Limit (BI & PD)	$1,000,000 per accident

Coverage must include:

4.1 Policy must be endorsed to provide a 60-day notice of cancellation or substantial change to Owner.

4.2 Policy must name Owner as an additional insured as its interests may appear.

5.0 Umbrella Insurance

Limits of Liability	
Annual aggregate	$10,000,000
Per Occurrence Limit	$10,000,000

Coverage must include:

5.1 Coverage must be "following form" coverage for all underlying coverages set forth above.

5.2 Policy must be endorsed to provide a 60-day notice of cancellation or substantial change to Owner.

5.2 Policy must name Owner as an additional insured as its interests may appear.

6.0 Waiver of Subrogation:

Design-Builder waives all right of recovery of damage against Owner, its agents and employees to the extent covered by insurance, and Design-Builder shall obtain from its insurers a waiver of subrogation against Owner and its agents and employees for all insurance coverage except Worker's Compensation and Professional Liability.

7.0 Consultants and Subcontractors

Unless otherwise approved by Owner, Design-Builder shall require all of its design consultants and/or subcontractors to provide the aforementioned coverage, except that the Umbrella Insurance limit may be reduced to $5,000,000. Any deficiency in the coverage or policy limits of the consultants and/or Subcontractor will be the sole responsibility of Design-Builder.

8.0 The insurance provisions set out above in no way affect the liability of Design-Builder as stated elsewhere in this Agreement.

9.0 Miscellaneous

9.1 The Commercial General Liability and Umbrella Excess Liability policies shall cover the contractual liability assumed by Design-Builder under the Design-Build Documents. The Commercial General and Umbrella Excess Liability policies shall include endorsements naming the Owner and their officers, members, agents and employees, as additional insureds. The policies of the Design-Builder shall be primary and non-contributing with any insurance carried by Owner.

9.2 The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Design-Builder and its representatives who may be engaged in performing any of the work, services or activities in connection with the Project.

10.0 Certificates of Insurance:

Before commencing performance of the Services, Design-Builder and its consultants and/or subcontractors must furnish certificate(s) of insurance evidencing:

10.1 Insurance coverage acceptable to Owner.

10.2 Effective expiration dates of policies.

10.3 Owner must be given sixty (60) days written notice of all cancellation, non-renewable, or material changes in policy.

10.4 A waiver of subrogation endorsement has been attached to all policies.

10.5 Any deductible and/or self-insured retention.

10.6 Any exclusions to the policy which are not part of the standard form.

10.7 Certificate of Insurance title block format is as follows:

Naturally Advanced Technologies US, Inc.
c/o Tom Robinson
305-4420 Chatterton Way
Victoria, BC, Canada V8X 5J2

RECORD 000278

Amendment #1
Naturally Advanced Technologies
Flax Fiber Processing Facility – Pamplico SC

Re: Guaranteed Maximum Price

Pursuant to Article 4.4.3.1 of the AIA A141-2004 Owner/Deign Builder Agreement, The Guaranteed Maximum Price (GMP) per the for the Work as described in the Agreement and detailed in Addendum A and Addendum B is: $ 5,223,808.00

Accepted by: [signature]

Naturally Advanced Technologies

GUY PREVOST
Name

CFO
Title

June 15, 2012
Date

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

OWNER (Signature)

LUC PREVOST CFO
(Printed name and title)

DESIGN-BUILDER (Signature)

PAUL R. DILLMAN, JR. PRESIDENT
(Printed name and title)

Init.

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2013-CP-21-2722
	)	
OMEGA CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	
CRAILAR, INC., D/B/A CRAILAR TECHNOLOGIES, INC., F/K/A NATURALLY ADVANCED TECHNOLOGIES US, INC.,	)	
	)	
Defendant.	)	
	)	

October 31, 2013
Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., Judge

A P P E A R A N C E S:

ALAN LAZENBY, Esquire
Attorney for the Plaintiff

LAWRENCE HERSHON, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
Motion for Temporary Injunction	4
Court Reporter Certification	23

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
(No Exhibits Presented)			

OCTOBER 31, 2013

(WHEREAS this matter was scheduled for a motion hearing, both parties appeared through their counsel of record. The hearing began at 11:14 a.m.)

MR. LAZENBY: Your Honor, I believe we both have memos that we have not filed with the -- with the Clerk's Office yet. Would you prefer us to give you the original or to give you a copy and then file the original after the hearing?

THE COURT: You can give me a copy would be fine.

MR. LAZENBY: Okay.

THE COURT: And then you can file the original. And if you would, each of you introduce yourselves and who you represent for the Court.

MR. LAZENBY: Thank you. My name is Alan Lazenby with the Lazenby Law Firm in Spartanburg. I'm representing Omega Construction.

THE COURT: Okay.

MR. HERSHON: Lawrence Hershon.

MR. MARSHALL: I'm Greg Marshall with Omega Construction. I'm the client.

MR. HERSHON: Lawrence Hershon with Parker Poe on behalf of the defendant, Crailar, Inc.

THE COURT: Okay. Spell your last name for me.

MR. HERSHON: It's H-E-R-S-H-O-N.

THE COURT: Okay. All right. I'm ready whenever you all

are.

MR. LAZENBY: Thank you, Your Honor. May it please the Court.

THE COURT: Sure.

MR. LAZENBY: This is Omega's motion. I'd like to hand the Court a memorandum in support of the motion for temporary injunction, as well as the supplemental affidavit of ---

THE COURT: Thank you.

MR. LAZENBY: --- Greg Marshall. And I know I -- I dislike motion practice in state court. Sometimes when you have things at the last second, I know it hinders Your Honor, but this motion is based upon the -- the -- the exhibits that we attached to the temporary restraining order, as well as the supplemental affidavit.

My client is a -- is a -- a contractor, a commercial contractor. The defendant Crailar is a company. It's based in Canada and it takes flax fiber, hemp fiber, and other types of fiber and turns it into a -- a product that's a cloth like cotton, and they -- they -- they take these huge bales of -- of fiber and they finish it in the plant to make it into the cloth.

Crailar had a facility in Kingstree. They moved -- to basically transform this -- this fiber into the cloth. They moved up to Pamplico and there was an existing structure, Collings Square, that they entered to -- Crailar entered into

a contract with my client Omega to up-fit that factory -- to up-fit that space to be used as their factory. As with many construction matters, as I'm sure you're aware, there -- there were some -- some disputes.

According to the -- the affidavit or the statement of account, you know, we claim that we're owed approximately 270 -- $285,000, and that's in the temporary restraining order and the statement of account, Your Honor. And there are some issues about -- about the work. The -- the HVAC system wasn't working properly. There were disputes about whether that was a result of our work and design. This was a design build contract. Or whether that was a result of Crailar not -- not processing the -- the material properly.

Mr. Marshall and others at Crailar were negotiating, trying to resolve these issues to avoid litigation because obviously no one wants to -- to spend their good money on an attorney. One of the things that Omega was concerned about was -- was having collateral and having the -- the ability to -- to collect on any judgment. We had investigated and we were not able to lien the facility because it was leased by Crailar. It was not owned by them. We didn't have the proper notice to owner I believe.

So in -- in trying to work out an agreement, Crailar and Omega discussed having an escrow agreement, having funds placed in escrow, and then to be disbursed after they worked

through the issues. And they went back and forth. I think the first draft was initiated by Crailar. We marked it up, sent it back, and while we're waiting for the -- the -- the final agreement to come back, we hear through the grapevine that -- that the facility has closed. It's shut down all operations. They've laid off all the employees.

And we later learn that they have purchased a plant in Europe to do this work. We tried to receive assurances that -- that we were going to be -- we were going to be paid or that there was money to pay us, you know, after the -- the dispute was resolved. We could not secure any type of -- of agreement or security.

So we filed the incident lawsuit for breach of contract and for quantum merit for the -- basically the -- the unpaid construction work which we contend. And then we also -- we sought and were granted an emergency TRO and this hearing. As you know, Your Honor, that order is only valid for ten days and this is the -- the hearing to see if that -- if we can get the temporary restraining order to be continued.

And, you know, as a matter of -- of law, Your Honor, it's a very, very simple proposition. There are -- there are three elements for the Court to decide to determine whether to enforce or maintain a temporary restraining order.

The first argument or the first fact that the Court must find is that there is irreparable harm to one party if the

restraining order is not kept in place. Here, our position is that there is a substantial amount that is due to -- that's owing to Crailar. We're dealing with a corporation that is -- that is headquartered in Canada. We're not aware that there's any other facilities in the U.S., certainly not in South Carolina. So the -- the ability to -- to collect a judgment is -- is paramount and I think the -- under the case law, Your Honor, typically the ability to collect -- well, I think I'm jumping ahead.

But, Your Honor, obviously we believe the irreparable harm is -- is present. If -- if Crailar is allowed to take these assets and -- and take them out of the state or out of the country, it -- it would leave itself judgment-proof and that would settle their litigation right there.

The second element is success on the merits and I think the -- the cases I cited in general, this element in -- it's not a -- an extremely high standard and you don't have to prove, you know, overwhelming evidence. The -- the -- the factor the Court has to determine is whether we've presented a -- a fair question as to the existence of a -- a contractual right to recovery. And, Your Honor, we -- we've provided in the TRO, which is already part of the record, the -- the contracts, our affidavit of account, and an explanation of why we believe that we're owed the money. And so I -- I believe that the success on the merits prong is -- is met.

The third factor and the fact where I anticipate there being some pushback or argument from Crailar is no adequate remedy at law. And, Your Honor, typically a money judgment is an adequate remedy at law, but an uncollectable money judgment is not. The case law that -- in any case, the Court can consider the impracticality of obtaining full and adequate compensation at law in determining that there is no adequate remedy. And so I would -- I would urge the Court to -- to consider the fact that if -- if this restraining order is -- is lifted, that it -- it would render meaningless Crailar's remedy of obtaining a judgment and trying to collect.

And again, you know, this isn't -- this isn't some speculative risk. You know, while we're in the middle of negotiations to get an escrow agreement, they shut down the company and don't even tell us. They move people out. We don't know if they've moved equipment out, but they laid off all their employees and didn't even tell us. And so we -- we feel like that -- that demonstrates that they're up to something and that's why we sought the emergency restraining order.

Now, admittedly, Your Honor, and I talked briefly with -- with Attorney Hershon prior to the hearing, we -- you know, our claim is in the amount of 285 -- $285,000. We don't know what is in that facility exactly. We -- we have an idea. The supplemental affidavit of Greg Marshall states that there are

approximately 12.5 million pounds of raw flax material. We have no idea what that's worth. Five hundred bales of -- of decorticated flax fiber. We don't know what that's worth. And there's approximately 100- to $200,000 worth of -- of equipment.

We know from another contractor or a sub-contractor that Crailar has allowed that contractor in to -- to get its parts and to get things out. We -- we believe Crailar has a -- you know, has financial difficulties and so that's another cause for concern.

We certainly don't want to -- to -- to tie up all of Crailar's assets. We don't know -- we don't know what raw material is worth. Who owns it? Is it on consignment? Is it owned by Crailar? We don't know if the physical equipment is mortgaged, if there is UCC statements out there, if other parties claim a lien on it. So, you know, we don't know what's there. That's why in the emergency restraining order we -- we listed everything.

I would be amenable -- I think the client would be amenable to -- if the Court is inclined to extend this restraining order, to -- to identify assets that -- that Crailar can certify, you know, are worth, you know, the -- the amount of our undertaking, $285,000, and certify that they own that free and clear. Then -- then that would satisfy us and we could release or there would be no need to have a -- a

restraint on other property. And I have no idea if -- if that would -- can -- can be accomplished easily with just a small portion of this or how much is required.

But, Your Honor, that -- that's our showing. We believe all three elements are met and -- and supported by the -- by the affidavits and TRO and supplemental affidavit. I'd be happy to answer any questions the Court has.

THE COURT: All right. Mr. Hershon?

MR. HERSHON: Thank you, Your Honor. Your Honor, I'll go ahead and submit the copy of the memo that -- let me make sure that this is the copy and not the original. And the reason for the larger packet is there's a copy of the contract here that differs a little bit from the contract that was attached to the plaintiff's motion.

And I think up front I do want to remind the Court that the -- the form of relief that plaintiff here, Omega, is attempting to -- attempting to seek is -- case law makes clear it's an extraordinary and drastic measure. It has to be cautiously applied by the Court.

Now, we do have a situation here where the TRO is already entered ex parte and I was able to, you know, determine online that that had been filed and got notice of the hearing a couple days ago, but in that time have been able to certainly review the contract and review some of the things that are -- that are at issue here.

And before getting into the elements that were -- that were discussed by Omega's counsel, I do want to point the Court to the contract itself, which is attached as an exhibit. There are two -- there are two affidavits here. There's Mr. Prevost and a Mr. Thompson. And attached to Mr. Prevost, which is Exhibit A, Exhibit 1 to that is the contract here that was for this design build work that Omega did, and what was not included in the plaintiff's filing was the Exhibit A to that -- that contract, which are the terms and conditions of that contract.

And I apologize that I don't have that tabbed -- that page tabbed for you, but -- and I'm trying to think of the easiest way for you to flip to it. But it's probably about twenty pages back that it starts and there's a section there in that. These are the AIA form, basically form construction contract documents.

And the main thing that we have here is there's a -- there's a failure of a condition precedent in this contract to them seeking the -- the legal and equitable remedies that they are here for today. Section 4.3 requires mediation prior to seeking arbitration, legal or equitable relief, and the provision there is pretty clear in this.

While there were discussions between the parties prior to this action being filed, there was never -- there has never been a mediation. There's never been an offer for that

mediation to occur. Never been the selection of a mediator and exchange of name of mediators. So that condition -- that condition precedent to doing anything in the court system or arbitration is -- has not been met and, therefore, the TRO itself is improper to be entered at that time.

Secondly, Your Honor, there's an arbitration provision and mediation is supposed to be a condition precedent to arbitration. And as this is a -- I think -- I don't think there's a question that this deals with interstate commerce. Under the Federal Arbitration Act, this arbitration provision is a valid provision. It follows that -- that mediation provision is 4.3. That arbitration provision starts at 4.4.

And there's -- and this is cited in the brief, but there's no less than case law from the U.S. Supreme Court that if there is an issue as to whether a condition precedent to arbitration has been met, that's not even something for -- for -- that the Court -- that a regular court -- a court of -- here a Court of Common Pleas would have jurisdiction to rule on.

So at the front end, I want to inform the Court that it's Crailar's position that it was not proper to go to -- to the Court to -- to seek an equitable remedy because of the condition precedent in the contract, both the mediation provision -- excuse me -- and the arbitration provision. And while that -- while that I believe is enough on its face for

the -- for the TRO to be withdrawn, I'd also like to address the three circumstances that could warrant an injunction as were stated by Omega's counsel: irreparable harm, likely success on the merits, and no adequate remedy at law.

And -- and what I see here, Your Honor, is an attempt to take -- to -- for the -- what their request is is for the Court to assume that the judgment is going to be in place and we need to go ahead and start worrying about enforcement of that judgment. I don't -- I'm not aware of case law in this state that allows to take that strong of an action to make that assumption that not only -- not only are we going to go ahead and assume that you have the judgment, we're going to assume that you can enforce that judgment.

And, you know, the normal -- the normal circumstance for -- for this kind of injunctive relief, you know, is normally that maybe to prevent the sale of real property where you have something unique that cannot otherwise be obtained if that's sold -- sold in some other way. Here we have something where there's a breach of contract claim with a specific amount of monetary damages that are sought.

So in terms of whether there is a remedy at law, they've admitted there's a remedy at law. There's a damages amount that they can obtain. They can -- if -- if they are successful, they will -- they will get a judgment of a certain amount that they've said I think, you know, is in the

RECORD 000293

neighborhood of $240,000.

Whether it becomes -- you know, yet it is true that the facility at this time is not open, but as stated in the affidavit by Mr. Prevost that's attached as Exhibit A, there -- there is an intent to reopen this facility. There's this flax that's sitting outside that's -- that is an accurate count of how much flax is there. I do not have the monetary value of that, but it -- but the intent would be to reopen the facility. That's what Mr. Prevost attests to in his affidavit. And that that flax would eventually -- would eventually need to be worked on here.

Now, just because judgment enforcement could become more difficult and I'm -- you know, I'm -- I'm assuming here some of the facts as stated by him that my client would certainly disagree with, but even if it were true that these assets were all being moved out of state, that doesn't stop the fact that there can be a judgment here and that judgment could be enrolled in any state in this country and that there's international law that allows for a recovery if for some reason these assets were outside of the U.S. That there -- there's certainly -- I don't have the name of the agreement, but there's some agreements with Canada and other places within the world for enforcement of judgments outside of the United States' borders.

So again, no irreparable harm is often termed as, you

know, whether or not there could be -- the damages sought or the complaint sought can be remedied by monetary damages. The plaintiff here admits that it can. To tie up assets of companies where -- and which are, you know, just to I guess take a sidetrack here, of a very high value. The original TRO ties up more than 10.5 million dollars -- Canadian dollars' worth of assets. The -- the debt they're -- I guess to explain a little bit of background, the -- all -- most of these assets that are at this facility are -- are secured by debt insurers that were issued -- issued in Canada to the tune of 10.5 million Canadian dollars.

And Mr. Prevost's affidavit states that most of the assets at this facility are tied -- are already secured and would have -- if there was a default situation that it had -- that Crailar had at a larger point -- at a larger context, which it does not have at this point, there are secured creditors that would have rights to that property. The flax -- you know, the affidavit does state that that flax is not subject to that -- to that debt insurer security at this time.

But to tie up that level of assets or even to tie up the level of assets that they are asking for here when they don't -- when -- when they are seeking a legal remedy is unprecedented in South Carolina law. I don't think there's precedent out there to support that kind of measure.

And going to that idea of success on the merits, I

certainly agree with opposing counsel that there are -- there are some disputes as to what happened here, and Mr. Thompson's affidavit goes through some of the problems. There are certainly -- there's some certain performance issues that have been referenced, including the air conditioner and including other things with this facility that did not make it clear in any sense that -- that -- that plaintiff is going to be successful on the merits here. And that burden is on the plaintiff to show it and I don't believe that the affidavits in front of the Court reach that burden when looking at the affidavits that have been put -- put in argument against -- against those affidavits.

And the Court also -- you know, a couple of other things that -- that are -- that the Court also needs to look over are this idea of balancing the equities in a situation like that, which I've already touched on a little bit by -- by talking about the tying up of assets. But the Court does need to realize that whether -- where -- where that balance of harm is.

I understand the idea, you know, what plaintiff's counsel here is stating in terms of that they are worried about whether assets will be leaving the state, but -- but what they're asking for is for -- for a company to not be able to make -- before a judgment being entered, whether a company is allowed to make its own business decisions, use its assets in

the best way that it sees -- and use its assets in the best way it sees -- it sees possible and, again, to block that type of, you know, basically free trade in this country is something that, again, I've not seen in South Carolina case law.

THE COURT: I don't think he's too worried about it leaving the state. I think he's worried about it leaving the country it seems to me. We can enroll a judgment in another state. That happens all the time and it's happened this week, but ---

MR. HERSHON: Yes.

THE COURT: --- how do you address that?

MR. HERSHON: Well, I address it in the same way that if -- if these assets were in another country that we have -- there are laws that allow judgments to be enforced in other countries as well.

THE COURT: In all countries?

MR. HERSHON: Not -- I don't -- I would not -- I would - no, I don't know if it's in all countries and I wouldn't state that to the Court, but to a country such as -- where this company has operations is in Canada and western Europe. We do have agreements and there are -- you know, there are laws that either get ratified through -- through -- through each -- each company -- each country's legislative branch, if they -- if they have that legislative branch, or otherwise that allow

this judgment enforcement to -- to be done internationally.

It is certainly a more difficult process. I would not -- I wouldn't argue that -- that -- that it is just as easy as enrolling a judgment, you know, across the border in North Carolina. That's certainly not the case, but just because a foreign -- a foreign company has a -- or a company moves assets -- has assets abroad doesn't mean that they are judgment-proof or judgment-protected. I certainly don't think that is true.

And, Your Honor, I do think, you know, if the Court does decide that a TRO is worthwhile someplace, I do believe that -- I would have to agree with Omega's counsel that it's -- it's not proper for the full value of these assets to be tied up. I don't have the value of what that flax is, but that is the -- the major non-encumbered asset, and so if there was something that the Court was going to require to stay in-state, I would request that it be -- be that item -- that flax.

THE COURT: All right. I understand.

MR. HERSHON: I can answer any questions you have, Your Honor.

THE COURT: Thank you. Any reply?

MR. LAZENBY: Just -- just briefly, Your Honor. At this stage of the litigation, we haven't had a chance to fully investigate all of their assets. However, we know of other

contractors who have not been paid, which is a -- in this industry is a -- is a huge red -- red flag. We are not here to -- to -- to -- to seize and keep all these assets. All we want is our $285,000 secured. So to say that we're doing something unprecedented I don't think is -- is -- is a fair statement.

One thing you haven't heard here today. You haven't heard that they -- that they dispute and don't owe us any money. They owe us money. It's a contractual dispute over -- over how much. I think the only argument that -- that goes against the factors is the success on the merits and I think that counsel has raised the argument of -- of, well, this contract is -- is subject to all these other condition precedents and -- and, therefore, you're not going to recover.

And that goes to the success on the merits factor, but, you know, Your Honor, the -- the case law is clear that when seeking a preliminary injunction -- and I'm reading from the Peek P-E-E-K v. Spartanburg Regional case, which is cited in the -- in the brief. When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right. The plaintiff need only present a fair question to raise as to the existence of such a right. The determination of whether to grant an injunction should not be based on the merits of the underlying case.

And so, Your Honor, we -- we think it would be improper

for the Court to delve into at this stage whether there's an arbitration agreement, whether it's enforceable, what the scope of it is, whether there's a mediation clause, whether that's enforceable. Now is not -- not -- not the time. This process is put in place to -- to protect claimants who -- who have -- have drastic remedies and this is a drastic situation. A foreign company purchasing a plant, closing down a plant in -- in South Carolina, buying a plant in another country, and laying off all it workers, this is a drastic situation, Your Honor.

And -- and we would be -- oh, something else is that Crailar can -- can bond the -- the -- the amount of the indebtedness. So that -- that's -- you know, there -- there -- there are easy ways to -- to fix this problem. I know this is -- this is a difficult situation for the Court.

I would also ask the Court that -- you know, this -- this emergency TRO that we have expires this Sunday and so if -- if because of the complexity of the matter that the Court is not able to render a final decision that -- that it can use Rule 65 and extend the TRO, which the Court is allowed to do for simply good cause being shown. So we'd ask the Court to do that and we would certainly be amendable to any type of -- of restraining order that is -- that is limited to the amount of our undertaking.

THE COURT:. All right.

RECORD 000300

MR. LAZENBY: Thank you.

THE COURT: All right. Anything further?

MR. HERSHON: I just wanted to clarify a couple of items. I guess in terms of named parties here -- and this is something I meant to start out with -- is so Crailar, Inc., is the -- is a United States company. It's a -- it's the American subsidiary of the Crailar Technologies, Inc. So -- you know, so there -- so we are dealing here with an American company operating in the U.S. Obviously, it's owned by a -- a foreign company.

I do want to stress to the Court first that, again, back to that -- that condition precedent that -- that there is -- you know, there is clear language there that there should have been some other things that were required to be done between two sophisticated business entities prior to seeking legal -- arbitration, legal or equitable remedy.

In terms of the burden that's here on the plaintiff, all -- and it's important to note -- also, I just want to note for the Court and I'm sure the Court is aware that these three steps, irreparable harm, likely success on the merits, and no adequate remedy at law, that it's all three of those are required. Each of those independently has to be required. So if any one of those fails, the -- the -- this fails.

And I think, you know, while there is already a temporary restraining order in case, I do want to caution the Court

where some of that appears to have been on some level of conjecture, you know. Yes, this facility is closed, but they're hearing -- you know, hearing things on the grapevine, things of that nature. There's a lot of unverified information. I think that's -- I understand the fears of this company, but again I just want to stress to the Court that -- that to base -- base an injunctive relief on that sort of -- that sort of information is I believe again beyond -- beyond some of the powers of the Court here. But again, I respect the Court's decision and I can answer any further questions it may have.

THE COURT: I'll take a look at it. I'll let you know something this week.

MR. HERSHON: Okay.

MR. LAZENBY: Thank you, Your Honor.

MR. HERSHON: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon, the proceedings end at 11:42 a.m.)

--- END REQUESTED TRANSCRIPT ---

STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF FLORENCE)

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 31st day of October, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Krystal J. Smith

Court Reporter

Florence, South Carolina

December 31, 2013

Omega Construction, Inc. v. Crailar, Inc.

Case Number 2013-CP-21-2722

AIA® Document A141™ – 2004

Standard Form of Agreement Between Owner and Design-Builder

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

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

Naturally Advanced Technology
1728 North Old River Road
Pamplico, South Carolina 29583

and the Design-Builder:
(Name, legal status, address and other information)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

NAT Flax Fiber Facility
Pamplico, South Carolina

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

EXHIBIT 1

Init.
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(1179214390)

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C INSURANCE AND BONDS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents (which may also be referred to as the Design-Build Documents) consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontractors, purchase orders, and other agreements between the Design-Builder and third parties. The Design-Builder shall incorporate the obligations of this Design-Build Contract into its respective subcontracts, supply agreements, and purchase orders.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Design-Build Documents, other than a Modification, is inconsistent with this Agreement, this Agreement will govern.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

§ 1.4 The Design-Builder accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Design-Builder agrees to furnish the architectural, engineering, and construction services set forth herein and agrees to furnish efficient business administration and superintendence, and to use its best efforts to

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complete the Project in the best, most expeditious, and economical manner consistent with the interests of the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the latter of the date of the issuance of the building permit or the date the Owner provides reasonable documentation of project financing as required by Article A.2.2.8 of Exhibit A. If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

(Insert Owner's time requirements.)

N/A.

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.

(Paragraph deleted)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than days from the date of commencement, or as follows:

(Paragraph deleted)

Design-Builder achieving Substantial Completion within 100 days from commencement is contingent upon (1) The agreement of the local building authority to issue a Temporary Certificate of Occupancy allowing machine commissioning before the Permanent Fire Pump is active and (2) NAT electing to install a temporary fire pump until the Permanent Fire Pump; System is active (see Additional Pricing Item #6 in Addendum A (NAT Outline Scope of Work) for pricing). If either of these 2 conditions are not satisfied, Substantial Completion shall be achieved not later than 130 days from date of Commencement. The Design-Builder understands and acknowledges that time is of the essence in the execution of the work in accordance with the schedule as noted herein and that any delay in completion of the Work beyond the Substantial Completion date will materially affect the Owner by causing among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages.

Portion of Work	Substantial Completion Date

§ 3.4 Within ten (10) days of the award of the Contract, the Progress Schedule shall be prepared by Design-Builder utilizing the critical path method and submitted to Owner. The Progress Schedule shall be detailed to a degree which will permit proper coordination of all trades for the Work, including all design elements of the Work. The Design-Builder shall be required to update the status of the Work according to the Progress Schedule on a monthly basis or as reasonably requested by Owner. The Progress Schedule shall show the amount of Work constructed and comparing the Work in place to the progress required by the Progress Schedule. Failure to provide such updates to the Progress Schedule shall be a material breach of this Agreement. In addition, if, at any time, the progress of the Work is such that the Design-Builder will not be able to meet the Substantial Completion date in the Progress Schedule (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents), Design-Builder shall inform Owner of this potential delay as required by the Design-Build Documents. At that time, Design-Builder shall also present a recovery schedule and plan for such overtime work or other measures that may be required to recover the schedule. Failure to provide the Owner with notice in accordance with the Design-Build Documents of a potential delay to one or more of the completion dates and a plan of corrective action shall be deemed a waiver of the Design-Builder's right to claim any extension of time for delay caused by that activity.

§ 3.6 Should the Design-Builder fail to progress with the Work in accordance with the Progress Schedule (taking into account extensions of the Contract Time approved in accordance with the Design-Build Documents), it shall, without being entitled to any increase in the Contract Sum or other compensation or extension in the Contract Times, work

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overtime, increase his force, or take other such action as may be necessary or appropriate to recover the Schedule and complete the activity by the dates shown on the Progress Schedule.

§ 3.7 The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Design-Build Documents. In the event that Design-Builder does not achieve Substantial Completion of the Work as set forth in Article 3.3 of this Agreement, Design-Builder shall pay Owner liquidated damages in the amount of Five hundred dollars ($500.00) per day for each day after the date for substantial Completion that Design-Builder fails to properly complete the Work. If the Design-Builder is more than ten (10) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the tenth (10th) day that Design-Builder fails to properly complete the Work. If Design-Builder is more than thirty (30) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the thirtieth (30th) day that Design-Builder fails to properly complete the Work. Design-Builder acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[ ] Stipulated Sum in accordance with Section 4.2 below;

[ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

[X] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM (Intentionally omitted.)

§ 4.2.1 Intentionally omitted.

§ 4.2.2 Intentionally omitted.

§ 4.2.3 Intentionally omitted.

Description	Units	Price ($0.00)

§ 4.2.4 Intentionally omitted.

Allowance	Amount ($0.00)	Included Items

§ 4.2.5 Intentionally omitted.

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 Intentionally omitted.

§ 4.3.2
(Paragraphs deleted)
Intentionally omitted.

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

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§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

Five percent (5%) of the Cost of the Work.

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 No later than May 18, 2012, the Design-Builder shall propose a Guaranteed Maximum Price for the Work. If accepted by the Owner in writing, this proposal shall become Amendment 1 to this Agreement and shall establish the Guaranteed Maximum Price for the Work. The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The Guaranteed Maximum Price shall include the cost of all design, labor, equipment, supplies, materials, services and allowances required to complete the Project pursuant to the Design-Build Documents.
(Insert specific provisions if the Design-Builder is to participate in any savings.)

To the extent the Cost of the Work plus the Design-Builder's fee isles than the Guaranteed Maximum Price (minus any remaining contingencies and allowances), the Owner and Design-Builder shall share such savings with the Owner receiving eighty percent (80%) of such savings and the Design-Builder receiving twenty percent (20%) of such savings.

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price ($0.00)

§ 4.4.3.4 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount ($0.00)	Included Items

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:
(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Intentionally omitted.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Design-Builder shall submit monthly Applications for Payment.

§ 5.1.3 Provided that an Application for Payment is received not later than the 5th day of the following month, the Owner shall make payment to the Design-Builder not later than the 25th day of the month in which the billing is received by the Owner. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Owner receives the Application for Payment.

§ 5.1.4 If requested by Owner in writing, with each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM (Intentionally omitted)

§ 5.2.1 Intentionally omitted

§ 5.2.2
(Paragraphs deleted)
Intentionally omitted

§ 5.2.3 Intentionally omitted.
(Paragraphs deleted)

§ 5.2.4
(Paragraphs deleted)
Intentionally omitted

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Intentionally omitted.

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§ 5.3.2
(Paragraphs deleted)
Intentionally omitted.
(Paragraphs deleted)

§ 5.3.3 Intentionally omitted.

§ 5.3.4 Intentionally omitted.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. When the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, elect not to withhold additional retainage. In such event, there will be a total of five percent (5%) retainage held by the Owner at the time of Substantial Completion of the Work. Nevertheless, any reduction or release of retainage, or a portion thereof, shall not be a waiver of (i) any of the rights to retainage in connection with other payments to the Design-Builder or (ii) any other right or remedy that the Owner has under any Design-Build Documents, at law or in equity.

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§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1

(Paragraphs deleted)

Intentionally omitted

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one.)

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

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§ 7.4 The Owner's Designated Representative is:
(Insert name, address and other information.)

Tom Robinson
Naturally Advanced Technologies U.S., Inc.
6188 Old Ironworks Road
Greensboro, North Carolina 27455Telephone: (336) 549-7873

COPY TO:
Guy Prevost
Naturally Advanced Technologies U.S., Inc.
305-4420 Chatterton Way
Victoria, BC, Canada, V8X 5J2

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

J. Barry Hennings
Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

(Office) 336-368-5156 (Fax) 336-368-2277; (email) barryh@omegaconstruction.com

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

Insurance Requirements

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

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

percent (%)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

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§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Document	Title	Pages
Insurance Requirements		1 - 3

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title	Date

§ 8.1.4 The Design-Builder's Proposal, dated , consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Number	Date	Pages

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

N/A

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Insurance Requirements

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ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

Facility Description

Facility construction to consist of renovations and upfit of an existing 145,800 sf industrial building to manufacturing/warehousing space with associated mechanical and office spaces.

The existing building space will be divided into two bale storage areas of 9,900 sf and 11,900 sf (Please note that the 11,900 sf area will be reduced to ~3,300 sf per local building official requirements. This change was made too late to be included in this GMP. Once the revised pricing for this change is developed, the GMP will be amended). The remaining production floor area is to be used initially for a decortications line consisting of 3 pre-opener stages, 1 fine opener line, and 2 balers. An on-grade bale unloading area will be added to the north end of the building adjacent to the 9,900 sf bale storage area. 3 existing docks will be refurbished at bale storage (2) and at the maintenance area (1). The rear office area (~1,800 sf) will be refurbished with paint, new carpet and new acoustical ceilings. New ADA compliant bathrooms will be installed and two existing bathrooms will be refurbished with new fixtures

Mechanical systems to be provided will include a refurbished compressed air system with new compressors, refurbishment of an existing air washer (#4), re-work of the existing building fire sprinkler system (through separate contract with facility owner) and re-work of the existing site water system (also through a separate contract with the facility owner). New heating and ventilation systems are included for refurbished office space. Modifications to the existing building plumbing system are included to accommodate revised restroom layouts and abatement activities.

The electrical systems include new 4160 V to 480 V electrical service to the building, new lighting in the production / warehousing areas, renovation of electrical systems in refurbished office / support areas, power wiring for new mechanical equipment, and convenience receptacles in production / warehousing areas. Low voltage systems provided include fire alarm system, and stub-ups for Owner's communications system in office areas.

Site improvements include clearing and grading for new pads and plant roads, a patch for the cut out area in existing plant asphalt roads, modifications to existing storm drainage system, re-commissioning/ modifications to the existing sanitary sewer system, re-commissioning /modifications to the existing site water system and removal/installation of site fencing.

SCOPE OF SUPPLY – SITE & BUILDING

Labor, materials, equipment and supervision is included for the following scope of work:

1000 – General Conditions

The following items are included:

1. Building permits/ fees / local licenses

2. Builder's risk insurance and Contractor's General liability insurance
3. Field office facilities
4. Field supervision
5. Temporary storage facilities
6. Temporary toilets
7. Temporary power and lighting inside building and job trailers.
8. Temporary telephone.
9. Equipment and tool rental
10. Fuel for project
11. Project Management
12. Project Executive
13. Employee lodging and subsistence
14. Site and Building design services including civil, architectural, structural, plumbing, mechanical, and electrical design. Sealed drawings will be provided in all the above disciplines. Structural steel, mechanical and electrical design will be via design-build subcontractor packages.
15. Drawing reproduction
16. Office shipping and postage costs

2000 – Sitework

1. Project Testing
2. Surveying and layout
3. As-built site drawings
4. Clearing and grubbing.
5. Erosion control measures, including, inlet protection at storm drain structures, swale sediment tubes and temporary seeding.
6. Earthwork including stripping and stockpiling topsoil, onsite cut/fill.
7. Storm drain system for area drainage at new plant roads and docks:
    - Installation of 1 new yard inlet structures
    - Installation of ~50 lf of 18" RCP storm drain pipe
8. Sanitary Sewer system:
    - Sanitary sewer tie-in for new restrooms.
    - Replace existing sanitary sewer manhole at northeast corner of existing building with pumping station, cap connection to gravity sewer serving other building on site.
    - Installation of ~500 lf of 2" force main sewer piping from pumping station to new septic system.
    - Installation of new septic system (~780 lf of tail lines) located northwest of existing building.
9. Site domestic / process water system:
    - Re-commission existing well pump systems (via contract with property owner)
10. Site fire water system:
    - Re-commissioning of existing fire pump system. (via contract with

property owner)

11. Asphalt paving and gravel drives for site roads and parking areas:
    - Installation of ~700 sy of new heavy duty paving at shive loading area. Heavy duty paving to consist of 8" of base coarse, 2" of binder course, and 1.5" of type C surface course.
    - Installation of ~2,700 SY of 10" gravel drive at the north side of the existing building for bale unloading.
    - Installation of ~2,800 SY of 6" gravel drive around the west side of the existing building for fire road access.
12. Concrete paving:
    - Installation of concrete truck apron at on-grade bale unloading area. Pad dimensions are approximately 70' x 85' of 8" wire mesh reinforced concrete.
    - Installation of concrete truck apron at shive loading area. Pad dimensions are approximately 85' x 25' of 8" wire mesh reinforced concrete.
13. ~525 lf of new barbed wire fencing and new electric gate.
14. Demolition of ~250 lf of existing fencing.
15. $10,000 allowance for site cleanup and landscaping.
16. $5,000 allowance for permanent seeding of disturbed areas.
17. $3,600 allowance for pest control treatment for existing building

3000 – Concrete Work

1. Allowance for the installation of spread-type column footings for the shive loading canopy. (Note: this allowance will be revised once the final design is determined for this canopy).
2. Installation of concrete pads for 2 compressor pads.
3. Installation of concrete pad for the new transformer.
4. Patching of ~500 sf of floor slab for the new office area for the new bathroom areas.
5. Installation of 1 new 5'x5' concrete pad at the new door on the south end of the building.
6. Patching for ~360 floor openings in the existing floor slab.
7. Addition of concrete stairs and ADA compliant ramp in the rear of the existing building to the existing exterior door.

4000 – Masonry

1. Repair allowance of ~$5,000 to patch damage to existing masonry walls.
2. All masonry accessories required for wall construction including sand, mortar, reinforcing, and CMU block.
3. Provide new CMU wall at existing nurses station/restroom to expand the restroom area to be compliant with ADA requirements.
4. Provide new masonry walls to expand existing "Engineer's Room" for conversion of the space to a control cabinet room.

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

5. Demolish CMU and Brick Veneer in areas needed for new openings (12 places)
6. Install new steel lintels at new masonry openings where necessary (6 places).
7. Provide temporary shoring to support masonry walls while new openings are being installed.
8. Patch openings left after shoring is removed.
9. Pressure wash brick on the building exterior.

5000 – Structural Steel

1. Provide structural steel and roof framing for Air washer air intake / exhaust penthouse with additional bump out to direct exhaust vertical.
2. Provide new dividing wall below penthouse to separate the intake/exhaust air plenum.
3. Provide new structural columns along North wall needed in order to cut holes in the north wall.
4. Erection of steel package.
5. An allowance has been included for the structural steel and erection of the shive handling canopies. (Note: this allowance will be revised once the final design is determined for the shive loading canopy)
6. Provide and erect new stell lintels for the new masonry wall openings
7. Provide welding and structural steel for metal support plates for the concrete slab hole patching

5040 – Miscellaneous Metals

1. Replace existing roof ladder on existing building with code compliant ladder.
2. Guardrail at refurbished rear offices area (60 lf)
3. Provide and install handrails at new entrance ramp and stairs.
4. (44) ea. pipe bollards
5. Provide 2 Frames for roof mounted HVAC equipment.
6. Provide angle embeds for the conveyor transfer pits.
7. Bent plate jambs / lintels for new overhead door openings in masonry walls.
8. Erection of miscellaneous steel package.
9. Anchor bolts for canopy footers.

6000 – Carpentry

1. Roof nailers for roof tie in at new penthouse.
2. Provide misc wood for blocking and concrete patching.

7000 – Thermal and Moisture Protection

1. $2,000 repair allowance for existing building roof.
2. ~ 42 sqs of Exterior 2" thick x 42" wide insulated foam metal panels for new partition walls and penthouse enclosure. Exterior facing to be 26 gauge G90 galvanized steel with a planked profile and a Kynar finish. Interior facing to be 26

gauge G90 galvanized steel with a planked profile and a Polyester finish. The texture will be stucco embossed and the color will be the manufacturers standard white.

3. ~5 sqs of interior liner R-Panel roll formed from 26 gauge galvalume steel with a Polyester finish, smooth texture for penthouse bump out liner paneling.
4. Installation one layer of 2" polyisocyanurate rigid roof insulation mechanically fastened.
5. Installation of a mechanically fastened white 45 mil TPO roofing system by Firestone with 15 yr "NDL" material and labor warranty by Firestone.
6. Install prefinished (standard color) 24 gauge gravel stop, gutter and downspouts.
7. Install tapered polyisocyanurate crickets around new penthouse and one layer of ½" high density wood fiber rigid insulation over new crickets – set in a solid mopping of hot asphalt. Install 3 plies of type IV felt over new crickets set in a solid mopping of hot asphalt. Install new SBS flashing at tie-in to new penthouse.
8. Install new flashing as relocated roof drains.
9. Install new flashing as new roof top HVAC units.
10. Caulking and sealants as required.
11. Floor joint caulking using polyurea materials for new exterior floor slabs.
12. Provide allowance for new shive loading canopies roof membrane, gutters, and downspouts to include 2" polyisocyanurate rigid roof insulation mechanically attached with a mechanically fastened white 45 mil TPO roofing system by Firestone with prefinished (std color) 24 gauge counter flashings, gravel stop, gutter and downspouts.
13. Provide sheetmetal cover for exterior access doors to replace damaged door louvers.
14. Provide 3'-11" wide dock canopy over bale unloading doors.

8000 – Doors and Windows

1. Hollow metal door frames, doors, and hardware for all new interior and exterior personnel doors.
2. Refurbishment of existing hollow metal doors, frame and hardware for existing interior and exterior personnel doors in reworked areas.
3. Refurbish 10 existing mechanical/electrical room doors to include wire brushing and new paint.
4. New aluminum storefront doors for rear office areas,
5. Overhead doors, dock seals, on-grade access openings, partition wall openings as follows (also see dock door markup drawing "NAT OH Door Markup - Pamplico 5-2-12.pdf":

Location	Qty	Size	Description
Receiving Docks	2	8' x 10'	Manual Operator, insulated vertical lift sectional, new dock seals
Dry Area Bale Unloading	2	10' x 10'	Electric Operator, insulated vertical lift sectional

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

Dry Area Bale Unloading	1	12' x 12'	Electric Operator, insulated High lift sectional
Shive Loading	2	8' x 10'	Refurbish existing rolling steel door
Bale Unloading Storage access to Bale Storage	1	12' x 12'	Electric Operator - Rolling Steel door with 3 hr fire rating and fusible link
Bale Unloading Storage access to Bale Storage to Dry Area	2	10 x 10	Electric Operator - Rolling Steel door with 3 hr fire rating and fusible link.
Bale Storage access to Dry Area	1	12' x 12'	Electric Operator - Rolling Steel door with 1 hr fire rating and fusible link
Bale Storage access to Dry Area	1	10 x 10	Electric Operator - Rolling Steel door with fire rating and fusible link.
Maintenance Shop Exterior	1	8 x 10	Refurbish existing rolling steel door, new dock seals.

9000 – Finishes

1. The office finishes refurbishment package includes replacing acoustical ceilings, replacing floor coverings (carpet, asbestos tile), re-painting walls, and cleaning for 1,800 sf rear office area and 500 sf of office area near shive loading.
2. New tile floors and walls in new ADA bathrooms.
3. Allowance for gypsum wall board for new storage area. (Note: This area to be resized per local building officials. Pricing will be adjusted to this new size).
4. Painting per markup drawing "NAT Painting Markup - Pamplico 4-30-12.pdf" to generally include as follows:
    i. Painting of all exposed roof deck, roof steel, columns, existing CMU walls, joists, beams, conduits in existing building for Bale Storage and Production Area.
    ii. Painting of exposed steel and existing CMU walls in Maintenance Room, and Electrical Room.
    iii. Painting of all exposed new misc steel in plant areas.
    iv. Painting of existing wood paneling, CMU, trim, and wood base in rear office area.
    v. Painting of all hollow metal doors and frames that in production, rear offices, maintenance area, and air washer #4.
    vi. Paint existing and new railings, new roof ladder.
    vii. Paint Pipe Bollards..
    viii. Paint New opening lintels.
    ix. Repaint exterior metal doors.

10000 - Specialties

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

1. Signage allowance of $6,000.
2. Fire protection cabinets (2 ea.) and fire extinguishers (50 ea.) for Office and plant areas.
3. Re-use of partitions in existing restrooms being refurbished.
4. Replace toilet accessories in all restrooms being refurbished.

11000 - Equipment

1. Refurbishment of existing loading dock levelers,
2. Two (2) new manual truck restraints.
3. New dock bumpers for existing 5 docks
4. Three new dock seals for shipping docks and maintenance area.

15010 – Plumbing

1. Provide new plumbing fixtures for existing refurbished bathrooms. An allowance has been made in case the new fixture bolt patterns do not line up with the existing bolts.
2. Provide two new ADA compliant bathrooms for the rear offices.
3. Provide a new hot water heater to serve the refurbished bathrooms.
4. Reroute existing Roof Drain line in Air Washer #6 beyond new penthouse perimeter.
5. Re-insulate existing water lines after abatement.
6. Re-insulate existing roof drains after abatement.
7. Installation of new eyewash/shower station in production area near rear offices.
8. Chlorination of existing system.
9. Installation of new roof drain in penthouse bump out.

15020 – HVAC

Reference attached Bahnson proposal "NAT – Flax Processing Project Budget Phase I" dated 5/17/12 for description of mechanical scope of work for the following:

Phase 1 Scope:

1. Compressed air system (two compressors – fixed drive 25 HP each). New compressors to be tied into existing receiver tanks in mechanical room.
2. Production Machine exhaust & filtration requirements (for 1 decortication line, 2 stage design expandable to 3 stage)
3. Air washer humidity control system (refurbish 1 existing air washer, with air distribution ductwork). Provision to be made for 2nd air washer to be brought online in the future.
4. Seismic restraints for piping, ductwork and mechanical equipment

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
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5. Patching of existing wall openings on the East and West walls left after the demolition of the existing ductwork.
6. Bahnson general services for Phase 1 Scope

Office/Control Room HVAC package:

Reference attached Bahnson proposal "NAT – Office and Control Room AC Systems"

1. Furnish and Install new air conditioning equipment, ductwork, and related components.

15030 – Fire Protection – (to be handled under separate contract with the property owner)

1. Renovate the existing building fire sprinkler system in the production area to relocate the existing sprinkler heads from the pendent position to an upright position after the existing suspended ceiling is removed.
2. Demolish and replace existing sprinkler system in new bale storage areas.
3. Provide a new fire sprinkler system freeze protection for the shive loading canopy.
4. Replace the existing fire pump and backup with new equipment and controls
5. Seismic restraints for new fire protection piping.
6. (Included in the GMP) Add Argus fire suppression and detection to the two filter houses.
7. (Included in the GMP) Add Argus fire suppression system to the dust filters.
8. (Included in the GMP) Add Argus fire suppression system to each HiVac system.
9. (Included in the GMP) Add Argus spark detection to the three bale openers.
10. (Included in the GMP) Install two reconditioned Argus Xtra Control Panels.
11. The equipment fire suppression system includes reconditioned components. See alternates at the end of this document for an adder for new components.

16010 – Electrical

1. Reference attached Adams Electric Proposal received on 5/18/12 for description of electrical scope of work included.

18000 – Cleanup and Dumpsters

1. Weekly project clean-up and waste disposal.
2. Final building clean-up prior to turnover
3. Dumpster rental, haul charges, and tipping fees for all waste generated by Omega Construction scope of work.

19000 – Building Demolition

1. Demolish existing building wall panels, masonry walls, and steel structure as

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

necessary to construct new wall openings.
2. Demolish sections of the interior floor slab of the existing building to new plumbing.
3. Core drill the existing building slab in 38 places for pipe bollard installation.
4. Demolish existing roof to allow construction of the new air washer intake penthouse..
5. Demolish carpet, ceiling, and CMU wall at women's bathroom for refurbished rear office area.
6. Perform selective demolition, asbestos abatement, and lead paint stabilization as specified in the Selective Demolition Scope of Work document dated 2-28-12, its associated markup drawings, the 3-5-12 NAT Abatement and Demolition Work Scope Addendum #1, and the 3-5-12 NAT Abatement and Demolition - Bid Form
7. Demolish welding room and tool storage room in Maintenance Area. Demolish air handling unit the welding room and its associated ductwork with the maintenance room.
8. Demolish two CMU wall between Air Washer # 4 and Air Washer #6 to install next insulated wall panel barriers with framed openings.
9. Demolish large duct over the old Engineer's office to prepare the area for the new control cabinets.

Additional Pricing Items :

1. Baler and Briquetter for waste and dust compaction – **Add $144,200.00**
2. 3rd stage air filtering for (2) process filters in Phase 1 scope – **Add 90,720.00**
3. Bale Storage Unit heaters for fire sprinkler system freeze protection. – **Add $12.453.00**
4. Spare "used" Vacuum Pump – **Add $20,685.00**
5. Use new components for equipment fire suppression system – **Add $24,307.00**
6. 1 month temporary fire pump with installation and removal – **Add $18,000.00**
7. Change manual truck restraints to fully hydraulic – **Add $3,475.00**

Clarifications and Exclusions

ADDENDUM A
OUTLINE SCOPE OF SUPPLY
NAT Facility – Pamplico, SC
By: Omega Construction Company
May 22, 2012

The following items are exclusions and clarifications that apply to the base scope of work:

General Clarifications and Exclusions:

1. Fire Protection design is preliminary and must be reviewed and approved by NAT's insurance underwriter. Significant revisions to the design assumptions required by NAT, the property Owner or their insurers or officials having jurisdiction may affect pricing.
2. No excavation or replacement of rock or unsuitable soils is included.
3. We have not included any allowance for potential dewatering.
4. Omega Construction standard safety program is included in general conditions cost.
5. No smoke vents or draft curtains are included in this scope.
6. Furnishings, cubicles, vending equipment, and window treatments are assumed to be provided by Owner
7. No Vapor Barrier is provided on the existing production area roof in the base estimate
8. Well water is assumed to not need water treatment before use in the process equipment.
9. Asphalt paving is based on the April 1, 2012 asphalt Index price of $636.67/ton. Asphalt paving will be priced at time of placement. Any deviation up or down from this index price will result in adjustment to the asphalt paving pricing.
10. Site storm drainage system is assumed to be adequate for the additional storm drainage off the new building and new pavement.
11. This pricing is contingent on acceptance of the project design by NAT, the Property Owner, NAT's insurer and any authority having jurisdiction. Any material change required by these parties could affect this work scope and the GMP.
12. See Clarifications and Exclusions listed in the attached Bahnson proposal "NAT – Flax Processing Project Budget Phase I" dated 5-17-12.
13. See Clarifications and Exclusions listed in the attached Bahnson proposal "NAT – Office & Control Room AC Systems" dated 5-17-12.
14. See Clarifications and Exclusions listed in the attached Adams proposal dated 5-18-12.
15. Backflow preventers are not included in this GMP proposal.
16. Except as listed above, all fire protection system costs have been excluded from this GMP. It is assumed that these costs will be paid by the Property Owner "Colony Square Investment Company".
17. Except as listed above, all site water system costs have been excluded from this GMP. It is assumed that these costs will be paid by the Property Owner "Colony Square Investment Company".
18. Proof of project financing must be provided before contracts associated with this GMP can be issued.
19. Any item not specifically listed in this Outline Scope of Supply is excluded.

Addendum B
NAT Guarenteed Maximum Price (GMP)
Date: 5-18-12 revision

Division	Description	GMP 5/18/2012	Division Total
1000 - General Conditions			
	Permits	$ 22,070	
	Insurance	$ 27,360	
	Supervision	$ 65,000	
	Project Management	$ 81,000	
	Safety Requirements	$ 4,368	
	Tools and Equip	$ 27,874	
	Temp Services	$ 22,606	
			$ 251,078
1000 - Design			
	Civil Design	$ 12,200	
	Architectural/Strucutral Design	$ 80,300	
	LEED Management	exc	
	LEED Comissioning	exc	
			$ 92,500
2000 - Sitework			
	Site Investigation and Layout	Inc	
	Site Demo and Clearing	Inc	
	Erosion Control	Inc	
	Grading	$ 156,990	
	Storm Drainage	Inc	
	Site Water System - Domestic	$ 1,045	
	Site Water System - Fire Loop	exc	
	Site Sewer System	exc	
	Asphalt Paving and Gravel Roads	Inc	
	Concrete Paving	$ 49,804	
	Temporary Roads	n/a	
	Landscaping Allowance	$ 10,000	
	Seeding Allowance	$ 6,000	
	Fencing	$ 26,211	
	Termite Treatment	$ 3,600	
			$ 252,650
3000 - Concrete Work			
	Foundations	$ 20,854	
	Door and Equipment Pads	Inc	
	Floor and Mezzanine Slab	exc	
	Sidewalks	exc	
	Reinforcing	Inc	
	Slab Hole Patching	$ 73,956	
	Formed Stairs, Equip pads	$ 22,814	
	Testing Allowance	$ 5,000	
	Pipe Bollards	$ 22,704	
			$ 145,328
4000 - Masonry			
	Masonry Cleaning - Exterior	$ 10,000	
	Shoring	$ 20,000	
	Masonry Walls	$ 49,046	
			$ 79,046
5000 - Metals			
	Waste Handling Canopies Allowance	$ 66,600	
	Penthouse Material and Erection	$ 65,300	
	Misc Steel and Erection	$ 44,820	
	Framed Openings	$ 56,647	
			$ 233,367

RECORD 000324

Addendum B
NAT Guarenteed Maximum Price (GMP)
Date: 6-18-12 revision

Division	Description	GMP 6/18/2012	Division Total
6000 - Carpentry			
	Roof Nailers and Misc Wood	$ 2,180	$ 2,180
7000 - Thermal and Moisture Protection			
	Roofing - Existing	$ 7,000	
	Roofing - Penthouse	$ 29,000	
	Dock Canopy	$ 25,000	
	Wall Siding and Insulation	$ 63,800	
	Caulking and Sealants	$ 2,000	
	Floor Joint Caulking	$ 2,500	$ 129,300
8000 - Doors and Windows			
	Hollow Metal Doors Allowance	$ 32,700	
	Overhead Doors	$ 33,799	
	High Speed Doors	n/a	$ 66,499
9000 - Finishes			
	Painting	$ 112,195	
	Storage Wall Allowance	$ 54,320	
	Office Finishes	$ 45,128	$ 211,643
10000 - Specialties			
	Toilet Partitions and Accessories	$ 1,970	
	Office Entryway Canopy Allowance	n/a	
	Signage Allowance	$ 6,000	$ 7,970
11000 - Equipment			
	Dock Equipment	$ 26,085	$ 26,085
15010 - Plumbing			
	Plumbing - Domestic	$ 48,360	$ 48,360
15020 - Mechanical Systems			
	Mechanical Package	$ 1,816,216	
	Remove and Patch for Roof top vents	$ 13,930	
	Patching Duct Openings	$ 29,580	
	Office Area/Control Room HVAC System	$ 84,700	
	Production/Filtering Equipment Fire Suppression Systems	$ 71,000	$ 2,016,426
15030 - Fire Protection			
	Fire Extinguishers	$ 2,500	
	Fire Protection - Building	exc	$ 2,500
16010 - Electrical			
	Revised Electrical Scope	$ 1,122,700	$ 1,122,700
16000 - Clean up			
	Clean up	$ 29,000	
	Dumpster Charges	$ 16,900	$ 45,900

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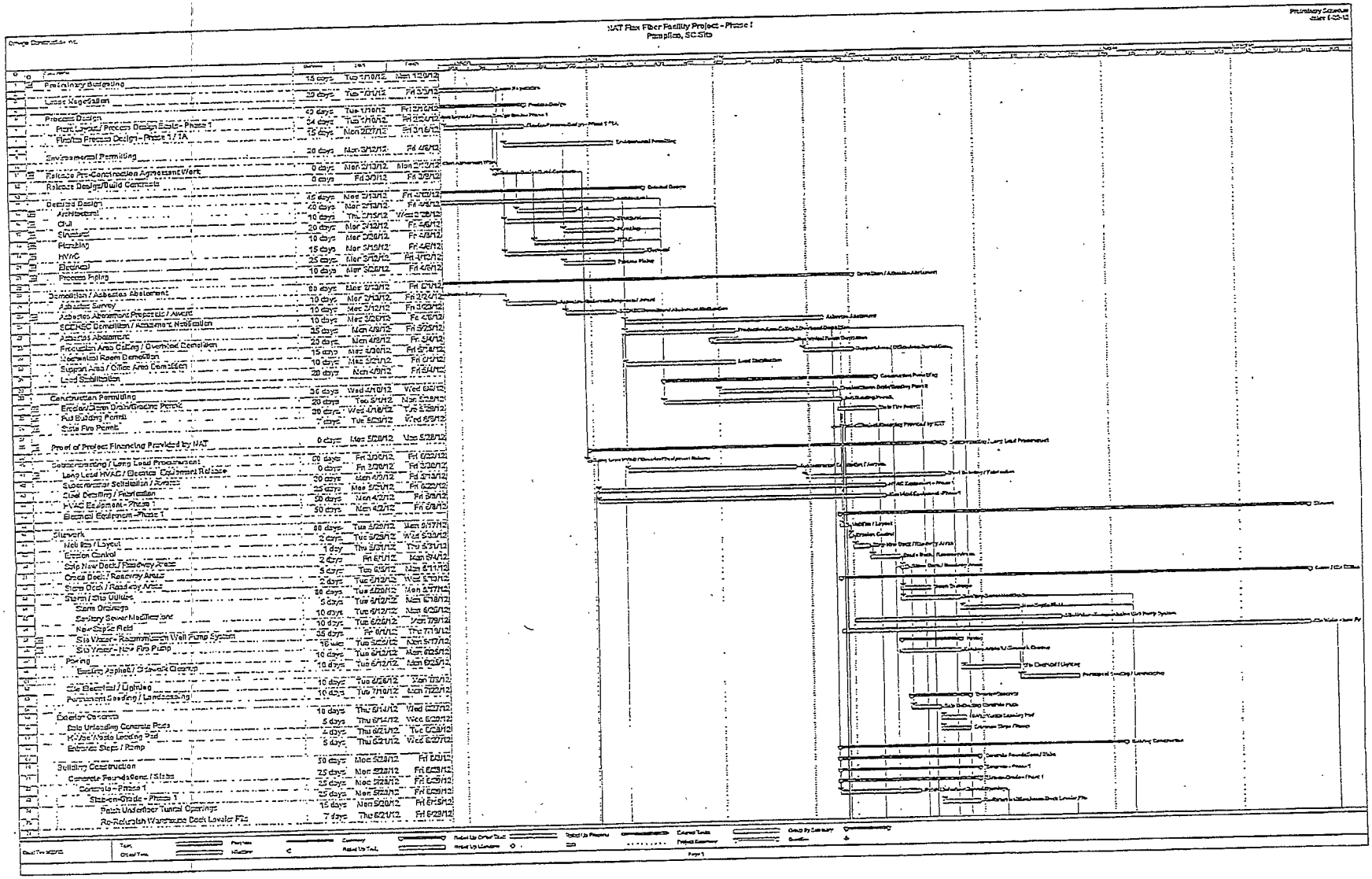
Addendum B
NAT Guarenteed Maximum Price (GMP)
Date: 6-18-12 revision

Division	Description	GMP 5/18/2012	Division Total
19000 - Demolition			
	Concrete Demo	$ 5,500	
	Masonry Demo	Inc	
	Metals Demo	Inc	
	Production Area\Office Area Demo	$ 86,259	
	Abestos Abatement Design/Air Monitoring	$ 19,100	
	Asbestos\Hazardous Materials Abatement	$ 131,674	
			$ 242,533
Subtotal		$ 4,976,055	
General Constructors Fee			
	Major Subcontractors - Fee 5%	$ 156,906	
	All Other Construction Costs - Fee 5%	$ 91,846	
GMP - Omega Construction Contract		$ 5,223,808	
	JSC Billing	$ 127,167	
Grand Total		$ 5,350,975	
Additional Alternate Pricing Items			
	Alternate for 3rd Stage Air Filtering	$ 90,720	
	Alternate for Bale Storage Unit Heaters	$ 12,453	
	Alternate for "used" spare Vacuum Pump	$ 20,685	
	Alternate for new components in fire suppression system	$ 24,307	
	1 month temp fire pump	$ 18,000	
	Change to fully hydraulic truck restraint	$ 3,475	
Items to be Priced to the Property Owner			
	Replacement of Vertical Shaft Electric Fire Pump, motor, and controller	TBD	
	Replacement of Vertical Shaft Diesel Fire Pump, motor, and controller	TBD	
	Misc Additonal Fire Pump System Refurbishment	TBD	
	Site Fire Loop Checkout	TBD	
	Upgraded Fire Protection System	TBD	
	New Well Pump and Storage Tank Refurbish	TBD	
Placeholders for NAT Issued Contracts			
	Rigging and Millwright Package	$ 100,000	
	Provide conveyor equipment	TBD	
			$ 269,640
Grand Total with Add'l Pricing Items		$ 5,620,615	

RECORD 000326



RECORD 000327

RECORD 000328

AIA® Document A141™ – 2004 Exhibit A

Terms and Conditions

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

NAT Flax Fiber Facility
Pamplico, South Carolina

THE OWNER:
(Name, legal status and address)

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

THE DESIGN-BUILDER:
(Name, legal status and address)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria shall be set forth in Amendment 1 and shall describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents or reasonably inferable therefrom, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

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

§ A.1.1.8 NEUTRAL

Intentionally omitted.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 Owner makes no representations regarding the compliance of the Project with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes and may request a Change Order in accordance with the terms of the Design-Build Documents. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

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§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build 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.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 So long as Owner complies with its pay obligations hereunder, drawings, specifications, and any and all other documents and instruments prepared by the Design-Builder, Design-Builder's Architect or consultant's hired by either of them, including those in electronic form, shall, upon receipt by the Owner, become and remain the property (including copyright and other intellectual property rights) of the Owner, and may be used by the Owner for any purpose relating to the Project, or any renovation, modification, or use of the Project. Except for use in connection with completing or correcting the Work, any use of such documents and instruments without the written agreement of the Design-Builder will be at the Owner's risk and without liability or legal exposure to the Design-Builder or Design Builder's Architect, and the owner shall indemnify and hold harmless the Design-Builder or Design-Builder's Architect from any and all claims, damages, losses, expenses arising out of or resulting from re-use or modification by the Owner. Upon termination of this Agreement for any reason, the Design-Builder shall furnish Owner with all design documents the Owner may request, including documents in electronic format, if requested by Owner.

§ A.1.6.2 Intentionally omitted.

§ A.1.6.3 Intentionally omitted.

§ A.1.6.4 Intentionally omitted.

§ A.1.6.5 Intentionally omitted.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such

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information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services necessary to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services, unless Owner has a reasonable objection to providing such information.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 If requested in writing by Design-Builder, the Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. Such independent review shall not affect the obligations of Owner or Design-Builder under the Design-Build Contract.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in connection with Design-Builder's responsibility to secure building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is specifically excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 With the exception of the asbestos survey and other environmental surveys, the services, information, surveys and reports provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense. The Owner, however, shall have no responsibility for the accuracy and completeness thereof, and the Design-Builder waives any claim against the Owner arising out of or relating to such items. Design-Builders shall rely on such information at its own risk, but Design-Builder shall provide prompt written notice to Owner of any errors, omissions or inconsistencies in such information.

§ A.2.2.7 If the Owner becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are reasonably necessary to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of

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soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW

§ A.2.3.1 The Owner shall review the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of such submittals, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2
(Paragraphs deleted)
Intentionally omitted.
(Paragraphs deleted)

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding anything else in Section A.2.3.2 or the Design-Build Documents, the Owner's review and/or approval of the Design-Builder's documents or submittals shall not impose any obligation on the Owner, nor relieve the Design-Builder of responsibility to ensure that such documents comply with the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, such site visits and any actions taken or not taken by Owner during such site visits shall in no way relieve, change or modify Design-Builder's responsibilities with respect to the quality or quantity of the Work, nor waive any rights or claims the Owner may have with respect to the Design-Builder. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the 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 Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

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§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten (10) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions in performing their respective portion of the Work.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall, before starting each portion of the Work, carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner, in writing, any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

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§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

.1 be consistent with the approved design documents;

.2 provide sufficient information for the use of those in the building trades; and

.3 include all documents required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically or as requested by Owner to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has completed its review and approval of each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's review and/or approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner 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 Owner shall not incur any responsibility and the Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's review and/or approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or

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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 professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 Unless otherwise directed by Owner in writing, the Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.3.9 The Design-Builder and each Designer and Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout, and nature of the Project site and the existing facility; (2) generally prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools, and equipment; and (5) other similar issues. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Design-Builder or any Subcontractor to comply with the requirements of this Section A.3.3.9. Subject to the conditions of Section A.4.1.4, Design-Builder shall be entitled to a Change Order, including adjustments to the Guaranteed Maximum Price and/or Contract Time arising out of concealed conditions that would not be evident from Design-Builder's customary investigation of the site.

§ A3.3.10 Design-Builder is responsible for notification and protection of all known or identified utilities in connection with the Work. In the event that utility services are interrupted during the course of Design-Builder's Work, Design-Builder will take whatever actions are appropriate to ensure that utility services are restored in the shortest possible time and will hold Owner harmless and indemnify Owner from any claims related to damages or interruption to such utility service.

§ A3.3.11 Design-Builder shall make the Work available to Owner for review, inspection or investigation at any time and shall provide Owner reasonable access to all parts of the Work upon request.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, 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. This provision does not include special fees or assessments including, but not limited to, transportation assessments, impact fees, federal and state right of way fees, mitigation assessments, utility assessments/charges, environmental impact fees, penalties and/or costs incurred that are outside the normal costs of performing the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the written consent of the Owner and, if appropriate, in accordance with a Change Order, but such consent

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shall not relieve Design-Builder of any responsibility under the Design-Build Contract, or impose any responsibility on the Owner with respect to such materials.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.4.4 The Design-Builder shall, as soon as practicable, furnish the Owner with copies or certificates of all permits, fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are legally enacted at the time the Design-Build documents are executed, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Work.

§ A.3.7.3 It is the Design-Builder's sole and exclusive responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear all costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

.1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

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§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information a critical path schedule for the Work as provided in the Design-Build Documents. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.9.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any invitees thereof. The Design-Builder shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section may be grounds for an extension of the Contract Time and an adjustment to the contract Sum for any resulting increase in costs and/or additional costs including costs of delay.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. All parties understand that the actual finished work product may vary slightly from the color, texture, etc. exhibited in samples due to printing variations, different lot numbers, field construction techniques, manufacturing process, weather conditions, etc. Design-Builder is responsible for constructing the Work in accordance with acceptable industry standards and subject to limitations inherent in the product.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents 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.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and

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field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder 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 Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may, after written notice do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required specifically in writing by the Owner or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, including, but not limited to, claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the willful, negligent acts, omissions or breach of contract of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.1.1 The Design-Builder's indemnity obligations shall also include, but are not be limited to, all claims and judgments which may be made against the Owner, its respective agents and employees, arising out of or resulting from the violation by Design-Builder or any Subcontractor of any applicable statute, law, rule, regulation, ordinance, or law.

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§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ A.3.17.3 So long as Owner is in compliance with its payment obligations hereunder, the Design-Builder shall also hold the Owner harmless from any costs and damages, including, but not limited to, attorneys' fees and litigation-related costs, incurred by the Owner as a result of the filing of any mechanics' liens, materialmen's liens, notice of claim of lien, or any litigation arising out of such liens. If any lien or notice of claim of lien of any type is filed on the Project or against funds owed by the Owner to the Design-Builder, the Owner shall be entitled to withhold 1 and 1/3 times the amount of the lien from any payments thereafter requested by Design-Builder until such lien is discharged, removed or bonded off, and, upon demand by the Owner, the Design-Builder shall file with the appropriate public registry, within seven days after receipt of notice of demand from the Owner, such funds or bonds as are required to cancel such liens or notice of claims of lien.

§ A.3.18 After executing a Scope of Work Addendum, the Design-Builder shall prepare and provide to Owner, the Design-Builder's Personnel Chart, which lists by name, job category, and responsibility, the Design-Builder's primary employees who will work on the Project. The Design-Builder shall promptly inform the Owner in writing of any proposed replacements, the reasons therefor, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Intentionally omitted.
Intentionally omitted.

§ A.4.1.3 Continuing Performance. Pending final resolution of any claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which were not discovered or could not have been discovered by the reasonable diligence of the Design-Builder, and which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give written notice to the other party promptly before conditions are disturbed and in no event later than seven (7) business days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall attempt to negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made in writing within 21 days after the Owner has given notice of the decision.

§ A.4.1.5 Claims for Additional Cost.

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§ A4.1.5.1 If the Design-Builder wishes to make any Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work for which additional compensation is being sought. Such notice shall include, to the extent then known by Design-builder, full details and substantiating data to permit evaluation by the Owner. If further or other information subsequently becomes known to the Contractor, it shall be immediately furnished to the Owner in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising hereunder.

§ A4.1.5.2 Any claim for adjustment to the Contract Sum shall not include any overhead costs, home office costs, indirect costs or any costs or expenses.

§ A4.1.5.3 In the event that Design-Builder believes that it is entitled to an increase in the Contract Sum or some other compensation for extra Work, it shall inform the Owner in writing of the reason for the claim and the estimated amount of the claim within ten (10) days of the latter of either the commencement of the event giving rise to the claim or Design-Builder's first knowledge of the event. Such written notice shall include the date on which notice of the claim is provided to Owner. Unless Design-Builder complies with this paragraph, it shall not be entitled to any increase in the Contract Sum or other additional compensation for extra Work.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, such Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 In the event that Design-Builder believes that it has been delayed in the prosecution of the Work for reasons over which it has no reasonable control, then Design-Builder shall inform the Owner in writing of the reason for such delay and the estimated amount of such delay within ten (10) days after the commencement of the event giving rise to the delay. Such written notice shall include the date on which notice of the claim is provided to Owner. Unless Design-Builder complies with the requirements of this Article, it shall not be entitled to any claim for delay, extension of the Contract Time, or additional compensation for its claim. If Design-Builder makes any claim for delay, Design-Builder shall specifically set forth how and why the delay in question affected the critical path.

§ A.4.1.7.2 As a precondition to Design-Builder making a claim for a delay arising out of abnormal weather conditions, Design-Builder shall submit data from the National Oceanic Atmospheric Administration (NOAA) showing the number of days where precipitation or other inclement weather occurred during the period for which the claim is made along with daily weather logs which must be kept at the job site and which must indicate that adverse or abnormal weather or site conditions precluded Work. Design-Builder agrees that a comparison of: (1) the number of days of precipitation for the month or months in question during the Project; and (2) the average number of days where precipitation for the month or months in question during the previous five years is a proper comparison by which to determine Design-Builder's entitlement for extension of time for weather delays. Design-Builder acknowledges that it has taken weather conditions into account in agreeing to meet the Substantial Completion and Final Completion Dates under the Design-Build Documents, and that the Design-Builder shall only be allowed an extension of time in accordance with the Design-Build Documents based upon the comparison set forth in this Article. Notwithstanding anything else contained in this Article or the Design-Build Documents, Design-Builder shall not be entitled to an extension of time unless it can show that the abnormal weather or site conditions specifically affected the critical path, and it meets all of the requirements for such a claim under the Design-Build Documents.

§ A.4.1.7.3 A basis exists for an extension of the Contract Time if the Design-Builder is delayed in performing the Work, but only to the extent that delays are not reasonably foreseeable, avoidable, beyond the control and without fault or negligence of the Design-Builder, and its designers, subcontractors, sub-subcontractors, and suppliers at every tier, and to the extent that the delays directly impact the Design-Builder's ability to achieve completion of the Work in accordance with the time requirements established by the Design-Build Documents (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents). Assessment of the existence of the basis for a time extension shall be determined by an examination of whether the delay event affects the critical path of the Project. A basis exists for an extension of time only if (a) the aforesaid criteria are met, (b) the delays cannot be made up by reasonable efforts which otherwise do not increase the cost of the Work, and (c) said delays stem from the following causes:

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.1 Class 1 causes: an act or failure to act on the part of the Owner or Owner's separate contractors constituting a breach of Owner's obligations under the Design-Build Documents, undiscoverable and unanticipated environmental contamination, actions or inactions of the landlord, or an injunction against Owner;

.2 Class 2 causes: All causes of delay other than an act or failure to act on the part of the Owner or Owner's separate contractors, including but not limited to, adverse weather, acts of God, riots, civil commotions, acts of War, unavoidable casualties to Work in progress, epidemics, quarantine restrictions, organized labor disputes, freight embargoes, abnormal material shortages, actions or inaction of Owner's Landlord, or solvencies of subcontractors, sub-subcontractors or suppliers, or the solvency of the design consultants retained by the Contractor or other cause traditionally defined as a *force majeure*.

§ A4.1.7.4 If the basis exists for an extension of time under subparagraph A4.1.7.3, and the Design-Builder has timely submitted a written claim documenting the basis for such extension in accordance with the Design-Build Documents, Owner may either:

.1 Accept a reasonable and appropriate time extension to cover the actual delay to the critical path of the Work, and, in the case of a Class 1 cause, grant a corresponding adjustment in the Contract Sum in accordance with the Design-Build Documents;

.2 Accept a reasonable and appropriate time extension to cover the actual delay to the critical path of the Work, and in the case of a Class 2 cause, there will be no corresponding adjustment in the Contract Sum, and the sole recourse of Design-Builder will be an entitlement to a time extension regardless of actual sources or cause of delay;

.3 Submit a written Change Order to the Design-Builder to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, after a submission to Owner of a good faith estimate of the costs of such acceleration and adjusting the Contract Sum in accordance with the Design-Build Documents to compensate Design-Builder for such directed acceleration; however, direct costs used in determining such compensation shall be limited to properly substantiated and document premium or overtime labor costs. The Design-Builder shall not be entitled to receive any compensation for such acceleration of construction activities, unless the acceleration is performed pursuant to a written Change Order from the Owner ; or

.4 Employ a combination of the above remedies.

§ A4.1.7.5 Owner will not be obligated or liable to Design-Builder for, and Design-Builder hereby expressly waives claims against Owner on account of, damages, costs, expenses, or related impacts which Design-Builder, or its designers, subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause enumerated in A4.1.7.4.2; Design-Builder's sole and exclusive remedy and full compensation in such event shall be extension of Contract Time in accordance with the provisions of the Design-Build Documents. Design-Builder likewise waives claims for damages, costs or expenses incurred by it or its subcontractors, and suppliers, due to a delay resulting from a Class 1 cause except and solely to the extent of costs allowed under A4.1.7.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build 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 Design-Builder, the applicable unit prices shall be equitably adjusted.

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§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.1.12 Review of the Design-Builder's claims by the Owner shall not constitute waiver of the Owner's right to deny the claim on the grounds that the claim was not timely made or that Design-Builder waived its right to make such a claim, nor shall such a review (regardless of whether the issue of timeliness or waiver by the Design-Builder is made at the time of the claim) prevent Owner from asserting such defects in the Design-Builder's claim.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Intentionally omitted.

§ A.4.2.2 Intentionally omitted.

§ A.4.2.3 Intentionally omitted.

§ A.4.2.4 Intentionally omitted.

§ A.4.2.5 Intentionally omitted.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute. The Owner's decision or failure to reject any of the persons or entities referred to in this

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Section A.5.4 shall not cause the Owner to be responsible for the performance of the Work, and shall not affect the obligations of the Owner or the Design-Builder under the Design-Build Contract.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

.1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

.3 each subcontract shall specifically provide that in the event of termination, the Owner shall only be responsible to the Contractor, Designer or Subcontractor for those obligations of the Design-Builder that accrue subsequent to the Owner's exercise of any rights of conditional assignment as provided in the Design-Build Documents.

§ A.5.5.2 Intentionally omitted.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1. Owner shall indemnify Design-Builder to the extent that such additional costs are the result of the actions or omissions of Owner's Separate Contractors.

§ A.6.1.2 The term "separate contractor" shall mean any contractor or equipment supplier retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 Design-Builder shall coordinate its Work with the Work of the Owner's separate contractors, equipment suppliers, and installers to ensure timely and proper completion of the entire Project. Owner shall provide Design-Builder with contact information regarding such separate contractors, and in the event Design-Builder requires any other information from Owner regarding such separate contractors, Design-Builder shall give Owner written notice of the information needed. However, the Design-Builder shall not be responsible for the means, methods and quality of the Work of the Owner's separate contractor and the Design-Builder shall not be responsible for the Owner's separate contractors' compliance with the construction schedule.

§ A.6.1.4 Design-Builder acknowledges that Owner and its agents, separate contractors, and suppliers may require access to and use of the Work during the performance of the Work for various purposes. Design-Builder specifically acknowledges that it has accounted for this fact in agreeing to the dates of Substantial and Final Completion under this Design-Build Contract.

§ A.6.1.5 While on site, Owner's separate contractors shall comply with all applicable OSHA guidelines.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results, and, if possible, such notifications shall be made in time to

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take such corrective action as necessary to avoid delay in completion of the Work. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may, after written notice, clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

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

§ A.7.2.2 Intentionally omitted.

§ A.7.2.3 Notwithstanding anything contained in the Design-Build Documents, Design-Builder shall not make any change in the Work or deviate from the Design-Build Documents unless Design-Builder receives written approval for such change from the Owner in the form of an executed Change Order or Construction Change Directive. Every Change Order shall be preceded by a written change order proposal from the Design-Builder, which shall describe the physical nature of the proposed change and information (including supporting documentation) necessary to determine whether there is a change, and the proposed amount of the adjustment, if any, in the Contract Sum and/or Contract Time. The Owner shall promptly review and make decisions on proposed change orders so as to not delay the project schedule. If Design-Builder performs any change in the Work without following the requirements of this Section, then Design-Builder shall not be entitled to any additional compensation or time related to such Work.

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§ A.7.2.4 Agreement on any Change Order shall constitute a final settlement of all Design-Builders' potential claims relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

.1 additional costs of professional services;

.2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

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

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 See Article 4.1.7

§ A.8.3.2 Intentionally omitted.

§ A.8.3.3 Intentionally omitted.

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ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may reasonably require, such as copies of requisitions from Contractors and material suppliers, provided any request for such data will not delay timely payment, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Each Application for Payment shall include partial lien waivers from Design-Builder, Architect, and 30-day arrear lien waivers from Suppliers and Subcontractors whose contracts are in excess of $25,000 for any pay period. All such lien waivers shall be in the form required by Owner. Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay. Design-Builder shall also include an updated Schedule of Values and Construction Progress Schedule with each Application for Payment.

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

§ A.9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work except for retainage, if any, being held by the Owner.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within the ten (10) days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for

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Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss, or anticipated loss, resulting from acts and omissions, because of the following:

.1 defective Work not remedied;

.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;

.3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld, except that payment shall not be required to the extent of any amount withheld pursuant to A.9.5.1 in connection with any other Application for Payment.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to Architect, designers, Subcontractor, or material supplier.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

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

§ A.9.6.8 Upon request by Owner, prior to any progress payment or final payment, Contractor shall be required to provide all documents, including, but not limited to, waivers, lien waivers, releases, and bonds, which are necessary to clear title to the Project and to waive, cancel, discharge, and void all claims or liens by subcontractors or suppliers against the Project and/or the Owner.

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§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or n portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete. If possible, all items of Work identified pursuant to this Section shall be completed or corrected by the Design-Builder within thirty (30) days after the items are identified.

§ A.9.8.4 Intentionally omitted.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion, or the Design-Build Documents

(Paragraph deleted)

§ 9.8.6 The Design-Builder shall not be deemed to have achieved Substantial Completion under the Contract Documents unless (1) Design-Builder has completed the Work in accordance with the Design-Build Documents, (2) Design-Builder has completed the Work to such an extent that any equipment to be installed by Owner is able to be properly and completely installed, and (3) Approvals from all required authorities and a formal Certificate of Occupancy have been obtained.

§ A.9.8.7 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.8 Acknowledgement of Substantial Completion may be withdrawn by the Owner based on subsequently discovered information that would have otherwise permitted Owner to determine that the Work was not Substantially Complete if known at the time of the issuance of the Acknowledgement of Substantial Completion.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.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 Design-Builder, provided such occupancy or use is

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consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder 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 completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder 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 Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

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

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) submission of all manufacturers' warranties to be transferred to Owner, together with evidence of such transfer, all maintenance and operating manuals and any special guaranties or warranties required by the Contract Documents; (6) assignment of all guaranties and warranties from Contractors, Subcontractors, vendors, suppliers or manufacturers; (7) provision of all necessary certifications from Design-Builder or its Consultants; and (8) 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 Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder 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 Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4
(Paragraphs deleted)
Intentionally omitted.

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

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§ A.9.11 The Design-Builder agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ A.9.12 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (2) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.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 Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

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§ A.10.2.8 The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

§ A.10.2.9 Until final acceptance of the Work by Owner in accordance with the Design-Build Documents, the Design-Builder shall have full responsibility for, and shall take every precaution necessary to prevent injury or damage to any part of the Work and shall rebuild, repair, restore or make good, all injuries or damages to any portion of the Work prior to final acceptance by Owner.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder 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 Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Design-Build Contract, is not disclosed in the Design-Build Documents, was not discoverable by the reasonable diligence of the Design-Builder, and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

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ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Design-Build Contract or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor 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 which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder'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 Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 Owner, its directors, officers, employees, agents, subsidiaries, representatives and affiliates shall be named as additional insureds on the policies, except Workers' Compensation Statutory Coverage, set forth in Sections A.11.1.1.1, A11.1.1.2, A11.1.1.3, A11.1.1.4, and A11.1.1.6. If these policies do not contain a standard Insurance Services Office separation of insured provision, they shall be endorsed to provide cross-liability coverage. These policies shall have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.

§ A.11.2.3 Design-Builder hereby waives any and all rights of recovery, claim, action, or cause of action against the Owner and its, employees, officers, directors, subsidiaries, affiliates, agents or representatives for any damages, whether insured or not by any of the foregoing policies. For all of the foregoing policies set forth in this Section 11.2, the Design-Builder shall obtain a waiver of subrogation from their respective insurers and each policy must be endorsed to reflect the insurer's acceptance of this waiver of subrogation. In addition, this waiver of subrogation applies whether or not there is insurance, any deductibles, or any self-insured retentions.

§ A.11.2.4 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Minimum Insurance Requirements.

§ A.11.2.5 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build 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 A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 Intentionally omitted.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.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 Design-Builder 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.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build 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, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 Intentionally omitted.

§ A.11.4.5 Intentionally omitted.

§ A.11.4.6 Intentionally omitted.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and

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employees, each of the other, and any of their contractors, Subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, 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, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 Intentionally omitted.

§ A.11.4.9 Intentionally omitted.

§ A.11.4.10 Intentionally omitted.

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build 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 Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner or separate contractor, as the case may be, shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if at any time within one (1) year after Final Completion, Owner discovers Work not in accordance with the Design-Build Documents, it shall give Design-Builder written notice of such defective Work. Within seven (7) days of receiving such notice, Design-Builder shall commence repair of the Work and proceed with diligence to complete the repair at no cost to Owner. The rights described in this Article 12 shall be in addition to all of Owner's other rights under the Design-Build Documents or the law, and nothing herein shall limit Owner's rights in any way. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner

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waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

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

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2, except as provided in Section A.12.2.2.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project, or to a person or entity who purchases the Project. In such event, the lender or purchaser shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice or if sent by electronic mail to the other party's representative.

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§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build 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, except to the extent that the Design-Build contract expressly limits such duties, obligations, or rights.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. No waiver of a right or duty be either party on one or more occasions shall constitute a waiver of such rights or duties on other occasions.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

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

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

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

Intentionally omitted

§ A.13.6.1

(Paragraphs deleted)

Intentionally omitted.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

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.3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or

.4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

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

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and Design-Builder's fee for such Work through the date of termination and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery.

§ A.14.1.4 If all of the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.1.5 The Design-Builder shall not stop Work nor terminate the Contract due to refusal of the Owner to issue payment for any of the reasons listed in Article A9.5.1.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreement between the Design-Builder and the Architect and Contractors;

.3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is in breach of a material provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

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

.2 accept assignment of contracts pursuant to Section A.5.5.1; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit on costs actually incurred as a result of work suspensions, delay, or interruption. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed in accordance with the Contract Documents and costs incurred by reason of such termination, along with Design-Builder's fee thereon. Regardless of whether termination is with or without cause, Owner shall not be liable to Design-Builder for consequential damages, incidental damages, special damages or lost profits for such termination.

§ A.14.4.4 Upon a determination by a court of competent jurisdiction that termination pursuant to Section A14.2 was wrongful or otherwise improper, such termination shall be deemed a termination for convenience pursuant to Section A14.4 and the provisions of Section A14.4.3 shall apply.

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(1380014693)
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AIA® Document A141™ – 2004 Exhibit B

Determination of the Cost of the Work

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

NAT Flax Fiber Facility
Pamplico, South Carolina

THE OWNER:
(Name, legal status and address)

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

THE DESIGN-BUILDER:
(Name, legal status and address)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE B.1 CONTROL ESTIMATE

§ B.1.1 Intentionally omitted.

§ B.1.2
(Paragraphs deleted)
Intentionally omitted

§ B.1.3 Intentionally omitted

§ B.1.4 Intentionally omitted.

ARTICLE B.2 COSTS TO BE REIMBURSED

§ B.2.1 COST OF THE WORK

The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

§ B.2.2 LABOR COSTS

§ B.2.2.1 Wages of construction workers and an on-site field superintendant directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval, and for Design-Builder's Project Manager when engaged in the Work.

§ B.2.2.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

§ B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or

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others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, photographs, facsimile transmissions and long-distance telephone calls, data transmissions, postage and parcel delivery charges, telephone service and computer-related costs at the site and necessary and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the necessary and reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work, including, but not limited to, reasonable transportation, travel, hotel, and per diem expenses.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in writing in advance by the Owner.

§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents .

§ B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums required by the Design-Build Documents that can be directly attributed to this Design-Build Contract, including any additional premiums required as a result of approved change Orders increasing the Guaranteed Maximum Price .

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, .

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Intentionally omitted.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or breach of this Agreement.

§ B.2.7.8 Intentionally omitted.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in advance in writing by the Owner.

§ B.2.7.10 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

§ B.2.7.11 All water, power and fuel costs necessary for the Work.

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§ B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions, so long as such costs do not result from the negligence or breach of contract by Design-Builder or a subcontractor or designer employed by Design-Builder.

§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Article B.2;

.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in SectionB.2;

.3 Overhead and general expenses, except as may be expressly included in Article B.2;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.7 **Bonuses, incentive compensation, contributions (other than Workmen's Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, Federal Unemployment Insurance), gratuities and entertainment expense. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Article B.2;**

.9 **Expenses for travel, including Design-Builder-supplied vehicles used for personal use, incurred by Design-Builder's employees while traveling for purposes other than the direct execution of the Work;**

.10 **Fines other than those due to the acts or omissions of Owner or its agents;**

.11 **Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines and work stoppages or slowdowns, except where such costs are due to circumstances beyond the control of the Design-Builder;**

.12 **Consultants to the Design-Builder not approved, in writing, by Owner;**

.13 **Corporate accounting, check and accounting processing cost shall not be reimbursed; and**

.14 **Other costs, damages, or expenses specifically excluded elsewhere in the Design-Build Documents.**

(Paragraphs deleted)

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

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§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Design-Builder shall then determine, with the advice of the Owner, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 When a specific bidder (1) is recommended in writing to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ B.5.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Design-Builder 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 Design-Builder.

§ B5.4 All Subcontractors shall be pre-qualified by the Design-Builder. The Owner shall have the opportunity and right to disapprove of any proposed subcontractor. However, to the extent there is an increase in cost due to the Owner disapproving of a proposed subcontractor, the Design-Builder shall be due a Change Order as provided for under Section b.5.2 above.

§ B5.5 Design-Builder may self-perform any of the work. Owner, however, reserves the right to require the Design-Builder to seek competitive pricing for such portions of the Work from other qualified contractors.

§ B5.6 All Subcontractors shall conform and be subject to the requirements of the Design-Build Documents. Subcontracts awarded on the basis of the cost of such work plus a fee shall require Owner's prior written approval.

§ B5.7 Subcontractor agreements shall, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Design-Builder is terminated by the Owner.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be in accordance with generally accepted accounting procedures. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's final accounting of the Cost of the Work.

§ B.6.3 Upon the Owner's direction, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after delivery of the final accounting by the Design-Builder. Based upon the Cost of

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the Work as acknowledged by the Owner, or, if the Owner has directed its auditors to report thereon, based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions for payment under the Design-Build Documents have been met, the Owner will, within forty (40) days after receipt of the Design-Builder's final accounting, issue final payment or notify the Design-Builder in writing of its reasons for withholding final payment.

§ B.6.4 If the Owner disputes the Cost of the Work as set forth in the Design-Builder's final accounting, the Design-Builder shall be entitled to assert a Claim in accordance with Article A.4, as modified. The Owner shall, pending resolution of any such dispute, pay the Design-Builder all sums otherwise payable and not in dispute.

§ B.6.5 Intentionally omitted.

MINIMUM INSURANCE REQUIREMENTS

Design-Builder, from the time of commencement of Services until one year after completion of Services, shall provide and maintain in force with responsible companies with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger and licensed by the South Carolina Insurance Commissioner to transact the business of insurance in the State of South Carolina for the applicable line of insurance, and satisfactory to the Owner the following minimum insurance coverage.

1.0 Professional Liability Insurance

Errors and Omissions Professional Liability Insurance having minimum limits of $1,000,000 per claim and $2,000,000 in the aggregate to be provided by the Architect hired by the Design-Builder. Owner shall be named as an intended third-party beneficiary to Design-Builder's Contract with Architect.

2.0 Commercial General Liability Insurance

Occurrence form including premises and operations coverage, products and completed operations coverage, coverage for independent contractors, personal injury coverage and blanket contractual liability.

Limits of Liability

Bodily Injury/Property Damage Liability	$1,000,000
Personal Injury Liability	$1,000,000
General Aggregate Limit	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000

Coverage must include:

2.1 Policy to be endorsed to provide policy limits "per project".

2.2 Policy must name Owner as an additional insured as its interests may appear.

2.3 Policy must be endorsed to provide a 60-day notice of cancellation.

2.4 There shall be no endorsement or modification of coverage for liability due to "explosion", "collapse" or "underground property damage".

3.0 Worker's Compensation

Limits of Liability

Worker's Compensation	statutory
Employer's Liability	
Each accident	$500,000
Policy Limit – Disease	$500,000
Each Employee – Disease	$500,000

Coverage Must Include

3.1 Coverage for all states in which operations are conducted.

3.2 Policy must be endorsed to provide a 30-day notice of cancellation.

4.0 Business Automobile Liability

(Owned, non-owned, and hired vehicles on an occurrence basis)

Limits of Liability	
Combined Single Limit (BI & PD)	$1,000,000 per accident

Coverage must include:

4.1 Policy must be endorsed to provide a 60-day notice of cancellation or substantial change to Owner.

4.2 Policy must name Owner as an additional insured as its interests may appear.

5.0 Umbrella Insurance

Limits of Liability	
Annual aggregate	$10,000,000
Per Occurrence Limit	$10,000,000

Coverage must include:

5.1 Coverage must be "following form" coverage for all underlying coverages set forth above.

5.2 Policy must be endorsed to provide a 60-day notice of cancellation or substantial change to Owner.

5.2 Policy must name Owner as an additional insured as its interests may appear.

6.0 Waiver of Subrogation:

Design-Builder waives all right of recovery of damage against Owner, its agents and employees to the extent covered by insurance, and Design-Builder shall obtain from its insurers a waiver of subrogation against Owner and its agents and employees for all insurance coverage except Worker's Compensation and Professional Liability.

7.0 Consultants and Subcontractors

Unless otherwise approved by Owner, Design-Builder shall require all of its design consultants and/or subcontractors to provide the aforementioned coverage, except that the Umbrella Insurance limit may be reduced to $5,000,000. Any deficiency in the coverage or policy limits of the consultants and/or Subcontractor will be the sole responsibility of Design-Builder.

8.0 The insurance provisions set out above in no way affect the liability of Design-Builder as stated elsewhere in this Agreement.

9.0 Miscellaneous

9.1 The Commercial General Liability and Umbrella Excess Liability policies shall cover the contractual liability assumed by Design-Builder under the Design-Build Documents. The Commercial General and Umbrella Excess Liability policies shall include endorsements naming the Owner and their officers, members, agents and employees, as additional insureds. The policies of the Design-Builder shall be primary and non-contributing with any insurance carried by Owner.

9.2 The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Design-Builder and its representatives who may be engaged in performing any of the work, services or activities in connection with the Project.

10.0 Certificates of Insurance:

Before commencing performance of the Services, Design-Builder and its consultants and/or subcontractors must furnish certificate(s) of insurance evidencing:

10.1 Insurance coverage acceptable to Owner.

10.2 Effective expiration dates of policies.

10.3 Owner must be given sixty (60) days written notice of all cancellation, non-renewable, or material changes in policy.

10.4 A waiver of subrogation endorsement has been attached to all policies.

10.5 Any deductible and/or self-insured retention.

10.6 Any exclusions to the policy which are not part of the standard form.

10.7 Certificate of Insurance title block format is as follows:

Naturally Advanced Technologies US, Inc.
c/o Tom Robinson
305-4420 Chatterton Way
Victoria, BC, Canada V8X 5J2

RECORD 000371

Amendment #1
Naturally Advanced Technologies
Flax Fiber Processing Facility – Pamplico SC

Re: Guaranteed Maximum Price

Pursuant to Article 4.4.3.1 of the AIA A141-2004 Owner/Deign Builder Agreement, The Guaranteed Maximum Price (GMP) per the for the Work as described in the Agreement and detailed in Addendum A and Addendum B is: **$ 5,223,808.00**

Accepted by: G R Prevost.

Naturally Advanced Technologies

GUY PREVOST
Name

CFO
Title

June 15, 2012
Date

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

FOR

OWNER *(Signature)*

GUY PREVOST CFO

(Printed name and title)

DESIGN-BUILDER *(Signature)*

PAUL R. SAUCIER, JR. PRESIDENT

(Printed name and title)

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CONVERTIBLE DEBENTURE INDENTURE

Made as of February 25, 2013

Between

CRAILAR TECHNOLOGIES INC.

and

COMPUTERSHARE TRUST COMPANY OF CANADA

mcmillan

EXHIBIT 9

SCHEDULE A

SECURED ASSETS

The following equipment located at the Guarantor's facility in Pamplico, South Carolina, U.S.A. or to be acquired using part of the proceeds of the Offering and installed at the Guarantor's facility in Pamplico, South Carolina, U.S.A.:

Shive handling system, including:

Conveyor - Roach Model, Basic System (Handling Solutions)

Decortication system, including:

One Decortication Line for Flax Straw (LaRoche S.A.), including:

- -Two bale openers – 1.6m wide
- -Two conveyors with electronic metal detectors
- -Two fine openers type "EXEL 2000"
- -Two diverters
- -Two blowers VT 540
- -Two condensers type "FC 1400"
- -Two step cleaners – 2m wide
- -One blower VT 540
- -One condenser "FC 1400"
- -One Fine opener "EXEL 2000" with chute feed
- -One blower VT 540
- -One condenser "FC 1400"
- -One step cleaner – 2m wide
- -One fine opener "EXEL 2000"
- -One double flap diverter
- -One dust blower VT 540
- -One floor conveyor for collection of shives
- -Collection of shives under 3 "EXEL 2000" openers with conveyor, blower and cyclone
- -One electrical control panel

One Opening Line for Flax Fibres (LaRoche S.A.), including:

- -One bale opener – 1.6m wide
- -One conveyor with electronic metal detector
- -One fine opener type "EXEL 2000"
- -One blower VT 540
- -Two diverters
- -Extension of control panel

Additional Equipment for Decortication Line (LaRoche S.A.), including:

- -One Blower VT 540
- -One Condenser "FC 1400"
- -One fine opener "EXEL 2000" with chute feed

-One Blower VT 540
-One Condenser "FC 1400" to feed the bale press
-Extension of electrical control panel

Harvesting equipment, including:
6 - Shelborn Stripper Head (Stuckey Farm Supply)
2 - Kuhn Drum Mowers with Hydraulic Cylinders (Adam Coastal Farm
2 – Shelbourne 24' Stripper Head (Sparrow & Kennedy Tractor Company)

HVAC, Humidifier, Electrical systems and mechanical systems

CONVERTIBLE DEBENTURE INDENTURE

Made as of July 26, 2013

Between

CRAILAR TECHNOLOGIES INC.

and

COMPUTERSHARE TRUST COMPANY OF CANADA

mcmillan

RECORD 000377

SCHEDULE F – SECURED ASSETS

The following equipment located at Crailar US's facility in Pamplico, South Carolina, U.S.A., having an aggregate acquisition cost of no less than $5,000,000:

3,789,100 X 1.37 = $5,191,067.

Crailar Inc.

Erbatech Invoice Summary

Summary					
Inv#	Total invoice (€)		Rate	Total Invoice ($)	
121210-1-3	€	1,703,300	1.323	$	2,253,125
121210-4	€	1,104,800	1.322	$	1,460,546
121210-2	€	492,000	1.317	$	647,767
300113-2	€	139,000	1.345	$	186,927
300113-1	€	350,000	1.336	$	467,670
Subtotal	€	3,789,100		$	5,016,035
Shipping				$	283,877.84
Total				$	5,299,913.08

Proforma invoice#	Container Type	Qty	Description	Total invoice (€)		Rate	Total Invoice ($)	
121210-1-3	40' Flat Rack	1	Material carrier	€	1,703,300	1.3228	$	2,253,125
		1	Filling cylinder for hydraulic press					
		6	Lifting lids					
		6	Lifting plates					
	40' Flat Rack	1	Material carrier					
		1	Filling cylinder for hydraulic press					
		6	Lifting lids					

RECORD 000378

	6	Lifting plates
40' OT Container	1	Cake ejector
	1	Guide block
	1	Guide rail with 2 carriages
	1	Frame for chute
40' OT Container	1	Cake ejector
	1	Guide block
	1	Guide rail with 2 carriages
	1	Frame for chute
40' OT Container	1	Condenser
	1	Transverse traverse
	1	Condenser
	1	Transverse traverse
	4	Columns
	1	Frame (5.1)
40' OT Container	2	Control cabinets for press including:
		2 - emergency stop housing
		2 - control cabinet base
		2 - flashlight
		4 can bus cable
		various spare parts
	2	Consoles
	1	Control cabinet for centrifuge including:
		1 - emergency stop housing
		1 - acknowledge housing
		4 - pressure regulators
	1	Control cabinet for centrifuge
	2	Consoles
	1	Control cabinet for cake ejector including:
		1 - emergency stop housing
		various spare parts

RECORD 000379

1 Control cabinet for cake ejector including:
1 - emergency stop housing
2 Hydraulic unit for cake ejector
2 Hydraulic unit
2 Pallets with pipe connections
2 Pallet including:
4 - stop cylinder
2 - toothed belt No. 1
2 - toothed belt No. 2
4 - pre-assembled air pipes
4 - pneumatic hoses (8 x 1.25)
2 - shim for cylinder
2 - carton with various screws
2 - shim for printing plate
4 - m edge protection
36 - spring pins 6 x 30
2 - distributing unit
12 - hydraulic hoses, large
12 - hydraulic hoses, small
4 - cable channels
6 - hydraulic pipes
2 cartons including:

14 screws M 30x100 DIN 933
14 screws M 30x120 DIN 933
14 screws M 30x130 DIN 933
40 discs - 31 DN 933

2 cartons including:

40 screws 30x140 DIN 933
40 screws DIN 985
80 discs - 31 DIN 125
40 screws M 30x80 DIN 933

RECORD 000380

			40 discs - 31 DIN 125					
		2 cartons including:	8 guiding units for printing plate					
		2 cartons including:	various connectors					
		1 Pallet including:						
		120 - shear connector M 23						
		120 - threaded rod M 24x300						
		40 - shear connector M16						
		40 - threaded rod M 16x165						
	40' OT Container	1 Base Frame						
		1 Transport basket						
		1 Frame						
		1 Printing plate						
		1 Dome						
		2 Traverse						
		2 Inlet funnel						
		2 Grabber						
	40' OT Container	2 Frame with chute						
		2 Blower						
		3 Transport basket						
		2 Guide rail						
	40' OT Container	4 Columns						
		2 Transport basket						
		1 Printing plate						
		2 Cylinders						
		1 Dome						
121210-4	40' HC Container	2 Control cabinet		€	1,104,800	1.322	$	1,460,546
		72 Lifting plates						
		2 Turn table						

RECORD 000381

			Various cable Frames for control cabinets 1 wooden box containing: 6 - control boxes 13 - Obermaier labels, small 14 - PVG labels, blue small 4 - pressure springs 2 - effectors various nameplates various rivets for labels 10 - detectors 30 - Obermaier labels, big 30 - PVG labels, big 10 - converters, type 6111 4 - press buttons 2 - document boxes 22 - set earth cable 1 - workbench 1 - mobile tool case with content 1 - tool case with content 1 - assortment mounting accessories 2 - indicators 2 - assembly levers 10 - open-end wrench simple, different sizes various pneumatic parts 4 - effectors 01.D100 1 - bench vice 1 - bench vice fixing					
121210-2	40' HC Container	3 3 7	Drying chamber Fan Pipe pieces in galvanized steel for suction	€	492,000	1.3166	$	647,757

RECORD 000382

		1	Pack with plate for lateral panels in galvanized steel				
		8	Packs of cable passage				
		2	Packs of drying filters				
		6	Motors HP 15				
		12	Side covers				
		3	Base for gear motors				
		4	Motors HP 15				
		36	Rolls of chain p.100 r.40				
	40' HC Container	3	Drying chambers				
		2	Fan				
		1	Pack with front panels, side frames, box, front plates				
		2	Pipes in galvanized steel for suction				
		12	Side frame in/out				
		12	Cover plate externals				
	40' HC Container	2	Fine opener				
		2	Emptier group				
		1	Feeding belt inclined with accessories				
			Gear motors				
300113-2	40' HC Container	2	Control cabinets	€	139,000	1.3448	$ 186,927
		72	Lifting plates				
		2	Turn tables				
			Various cable				
			Frames for control cabinet				
		1	wooden box containing:				
			6 - control boxes				
			13 - Obermaier labels, small				
			14 - PVG labels, blue small				
			4 - pressure springs				
			2 - effectors				
			various nameplates				
			various rivets for labels				

RECORD 000383

			10 - detectors				
			30 - Obermaier labels, big				
			30 - PVG labels, big				
			10 - converters, type 6111				
			4 - press buttons				
			2 - document boxes				
			22 - set earth cable				
			1 - workbench				
			1 - mobile tool case with content				
			1 - tool case with content				
			1 - assortment mounting accessories				
			2 - indicators				
			2 - assembly levers				
			10 - open-end wrench simple, different sizes				
			various pneumatic parts				
			4 - effectors 01.D100				
			1 - bench vice				
			1 - bench vice fixing				
300113-1	40' HC Container	2	Fine opener mod. AST-200	€	350,000	1.3362	$ 467,670
		2	Silo Mod SE-190				
		3	Spare drums				
		2	Right side holding frames for feeding				
		2	left side holding frames for feeding				
		2	tensioning cylinders for conveyor belts				
		2	holding plates for conveyor belt				
		2	head frames				
		2	panels on conveyor belt				
		2	right fixing plates for control box				
		2	left fixing plates for control box				
		2	left plates				
		2	right plates				

RECORD 000384

2	feeding chutes
2	right safety protection for conveyor belt
2	left safety protections for conveyor belt
2	electric channel gamma-P, complete of lid
2	Holding frames for motor fans
2	chutes 60x2000
2	channels for suction 1500x90x985
2	curves 1500x90, 90 degrees
2	condenser chutes 1850x150
6	pipes of 350x2000
2	pipes of 350x1386 with flange
2	pipes of 350x675
2	pipes of 250x2000
2	pipes of 250x1145
2	pipes of 250x815
2	curves of 250 @ 90 degrees
2	curves of 350 @ 90 degrees
2	curves of 350 at 15 degrees
4	small chutes of 250 x 140 at 250 degrees
2	deviator of 350 at 250-250 with curves at 45 degrees
17	collar, di 250
20	collar, di 350
1	wooden box containing
	30 - carton boxes with bolts
	7 - carton boxes accessories for erection
	1 - carton box with plate thickness (for machine leveling)
	2 - carton boxes with silicon strips for doors
	1 - carton box with Teflon strips
	various equipment for erection

RECORD 000385

CONVERTIBLE DEBENTURE INDENTURE

Made as of the 20th day of September, 2012

Between

NATURALLY ADVANCED TECHNOLOGIES INC.

and

COMPUTERSHARE TRUST COMPANY OF CANADA

mcmillan

RECORD 000386

SCHEDULE A

SECURED ASSETS

The following equipment located at NAT US's facility in Pamplico, South Carolina, U.S.A. or to be acquired using part of the proceeds of the Offering and installed at NAT US's facility in Pamplico, South Carolina, U.S.A., having an aggregate acquisition cost of no less than $5,500,000:

Shive handling system, including:
Conveyor - Roach Model, Basic System (Handling Solutions)

Decortication system, including:
One Decortication Line for Flax Straw (LaRoche S.A.), including:
-Two bale openers – 1.6m wide
-Two conveyors with electronic metal detectors
-Two fine openers type "EXEL 2000"
-Two diverters
-Two blowers VT 540
-Two condensers type "FC 1400"
-Two step cleaners – 2m wide
-One blower VT 540
-One condenser "FC 1400"
-One Fine opener "EXEL 2000" with chute feed
-One blower VT 540
-One condenser "FC 1400"
-One step cleaner – 2m wide
-One fine opener "EXEL 2000"
-One double flap diverter
-One dust blower VT 540
-One floor conveyor for collection of shives
-Collection of shives under 3 "EXEL 2000" openers with conveyor, blower and cyclone
-One electrical control panel

One Opening Line for Flax Fibres (LaRoche S.A.), including:
-One bale opener – 1.6m wide
-One conveyor with electronic metal detector
-One fine opener type "EXEL 2000"
-One blower VT 540
-Two diverters
-Extension of control panel

Additional Equipment for Decortication Line (LaRoche S.A.), including:
-One Blower VT 540
-One Condenser "FC 1400"

RECORD 000387

-One fine opener "EXEL 2000" with chute feed
-One Blower VT 540
-One Condenser "FC 1400" to feed the bale press
-Extension of electrical control panel

Harvesting equipment, including:
6 - Shelborn Stripper Head (Stuckey Farm Supply)
2 - Kuhn Drum Mowers with Hydraulic Cylinders (Adam Coastal Farm
2 – Shelbourne 24' Stripper Head (Sparrow & Kennedy Tractor Company)

HVAC, Humidifier, Electrical systems and mechanical systems

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

C.A. NUMBER: 2013 CP 21 2722

OMEGA CONSTRUCTION, INC,

.Plaintiff,

vs.

CRAILER, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.

Defendant.

AFFIDAVIT OF D. GREG MARSHALL

FILED
2013 OCT 16 AM 11:11
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME D. Greg Marshall who, being duly sworn, deposes and says as follows:

1. I am the Chief Financial Officer of Omega Construction, Inc. ("Omega"). Omega is a corporation organized and existing under the laws of the State of North Carolina. It also does business in South Carolina. I have personal knowledge of all matters set forth herein.

2. On or about May 23, 2012, Omega, as Design-Builder, entered into Design-Build contract with Defendant Crailar, Inc., d/b/a/ Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailer"). This contract set forth Omega and Crailar's rights and obligations with respect to the design and construction of Crailar's manufacturing facility located in Pamplico, South Carolina ("Pamplico Facility"). (Exhibit A, Contract).

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

3. Despite timely demands for payment, Crailar has failed and refused to pay the amount due and owing to Omega under the contract. (Exhibit B, Verified Statement of Account).

4. On October 1, 2013, I learned through another contractor that is owed money by Crailar that Crailar had suddenly and without notice closed the Pamplico Facility.

5. I attempted to contact officials at Crailar by telephone and electronic mail to ascertain the status of the company and its intent/ability to pay what it owed to Omega. Through Guy Prevost, Crailar's Corporate Controller and Compliance Officer, I learned that Crailar had halted production in the Pamplico Facility and intends to move its production operations overseas in a facility that Crailar intends to acquire or has already acquired. Although Mr. Prevost indicated that Crailar would like to "retool" the Pamplico Facility and resume operations there at some time in the future, he offered no written guarantees of payment or return of operations to the United States. Mr. Prevost indicated that there were approximately 12.5 million pounds of raw flax material at the Pamplico Facility that will need to be processed by Crailar to produce finished goods inventory.

6. I received similar information from Ryan Levernz, Director of Corporate Communications for Crailar. Despite assurances that Crailar intended to return operations to the Pamplico Facility at some point, Mr. Levernz offered no substantive guarantee of payment or protection of the amounts owed to Omega.

7. Crailar's sudden closure and effective abandonment of the Pamplico Facility before making final payment to Omega causes immediate and irreparable harm to Omega.

8. Currently, there are approximately 12.5 million pounds of raw flax material, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment located at the Pamplico Facility. (Exhibit C, Photographs) (Exhibit D, List of Equipment). If Crailar is allowed to remove these materials and equipment from the Pamplico Facility by transporting this material overseas, selling it, or otherwise, Omega will be deprived of its recourse against these substantial assets to recover the contract amount due.

9. A temporary restraining order issued against Crailar under the circumstances will prevent it from disposing of assets that could be applied to satisfy the contract debt owed to Omega.

FURTHER AFFIANT SAYETH NOT.

D. Greg Marshall

Sworn to and subscribed before me this
14th day of October, 2013

Notary Public, State of North Carolina

Anjanette L Hodges
Notary Public, North Carolina
Surry County
My Commission Expires
12-19-17

EXHIBIT A

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-_____

AIA® Document A141™ – 2004

Standard Form of Agreement Between Owner and Design-Builder

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

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

Naturally Advanced Technology
1728 North Old River Road
Pamplico, South Carolina 29583

and the Design-Builder:
(Name, legal status, address and other information)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

NAT Flax Fiber Facility
Pamplico, South Carolina

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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2 WORK OF THIS AGREEMENT

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6 DISPUTE RESOLUTION

7 MISCELLANEOUS PROVISIONS

8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

TABLE OF EXHIBITS

A TERMS AND CONDITIONS

B DETERMINATION OF THE COST OF THE WORK

C INSURANCE AND BONDS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents (which may also be referred to as the Design-Build Documents) consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontractors, purchase orders, and other agreements between the Design-Builder and third parties. The Design-Builder shall incorporate the obligations of this Design-Build Contract into its respective subcontracts, supply agreements, and purchase orders.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Design-Build Documents, other than a Modification, is inconsistent with this Agreement, this Agreement will govern.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

§ 1.4 The Design-Builder accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Design-Builder agrees to furnish the architectural, engineering, and construction services set forth herein and agrees to furnish efficient business administration and superintendence, and to use its best efforts to

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RECORD 000394

complete the Project in the best, most expeditious, and economical manner consistent with the interests of the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the latter of the date of the issuance of the building permit or the date the Owner provides reasonable documentation of project financing as required by Article A.2.2.8 of Exhibit A. If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:
(Insert Owner's time requirements.)

N/A

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.
(Paragraph deleted)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than days from the date of commencement, or as follows:
(Paragraph deleted)

Design-Builder achieving Substantial Completion within 100 days from commencement is contingent upon (1) The agreement of the local building authority to issue a Temporary Certificate of Occupancy allowing machine commissioning before the Permanent Fire Pump is active and (2) NAT electing to install a temporary fire pump until the Permanent Fire Pump; System is active (see Additional Pricing Item #6 in Addendum A (NAT Outline Scope of Work) for pricing). If either of these 2 conditions are not satisfied, Substantial Completion shall be achieved not later than 130 days from date of Commencement. The Design-Builder understands and acknowledges that time is of the essence in the execution of the work in accordance with the schedule as noted herein and that any delay in completion of the Work beyond the Substantial Completion date will materially affect the Owner by causing among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages.

Portion of Work	Substantial Completion Date

§ 3.4 Within ten (10) days of the award of the Contract, the Progress Schedule shall be prepared by Design-Builder utilizing the critical path method and submitted to Owner. The Progress Schedule shall be detailed to a degree which will permit proper coordination of all trades for the Work, including all design elements of the Work. The Design-Builder shall be required to update the status of the Work according to the Progress Schedule on a monthly basis or as reasonably requested by Owner. The Progress Schedule shall show the amount of Work constructed and comparing the Work in place to the progress required by the Progress Schedule. Failure to provide such updates to the Progress Schedule shall be a material breach of this Agreement. In addition, if, at any time, the progress of the Work is such that the Design-Builder will not be able to meet the Substantial Completion date in the Progress Schedule (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents), Design-Builder shall inform Owner of this potential delay as required by the Design-Build Documents. At that time, Design-Builder shall also present a recovery schedule and plan for such overtime work or other measures that may be required to recover the schedule. Failure to provide the Owner with notice in accordance with the Design-Build Documents of a potential delay to one or more of the completion dates and a plan of corrective action shall be deemed a waiver of the Design-Builder's right to claim any extension of time for delay caused by that activity.

§ 3.6 Should the Design-Builder fail to progress with the Work in accordance with the Progress Schedule (taking into account extensions of the Contract Time approved in accordance with the Design-Build Documents), it shall, without being entitled to any increase in the Contract Sum or other compensation or extension in the Contract Times, work

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overtime, increase his force, or take other such action as may be necessary or appropriate to recover the Schedule and complete the activity by the dates shown on the Progress Schedule.

§ 3.7 The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Design-Build Documents. In the event that Design-Builder does not achieve Substantial Completion of the Work as set forth in Article 3.3 of this Agreement, Design-Builder shall pay Owner liquidated damages in the amount of Five hundred dollars ($500.00) per day for each day after the date for substantial Completion that Design-Builder fails to properly complete the Work. If the Design-Builder is more than ten (10) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the tenth (10th) day that Design-Builder fails to properly complete the Work. If Design-Builder is more than thirty (30) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the thirtieth (30th) day that Design-Builder fails to properly complete the Work. Design-Builder acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[ ] Stipulated Sum in accordance with Section 4.2 below;

[ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

[X] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM (Intentionally omitted.)
§ 4.2.1 Intentionally omitted.

§ 4.2.2 Intentionally omitted.

§ 4.2.3 Intentionally omitted.

Description	Units	Price ($0.00)

§ 4.2.4 Intentionally omitted.

Allowance	Amount ($0.00)	Included Items

§ 4.2.5 Intentionally omitted.

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE
§ 4.3.1 Intentionally omitted.

§ 4.3.2
(Paragraphs deleted)
Intentionally omitted.

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

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§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

Five percent (5%) of the Cost of the Work.

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 No later than May 18, 2012, the Design-Builder shall propose a Guaranteed Maximum Price for the Work. If accepted by the Owner in writing, this proposal shall become Amendment 1 to this Agreement and shall establish the Guaranteed Maximum Price for the Work. The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The Guaranteed Maximum Price shall include the cost of all design, labor, equipment, supplies, materials, services and allowances required to complete the Project pursuant to the Design-Build Documents.
(Insert specific provisions if the Design-Builder is to participate in any savings.)

To the extent the Cost of the Work plus the Design-Builder's fee isles than the Guaranteed Maximum Price (minus any remaining contingencies and allowances), the Owner and Design-Builder shall share such savings with the Owner receiving eighty percent (80%) of such savings and the Design-Builder receiving twenty percent (20%) of such savings.

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price ($0.00)

§ 4.4.3.4 Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount ($0.00)	Included Items

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:
(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Intentionally omitted.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Design-Builder shall submit monthly Applications for Payment.

§ 5.1.3 Provided that an Application for Payment is received not later than the 5th day of the following month, the Owner shall make payment to the Design-Builder not later than the 25th day of the month in which the billing is received by the Owner. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Owner receives the Application for Payment.

§ 5.1.4 If requested by Owner in writing, with each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM (Intentionally omitted)

§ 5.2.1 Intentionally omitted

§ 5.2.2
(Paragraphs deleted)
Intentionally omitted

§ 5.2.3 Intentionally omitted.
(Paragraphs deleted)

§ 5.2.4
(Paragraphs deleted)
Intentionally omitted

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Intentionally omitted.

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§ 5.3.2
(Paragraphs deleted)
Intentionally omitted.
(Paragraphs deleted)

§ 5.3.3 Intentionally omitted.

§ 5.3.4 Intentionally omitted.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. When the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, elect not to withhold additional retainage. In such event, there will be a total of five percent (5%) retainage held by the Owner at the time of Substantial Completion of the Work. Nevertheless, any reduction or release of retainage, or a portion thereof, shall not be a waiver of (i) any of the rights to retainage in connection with other payments to the Design-Builder or (ii) any other right or remedy that the Owner has under any Design-Build Documents, at law or in equity.

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§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1

(Paragraphs deleted)

Intentionally omitted.

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one.)

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information

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§ 7.4 The Owner's Designated Representative is:
(Insert name, address and other information.)

Tom Robinson
Naturally Advanced Technologies U.S., Inc.
6188 Old Ironworks Road
Greensboro, North Carolina 27455Telephone: (336) 549-7873

COPY TO:
Guy Prevost
Naturally Advanced Technologies U.S., Inc.
305-4420 Chatterton Way
Victor, BC, Canada V8X 5J2

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

J. Barry Hennings
Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

(Office) 336-368-5156; (Fax) 336-368-2277; (email) barryh@omegaconstruction.com

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

Insurance Requirements

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

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

percent (%)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

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§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Document	Title	Pages
Insurance Requirements		1 - 3

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title	Date

§ 8.1.4 The Design-Builder's Proposal, dated , consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Number	Date	Pages

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

N/A

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Insurance Requirements

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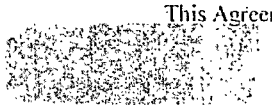
This Agreement entered into as of the day and year first written above.



OWNER *(Signature)*

(Printed name and title)

DESIGN-BUILDER *(Signature)*

(Printed name and title)

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Additions and Deletions Report for
AIA® Document A141™ – 2004

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Naturally Advanced Technology
1728 North Old River Road
Pamplico, South Carolina 29583

...

(Name, legal status, address and other information)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

...

NAT Flax Fiber Facility
Pamplico, South Carolina

PAGE 2

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents (which may also be referred to as the Design-Build Documents) consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder ~~and accepted by the Owner, if any; the Design-Builder's Proposal~~ and ~~written modifications to the Proposal~~ accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontractors, purchase orders, and other agreements between the Design-Builder and third parties. The Design-Builder shall incorporate the obligations of this Design-Build Contract into its respective subcontracts, supply agreements, and purchase orders.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Design-Build Documents, other than a Modification, is inconsistent with this Agreement, this Agreement will govern.

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§ 1.4 The Design-Builder accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Design-Builder agrees to furnish the architectural, engineering, and construction services set forth herein and agrees to furnish efficient business administration and superintendence, and to use its best efforts to complete the Project in the best, most expeditious, and economical manner consistent with the interests of the Owner.

PAGE 3

§ 3.1 The date of commencement of the Work shall be the ~~date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.~~
~~(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)~~latter of the date of the issuance of the building permit or the date the Owner provides reasonable documentation of project financing as required by Article A.2.2.8 of Exhibit A.

...

N/A

...

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

...

~~(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)~~

Design-Builder achieving Substantial Completion within 100 days from commencement is contingent upon (1) The agreement of the local building authority to issue a Temporary Certificate of Occupancy allowing machine commissioning before the Permanent Fire Pump is active and (2) NAT electing to install a temporary fire pump until the Permanent Fire Pump; System is active (see Additional Pricing Item #6 in Addendum A (NAT Outline Scope of Work) for pricing). If either of these 2 conditions are not satisfied, Substantial Completion shall be achieved not later than 130 days from date of Commencement. The Design-Builder understands and acknowledges that time is of the essence in the execution of the work in accordance with the schedule as noted herein and that any delay in completion of the Work beyond the Substantial Completion date will materially affect the Owner by causing among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages.

...

§ 3.4 Within ten (10) days of the award of the Contract, the Progress Schedule shall be prepared by Design-Builder utilizing the critical path method and submitted to Owner. The Progress Schedule shall be detailed to a degree which will permit proper coordination of all trades for the Work, including all design elements of the Work. The Design-Builder shall be required to update the status of the Work according to the Progress Schedule on a monthly basis or as reasonably requested by Owner. The Progress Schedule shall show the amount of Work constructed and comparing the Work in place to the progress required by the Progress Schedule. Failure to provide such updates to the Progress Schedule shall be a material breach of this Agreement. In addition, if, at any time, the progress of the Work is such that the Design-Builder will not be able to meet the Substantial Completion date in the Progress Schedule (taking into account extensions of the Contract Times approved in accordance with the Design-Build Documents), Design-Builder shall inform Owner of this potential delay as required by the Design-Build Documents. At that time,

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Design-Builder shall also present a recovery schedule and plan for such overtime work or other measures that may be required to recover the schedule. Failure to provide the Owner with notice in accordance with the Design-Build Documents of a potential delay to one or more of the completion dates and a plan of corrective action shall be deemed a waiver of the Design-Builder's right to claim any extension of time for delay caused by that activity.

§ 3.6 Should the Design-Builder fail to progress with the Work in accordance with the Progress Schedule (taking into account extensions of the Contract Time approved in accordance with the Design-Build Documents), it shall, without being entitled to any increase in the Contract Sum or other compensation or extension in the Contract Times, work overtime, increase his force, or take other such action as may be necessary or appropriate to recover the Schedule and complete the activity by the dates shown on the Progress Schedule.

§ 3.7 The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Design-Build Documents. In the event that Design-Builder does not achieve Substantial Completion of the Work as set forth in Article 3.3 of this Agreement, Design-Builder shall pay Owner liquidated damages in the amount of Five hundred dollars ($500.00) per day for each day after the date for substantial Completion that Design-Builder fails to properly complete the Work. If the Design-Builder is more than ten (10) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the tenth (10th) day that Design-Builder fails to properly complete the Work. If Design-Builder is more than thirty (30) days late in achieving Substantial Completion of the Work, the Design-Builder shall pay Owner an additional Five hundred dollars ($500.00) per day for each day after the thirtieth (30th) day that Design-Builder fails to properly complete the Work. Design-Builder acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty.

PAGE 4

[X] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

...

§ 4.2 STIPULATED SUM (Intentionally omitted.)
§ 4.2.1 ~~The Stipulated Sum shall be ($), subject to additions and deductions as provided in the Design-Build Documents.~~Intentionally omitted.

§ 4.2.2 ~~The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~
Intentionally omitted.

§ 4.2.3 ~~Unit prices, if any, are as follows:~~Intentionally omitted.

...

§ 4.2.4 ~~Allowances, if any, are as follows:~~
~~(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)~~Intentionally omitted.

...

§ 4.2.5 ~~Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:~~
Intentionally omitted.

...

§ 4.3.1 ~~The Cost of the Work is as defined in Exhibit B.~~Intentionally omitted.

§ 4.3.2 ~~The Design-Builder's Fee is:~~

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~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)~~

Intentionally omitted.

PAGE 5

Five percent (5%) of the Cost of the Work.

...

§ 4.4.3.1 No later than May 18, 2012, the Design-Builder shall propose a Guaranteed Maximum Price for the Work. If accepted by the Owner in writing, this proposal shall become Amendment 1 to this Agreement and shall establish the Guaranteed Maximum Price for the Work. The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed ~~($ —),~~ the Guaranteed Maximum Price, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The Guaranteed Maximum Price shall include the cost of all design, labor, equipment, supplies, materials, services and allowances required to complete the Project pursuant to the Design-Build Documents.

...

To the extent the Cost of the Work plus the Design-Builder's fee isles than the Guaranteed Maximum Price (minus any remaining contingencies and allowances), the Owner and Design-Builder shall share such savings with the Owner receiving eighty percent (80%) of such savings and the Design-Builder receiving twenty percent (20%) of such savings.

...

§ 4.5.2 ~~Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.~~ Intentionally omitted.

...

§ 5.1.1 Based upon Applications for Payment properly submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

month. Design-Builder shall submit monthly Applications for Payment.

§ 5.1.3 Provided that an Application for Payment is received not later than the 5th day of the following month, the Owner shall make payment to the Design-Builder not later than the ~~day of the month.~~ 25th day of the month in which the billing is received by the Owner. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than ~~(~~ twenty (20) days after the Owner receives the Application for Payment.

§ 5.1.4 ~~With~~ If requested by Owner in writing, with each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on

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account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM (Intentionally omitted)

§ 5.2.1 ~~Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.~~Intentionally omitted

§ 5.2.2 ~~Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

~~.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;~~

~~.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);~~

~~.3 Subtract the aggregate of previous payments made by the Owner; and~~Intentionally omitted

~~.4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.~~

§ 5.2.3 ~~The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:~~Intentionally omitted.

~~.1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and~~

~~*(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*~~

~~.2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.~~

§ 5.2.4 ~~Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:~~

~~*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)*~~

Intentionally omitted

...

§ 5.3.1 ~~Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.~~Intentionally omitted.

§ 5.3.2 ~~Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

~~.1 Take the Cost of the Work as described in Exhibit B;~~

~~.2 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed sum~~

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~~Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~Intentionally omitted.

~~.3 Subtract the aggregate of previous payments made by the Owner;~~

~~.4 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and~~

~~.5 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.~~

§ 5.3.3 ~~Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:~~Intentionally omitted.

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§ 5.3.4 ~~Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.~~Intentionally omitted.

...

.3 Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;

...

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. When the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, elect not to withhold additional retainage. In such event, there will be a total of five percent (5%) retainage held by the Owner at the time of Substantial Completion of the Work. Nevertheless, any reduction or release of retainage, or a portion thereof, shall not be a waiver of (i) any of the rights to retainage in connection with other payments to the Design-Builder or (ii) any other right or remedy that the Owner has under any Design-Build Documents, at law or in equity.

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§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in ~~Section A.9.10 of~~ Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

...

§ 6.1 ~~The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:~~

~~*(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)*~~

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Intentionally omitted.

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

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Tom Robinson
Naturally Advanced Technologies U.S., Inc.
6188 Old Ironworks Road
Greensboro, North Carolina 27455Telephone: (336) 549-7873

COPY TO:
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Naturally Advanced Technologies U.S., Inc.
305-4420 Chatterton Way
Victor, BC, Canada, V8X 5J2

J. Barry Hemmings
Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27041
(Office) 336-368-5156; (Fax) 336-368-2277; (email) barryh@omegaconstruction.com

Insurance Requirements

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Insurance Requirements 1 - 3

N/A

Insurance Requirements:

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:10:16 on 05/23/2012 under Order No. 3143417507_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2004, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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AIA® Document A141™ – 2004 Exhibit B

Determination of the Cost of the Work

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

NAT Flax Fiber Facility
Pamplico, South Carolina

THE OWNER:
(Name, legal status and address)

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

THE DESIGN-BUILDER:
(Name, legal status and address)

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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/
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ARTICLE B.1 CONTROL ESTIMATE

§ B.1.1 Intentionally omitted.

§ B.1.2

(Paragraphs deleted)

Intentionally omitted

§ B.1.3 Intentionally omitted

§ B.1.4 Intentionally omitted.

ARTICLE B.2 COSTS TO BE REIMBURSED

§ B.2.1 COST OF THE WORK

The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

§ B.2.2 LABOR COSTS

§ B.2.2.1 Wages of construction workers and an on-site field superintendant directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval, and for Design-Builder's Project Manager when engaged in the Work.

§ B.2.2.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

§ B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or

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others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, photographs, facsimile transmissions and long-distance telephone calls, data transmissions, postage and parcel delivery charges, telephone service and computer-related costs at the site and necessary and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the necessary and reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work, including, but not limited to, reasonable transportation, travel, hotel, and per diem expenses.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in writing in advance by the Owner.

§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents .

§ B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums required by the Design-Build Documents that can be directly attributed to this Design-Build Contract, including any additional premiums required as a result of approved change Orders increasing the Guaranteed Maximum Price .

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, .

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions as modified, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Intentionally omitted.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or breach of this Agreement.

§ B.2.7.8 Intentionally omitted.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in advance in writing by the Owner.

§ B.2.7.10 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

§ B.2.7.11 All water, power and fuel costs necessary for the Work.

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§ B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions, so long as such costs do not result from the negligence or breach of contract by Design-Builder or a subcontractor or designer employed by Design-Builder.

§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Article B.2;

.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in SectionB.2;

.3 Overhead and general expenses, except as may be expressly included in Article B.2;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.7 **Bonuses, incentive compensation, contributions (other than Workmen's Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, Federal Unemployment Insurance), gratuities and entertainment expense. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Article B.2;**

.9 **Expenses for travel, including Design-Builder-supplied vehicles used for personal use, incurred by Design-Builder's employees while traveling for purposes other than the direct execution of the Work;**

.10 **Fines other than those due to the acts or omissions of Owner or its agents;**

.11 **Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines and work stoppages or slowdowns, except where such costs are due to circumstances beyond the control of the Design-Builder;**

.12 **Consultants to the Design-Builder not approved, in writing, by Owner;**

.13 **Corporate accounting, check and accounting processing cost shall not be reimbursed; and**

.14 **Other costs, damages, or expenses specifically excluded elsewhere in the Design-Build Documents.**

(Paragraphs deleted)

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

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§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Design-Builder shall then determine, with the advice of the Owner, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 When a specific bidder (1) is recommended in writing to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ B.5.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Design-Builder 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 Design-Builder.

§ B5.4 All Subcontractors shall be pre-qualified by the Design-Builder. The Owner shall have the opportunity and right to disapprove of any proposed subcontractor. However, to the extent there is an increase in cost due to the Owner disapproving of a proposed subcontractor, the Design-Builder shall be due a Change Order as provided for under Section b.5.2 above.

§ B5.5 Design-Builder may self-perform any of the work. Owner, however, reserves the right to require the Design-Builder to seek competitive pricing for such portions of the Work from other qualified contractors.

§ B5.6 All Subcontractors shall conform and be subject to the requirements of the Design-Build Documents. Subcontracts awarded on the basis of the cost of such work plus a fee shall require Owner's prior written approval.

§ B5.7 Subcontractor agreements shall, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Design-Builder is terminated by the Owner.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be in accordance with generally accepted accounting procedures. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's final accounting of the Cost of the Work.

§ B.6.3 Upon the Owner's direction, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after delivery of the final accounting by the Design-Builder. Based upon the Cost of

Init. /

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the Work as acknowledged by the Owner, or, if the Owner has directed its auditors to report thereon, based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions for payment under the Design-Build Documents have been met, the Owner will, within forty (40) days after receipt of the Design-Builder's final accounting, issue final payment or notify the Design-Builder in writing of its reasons for withholding final payment.

§ B.6.4 If the Owner disputes the Cost of the Work as set forth in the Design-Builder's final accounting, the Design-Builder shall be entitled to assert a Claim in accordance with Article A.4, as modified. The Owner shall, pending resolution of any such dispute, pay the Design-Builder all sums otherwise payable and not in dispute.

§ B.6.5 Intentionally omitted.

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/

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Additions and Deletions Report for
AIA® Document A141™ – 2004 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:13:58 on 05/23/2012.

PAGE 1

NAT Flax Fiber Facility
Pamplico, South Carolina

...

Naturally Advanced Technologies U.S., Inc.
1728 North Old River Road
Pamplico, South Carolina 29583

...

Omega Construction, Inc.
P.O. Box 250
344 Shelleybrook Drive
Pilot Mountain, NC 27401

Telephone: (336) 368-5156
Facsimile: (336) 368-2277

PAGE 2

§ B.1.1 ~~Where the Contract Sum is the Cost of the Work, plus the Design-Builder's Fee without a Guaranteed Maximum Price pursuant to Section 4.3 of the Agreement, the Design-Builder shall prepare and submit to the Owner prior to the Design-Builder's first Application for Payment, in writing, a Control Estimate. The Control Estimate shall include the estimated Cost of the Work plus the Design-Builder's Fee. The Control Estimate shall be used to monitor actual costs.~~Intentionally omitted.

§ B.1.2 ~~The Control Estimate shall include:~~

~~.1 the documents enumerated in Article 8 of the Agreement, including all Addenda thereto and the Terms and Conditions of the Contract;~~

~~.2 a statement of the estimated Cost of the Work showing separately the compensation for design services, construction costs organized by trade categories or systems and the Design-Builder's Fee; and~~

~~.3 contingencies for further development of design and construction.~~Intentionally omitted

§ B.1.3 ~~The Design-Builder shall meet with the Owner to review the Control Estimate. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge its acceptance in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.~~Intentionally omitted

§ B.1.4 ~~The Design-Builder shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control~~

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~~Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Design-Builder's first Application for Payment and shall be revised monthly or at other intervals as mutually agreed.~~Intentionally omitted.

...

The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

...

§ B.2.2.1 Wages of construction workers and an on-site field superintendant directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's ~~approval.~~prior written approval, and for Design-Builder's Project Manager when engaged in the Work.

...

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, ~~customary benefits such as~~ sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

PAGE 3

§ B.2.5.4 Cost of document reproductions, photographs, facsimile transmissions and long-distance telephone calls, data transmissions, postage and parcel delivery charges, telephone service and computer-related costs at the site and necessary and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the necessary and reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the ~~Work.~~Work, including, but not limited to, reasonable transportation, travel, hotel, and per diem expenses.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in writing in advance by the Owner.

...

§ B.2.7.1 That portion of insurance and bond premiums required by the Design-Build Documents that can be directly attributed to this Design-Build ~~Contract.~~Contract, including any additional premiums required as a result of approved change Orders increasing the Guaranteed Maximum Price .

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the ~~Work.~~Work and for which the Design-Builder is liable.

...

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and ~~Conditions,~~ Conditions as modified, or other provisions of the Design-Build Documents, ~~and which do not fall within the scope of Section A.13.5.3.~~

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§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and ~~Conditions,~~ Conditions as modified, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 ~~Data processing costs related to the Work.~~ Intentionally omitted.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or ~~failure to fulfill a specific responsibility to the Owner as set forth in the Design-Build Documents.~~ breach of this Agreement.

§ B.2.7.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.~~ Intentionally omitted.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in advance in writing by the Owner.

§ B.2.7.10 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

§ B.2.7.11 All water, power and fuel costs necessary for the Work.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and ~~Conditions.~~ Conditions, so long as such costs do not result from the negligence or breach of contract by Design-Builder or a subcontractor or designer employed by Design-Builder.

...

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Article B.2;

.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in SectionB.2;

.3 Overhead and general expenses, except as may be expressly included in Article B.2;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.7 Bonuses, incentive compensation, contributions (other than Workmen's Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, Federal Unemployment Insurance), gratuities and entertainment expense. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Article B.2;

.9 Expenses for travel, including Design-Builder-supplied vehicles used for personal use, incurred by Design-Builder's employees while traveling for purposes other than the direct execution of the Work;

.10 Fines other than those due to the acts or omissions of Owner or its agents;

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.11 Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines and work stoppages or slowdowns, except where such costs are due to circumstances beyond the control of the Design-Builder;

.12 Consultants to the Design-Builder not approved, in writing, by Owner;

.13 Corporate accounting, check and accounting processing cost shall not be reimbursed; and

.14 Other costs, damages, or expenses specifically excluded elsewhere in the Design-Build Documents.

~~§ B.3.1.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Sections B.2.2.2 and B.2.2.3.~~

~~§ B.3.1.2 Expenses of the Design-Builder's principal office and offices other than the site office.~~

~~§ B.3.1.3 Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.~~

~~§ B.3.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.~~

~~§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.~~

~~§ B.3.1.6 Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.~~

~~§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.~~

~~§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.~~

PAGE 5

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed ~~by others under contracts~~ under subcontracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from ~~whom~~ which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from ~~Contractors~~ Subcontractors and from suppliers of materials or equipment fabricated especially for the ~~Work and shall deliver such bids to the Owner. The Owner shall then determine~~ Work. The Design-Builder shall then determine, with the advice of the Owner, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 ~~Contracts or other agreements shall conform to the applicable payment provisions of this Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior consent.~~ When a specific bidder (1) is recommended in writing to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ B.5.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Design-Builder 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 Design-Builder.

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§ B5.4 All Subcontractors shall be pre-qualified by the Design-Builder. The Owner shall have the opportunity and right to disapprove of any proposed subcontractor. However, to the extent there is an increase in cost due to the Owner disapproving of a proposed subcontractor, the Design-Builder shall be due a Change Order as provided for under Section b.5.2 above.

§ B5.5 Design-Builder may self-perform any of the work. Owner, however, reserves the right to require the Design-Builder to seek competitive pricing for such portions of the Work from other qualified contractors.

§ B5.6 All Subcontractors shall conform and be subject to the requirements of the Design-Build Documents. Subcontracts awarded on the basis of the cost of such work plus a fee shall require Owner's prior written approval.

§ B5.7 Subcontractor agreements shall, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Design-Builder is terminated by the Owner.

...

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be ~~satisfactory to the Owner.~~ in accordance with generally accepted accounting procedures. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's ~~accountant a~~ final accounting of the Cost of the Work.

§ B.6.3 ~~The Owner's accountants~~ Upon the Owner's direction, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within ~~21~~ 30 days after delivery of the final ~~accounting. Based upon~~ accounting by the Design-Builder. Based upon the Cost of the Work as acknowledged by the Owner, or, if the Owner has directed its auditors to report thereon, based upon such Cost of the Work as the Owner's ~~accountants~~ auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions ~~of Section A.9.10 of the Agreement~~ for payment under the Design-Build Documents have been met, the Owner will, within ~~seven~~ forty (40) days after receipt of the ~~written report of the Owner's accountants,~~ Design-Builder's final accounting, issue final payment or notify the Design-Builder in writing of ~~the Owner's intention to make final payment or to withhold final payment.~~ its reasons for withholding final payment.

§ B.6.4 If the ~~Owner's accountants report~~ Owner disputes the Cost of the Work as ~~substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner's accountants shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the Owner's accountant to be due the Design-Builder.~~ set forth in the Design-Builder's final accounting, the Design-Builder shall be entitled to assert a Claim in accordance with Article A.4, as modified. The Owner shall, pending resolution of any such dispute, pay the Design-Builder all sums otherwise payable and not in dispute.

§ B.6.5 ~~If, subsequent to final payment and at the Owner's request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the Owner shall reimburse the Design-Builder such costs and the Design-Builder's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Design-Builder has participated in savings as provided in Section 4.4.3.1 of the Agreement, the amount of such savings shall be recalculated and appropriate credit~~

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~~given to the Owner in determining the net amount to be paid by the Owner to the Design-Builder.~~ Intentionally omitted.

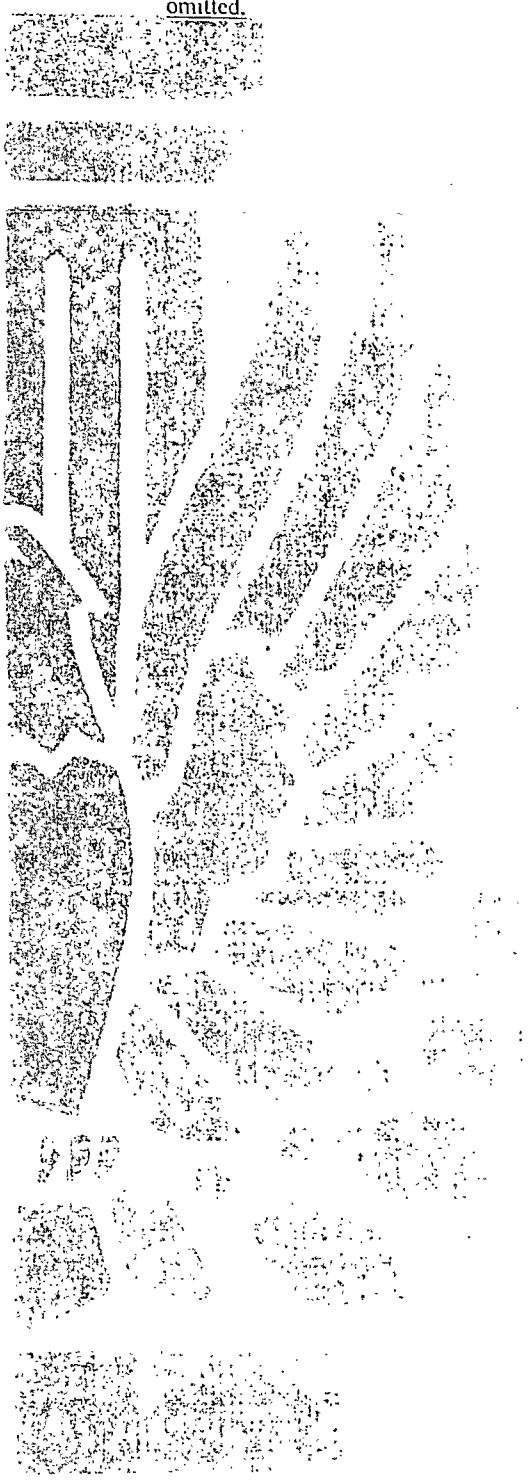

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EXHIBIT B

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-_____

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF FLORENCE	)	IN THE COURT OF COMMON PLEAS
	)	
OMEGA CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	VERIFIED STATEMENT OF ACCOUNT
vs.	)	
	)	
CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.	)	
	)	
Defendant.	)	C.A. No: _____
	)	

VERIFIED STATEMENT OF ACCOUNT

Personally appeared before me, Ginger D. Goforth, Esquire, who being duly sworn, deposes and states that she is the attorney for Plaintiff Omega Construction, Inc. ("Omega"), and that she is authorized to give this Affidavit. According Omega's records, Omega has issued the following invoices to Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc., ("Crailar") which have not been paid by Crailar:

Pay Application #4	**07/31/2012**	**$20.00**
Pay Application #12R	**03/21/2013**	**$99,822.90**
Pay Application #14	**05/03/2013**	**$119.857.83**
Pay Application #15	**08/13/2013**	**$20,010.50**
Pay Application #15R	**08/13/2013**	**$45,717.43**

Omega is still due and owning the sum of **TWO HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED TWENTY EIGHT AND 66/100 DOLLARS ($285,428.66)**

for work that Omega performed on the subject property.

Ginger D. Goforth, Esquire

Sworn to by: Jessica Holmen
(Notary Public)

This 15 day of October 2013

My Commission expires on 4/23/19

JESSICA HOLMEN
COM. EXP.
NOTARY
PUBLIC
APRIL 23, 2019
SOUTH CAROLINA

EXHIBIT C

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.

In the Common Pleas Court for Florence County

C.A. No: 2013-CP-_____

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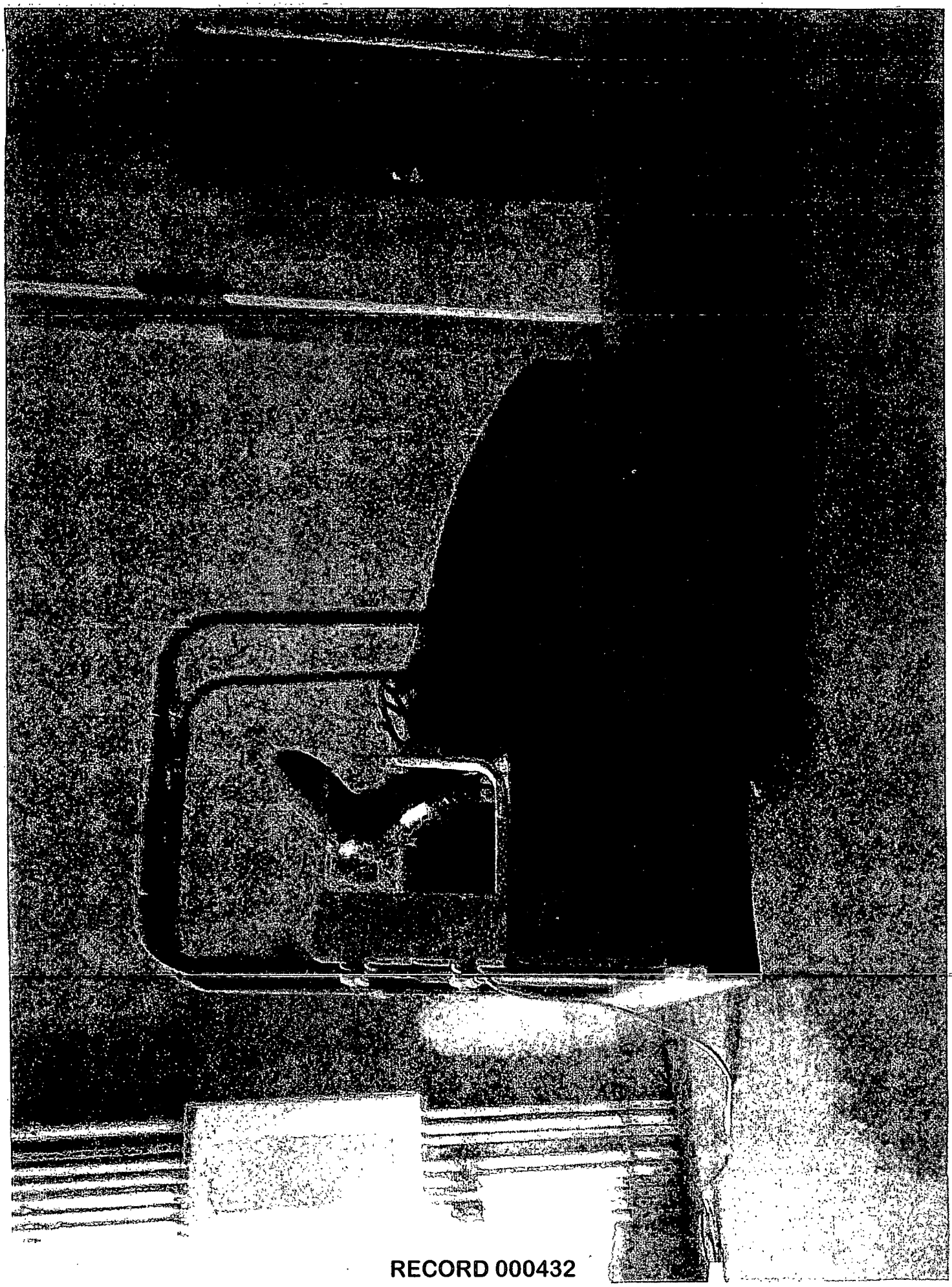
RECORD 0002 26

RECORD 000430

RECORD 0000431



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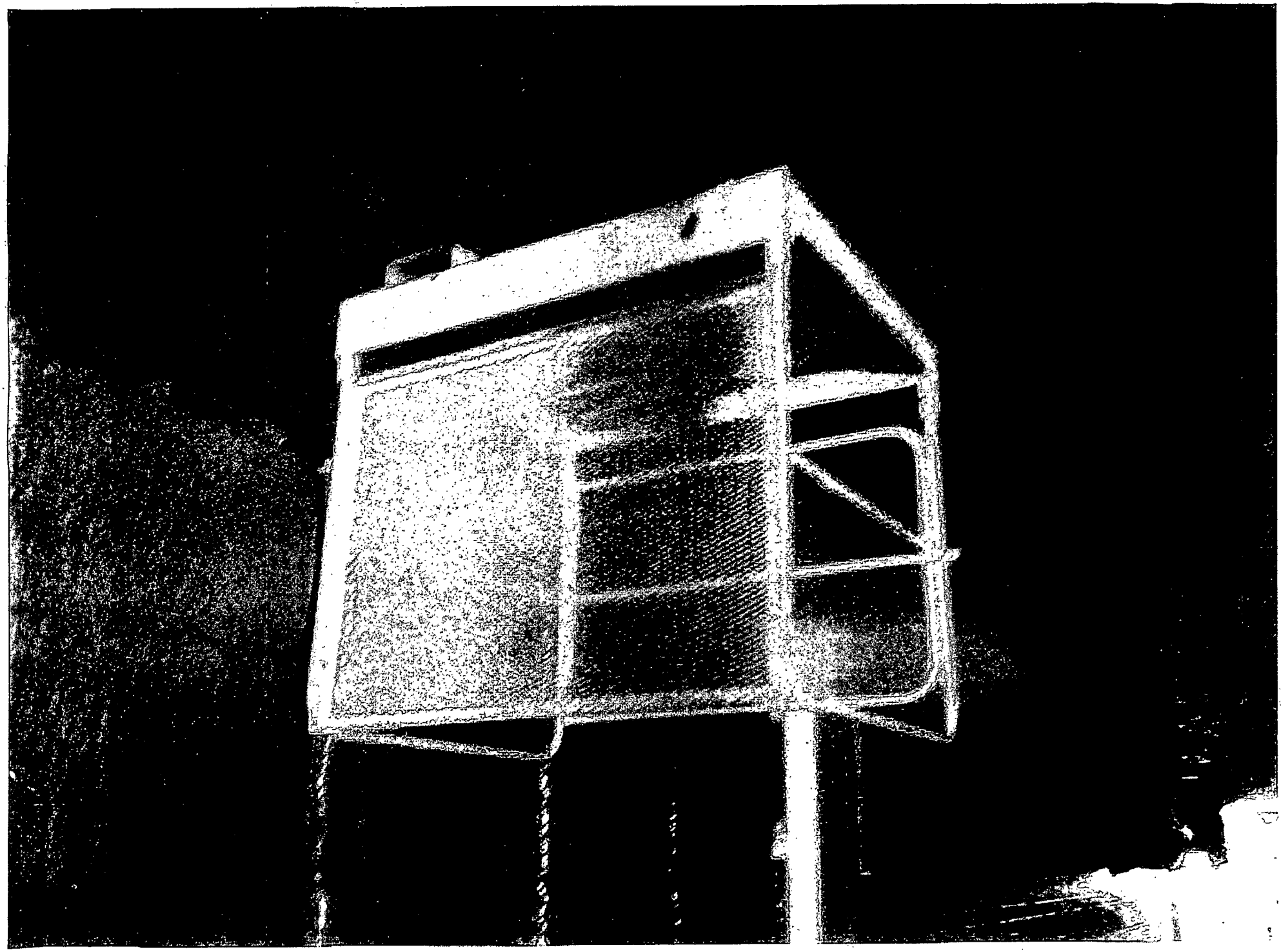

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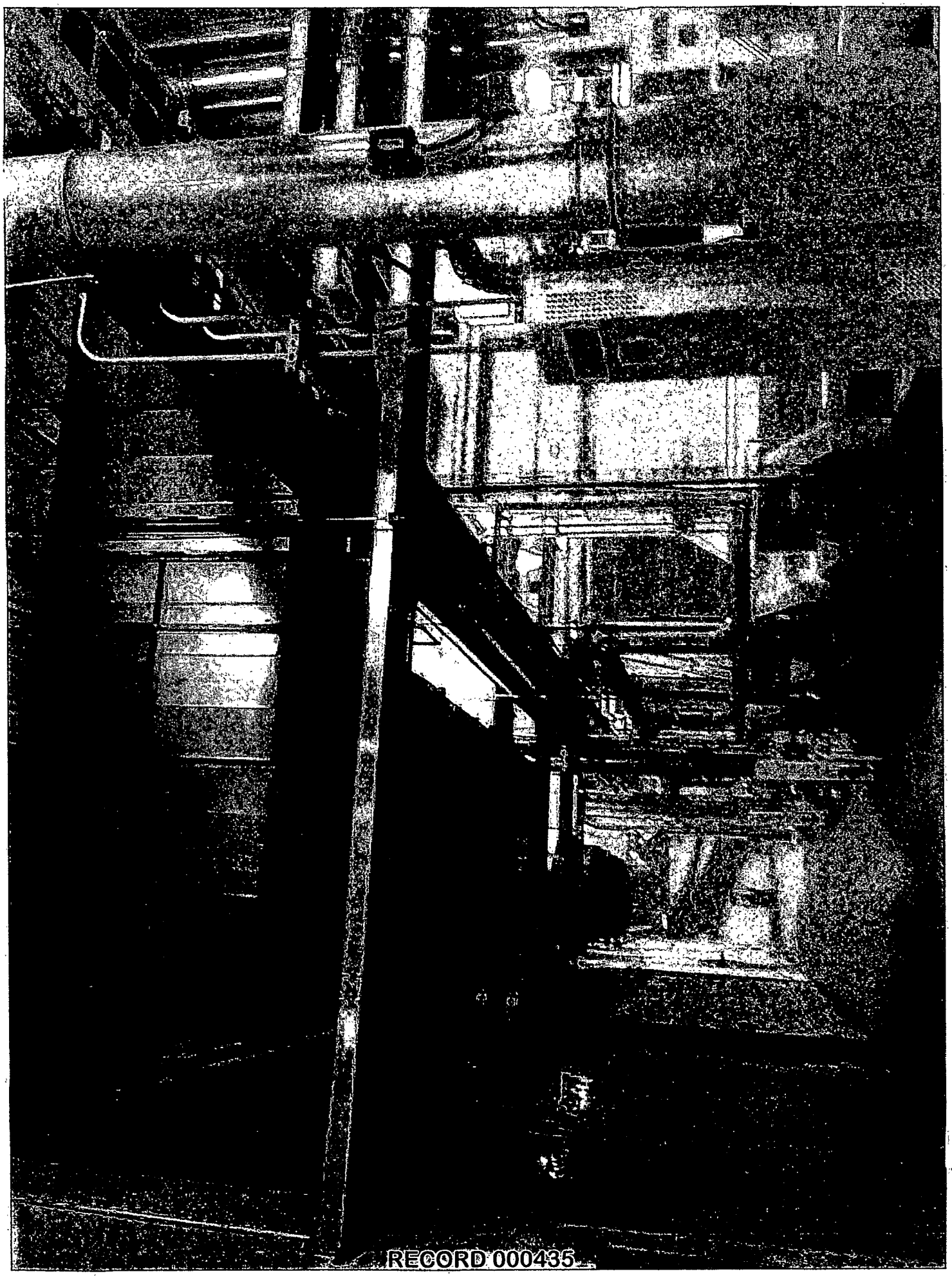
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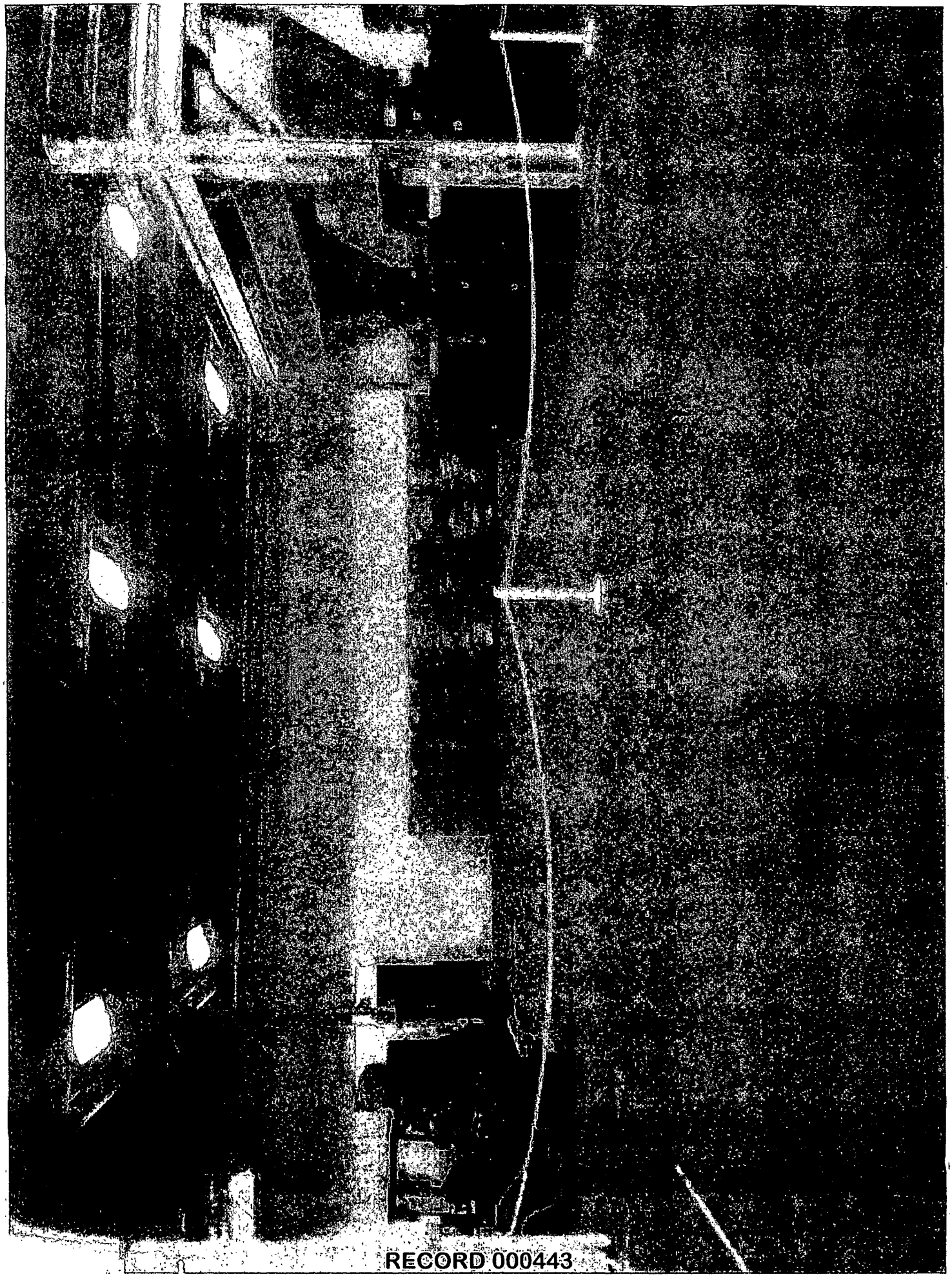

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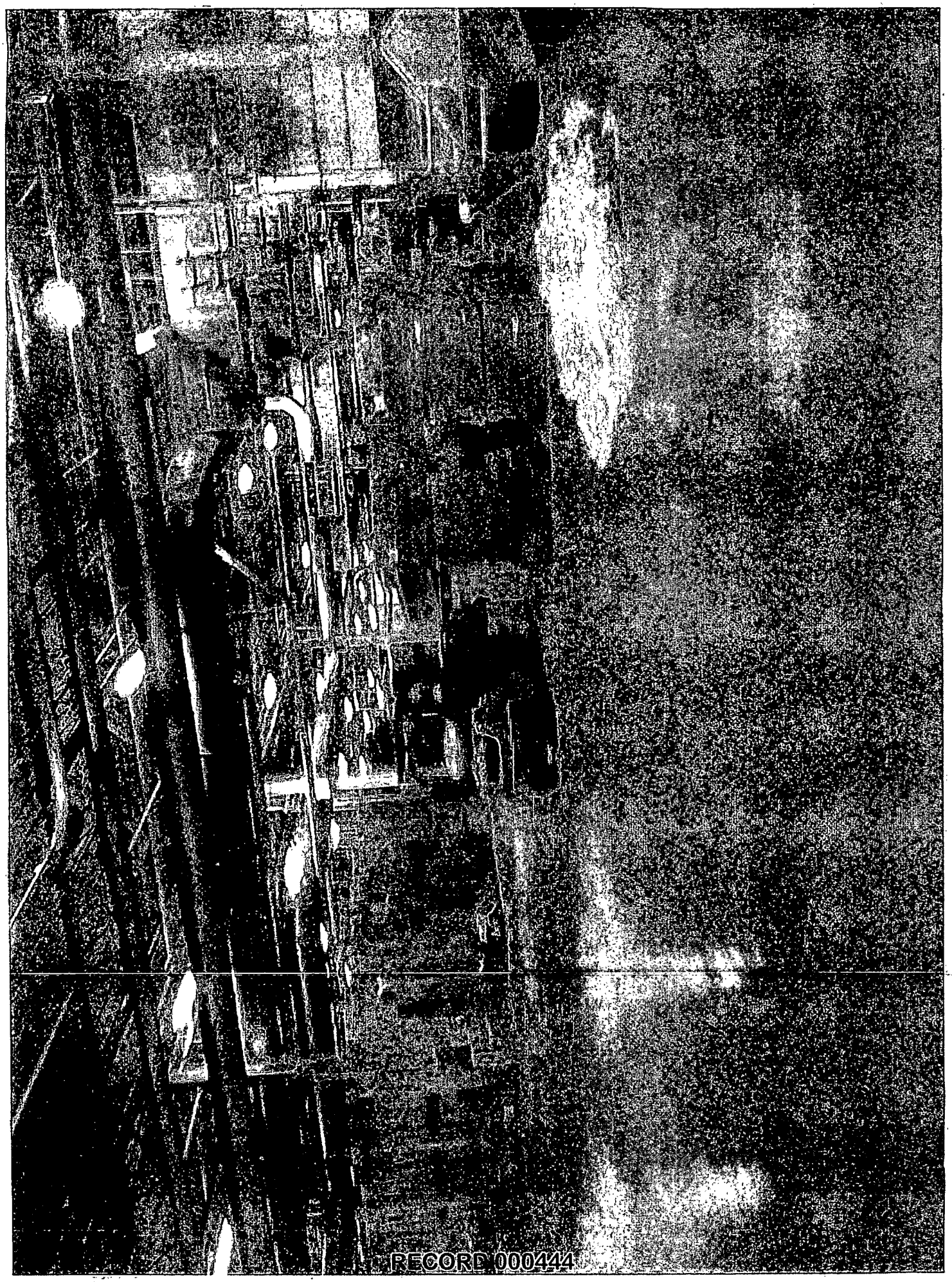

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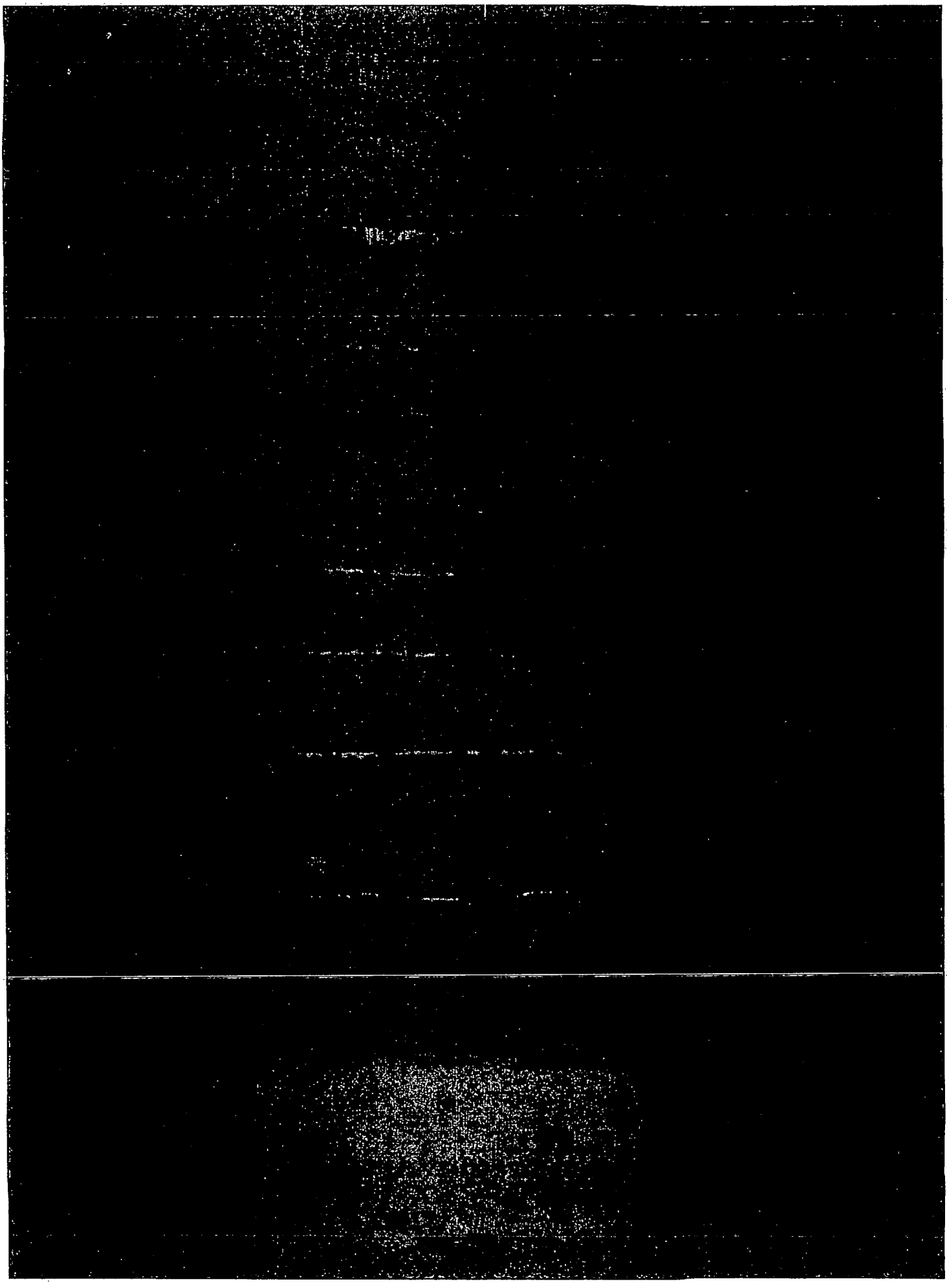

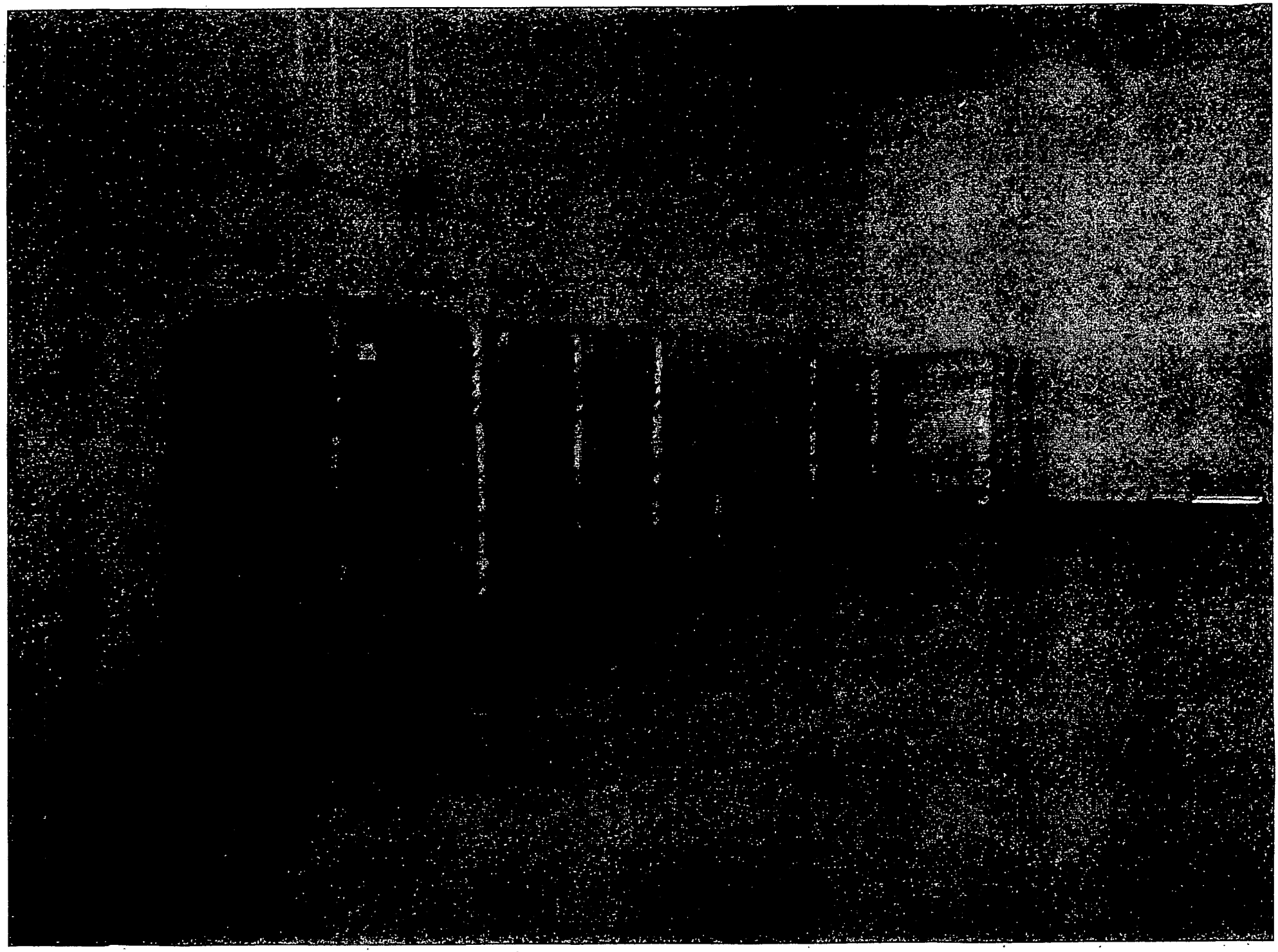

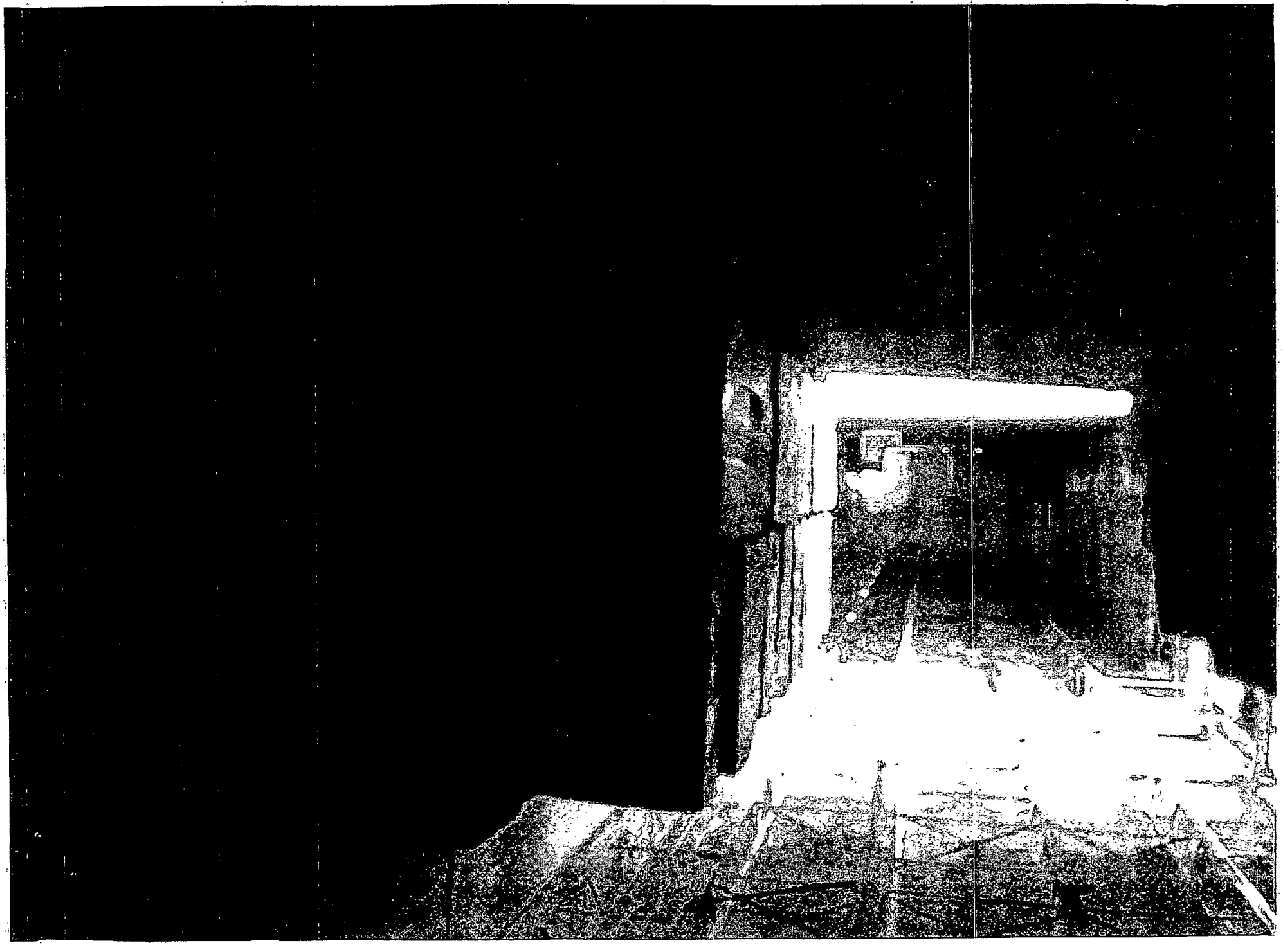

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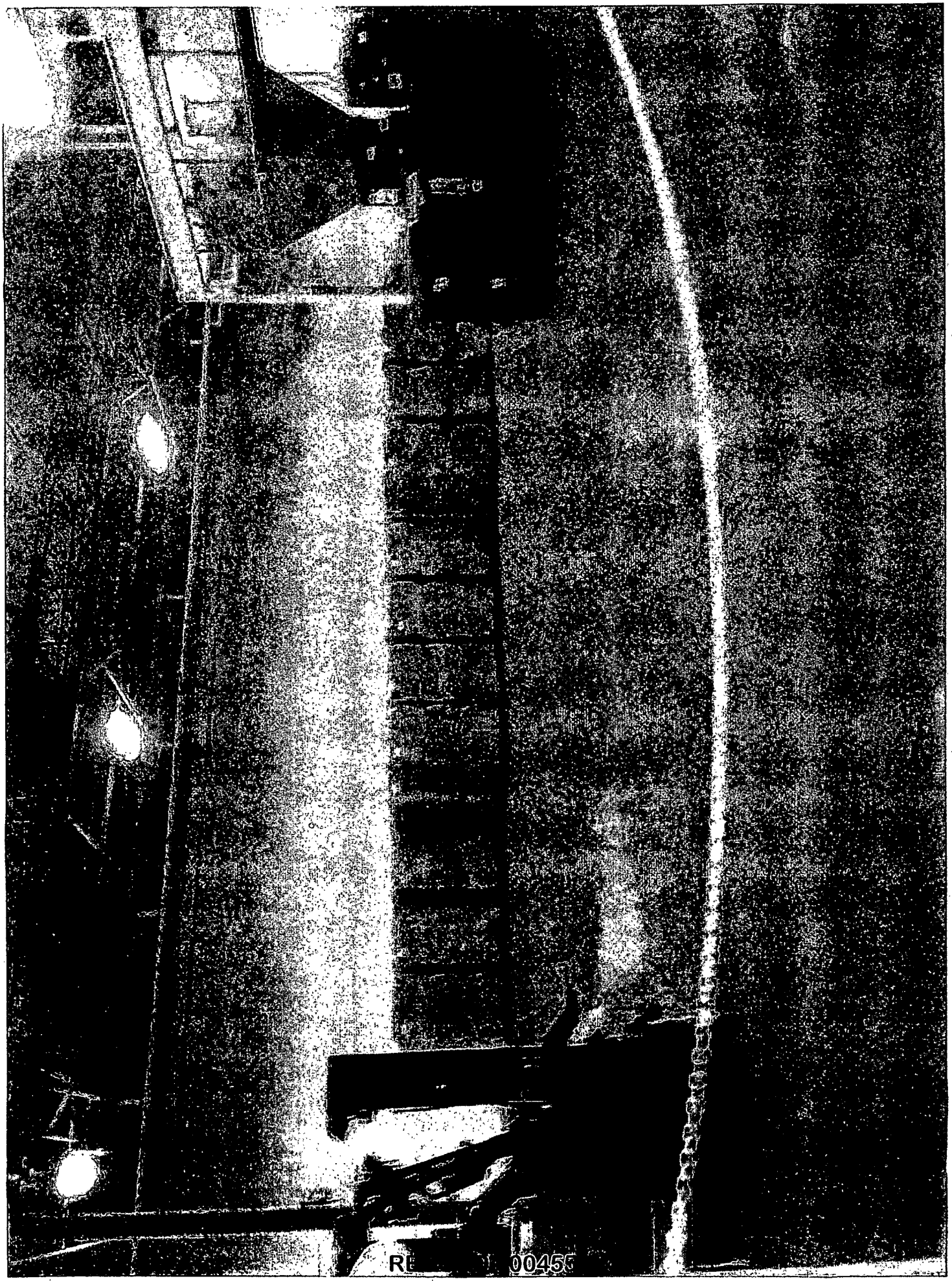
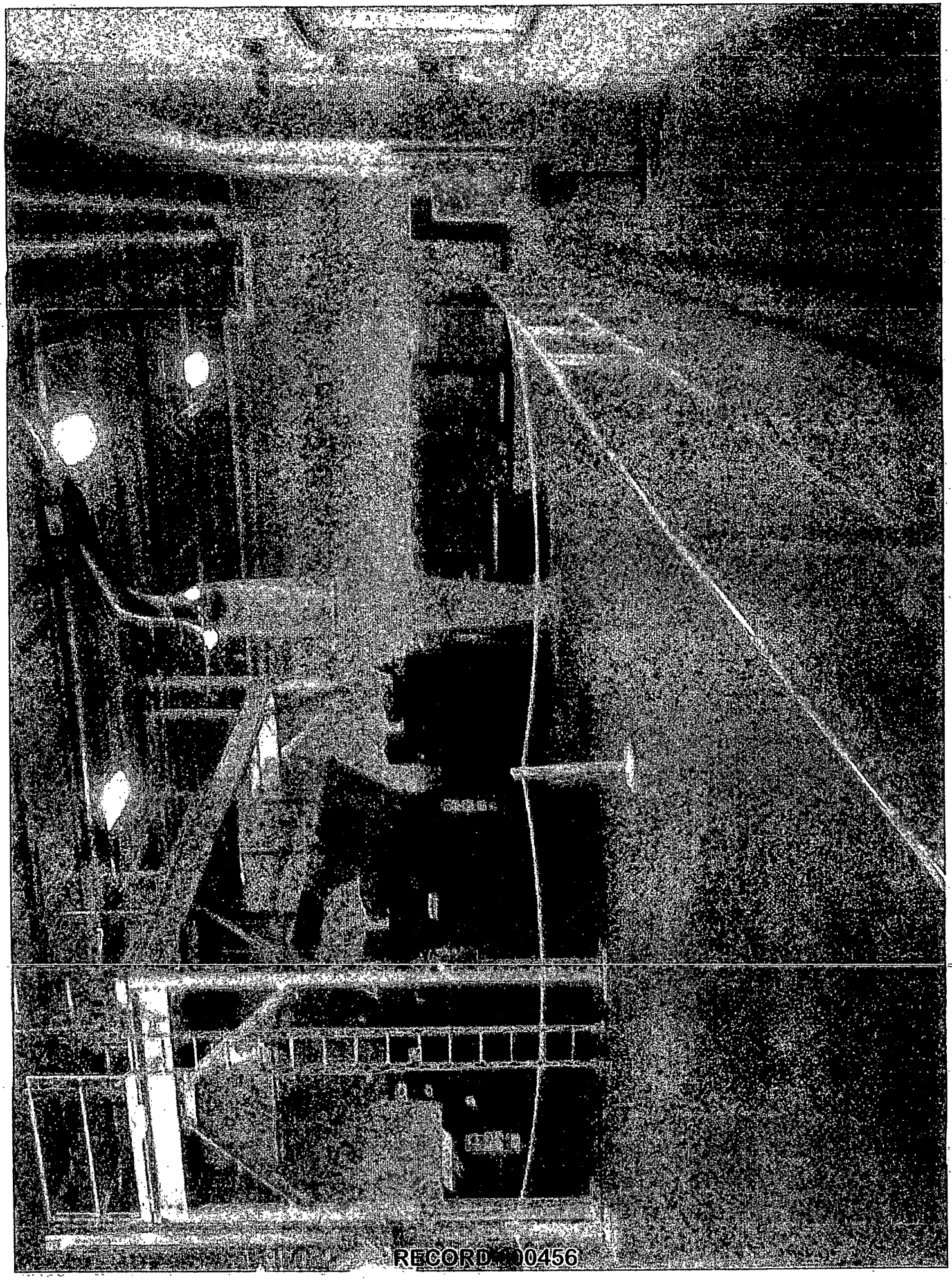
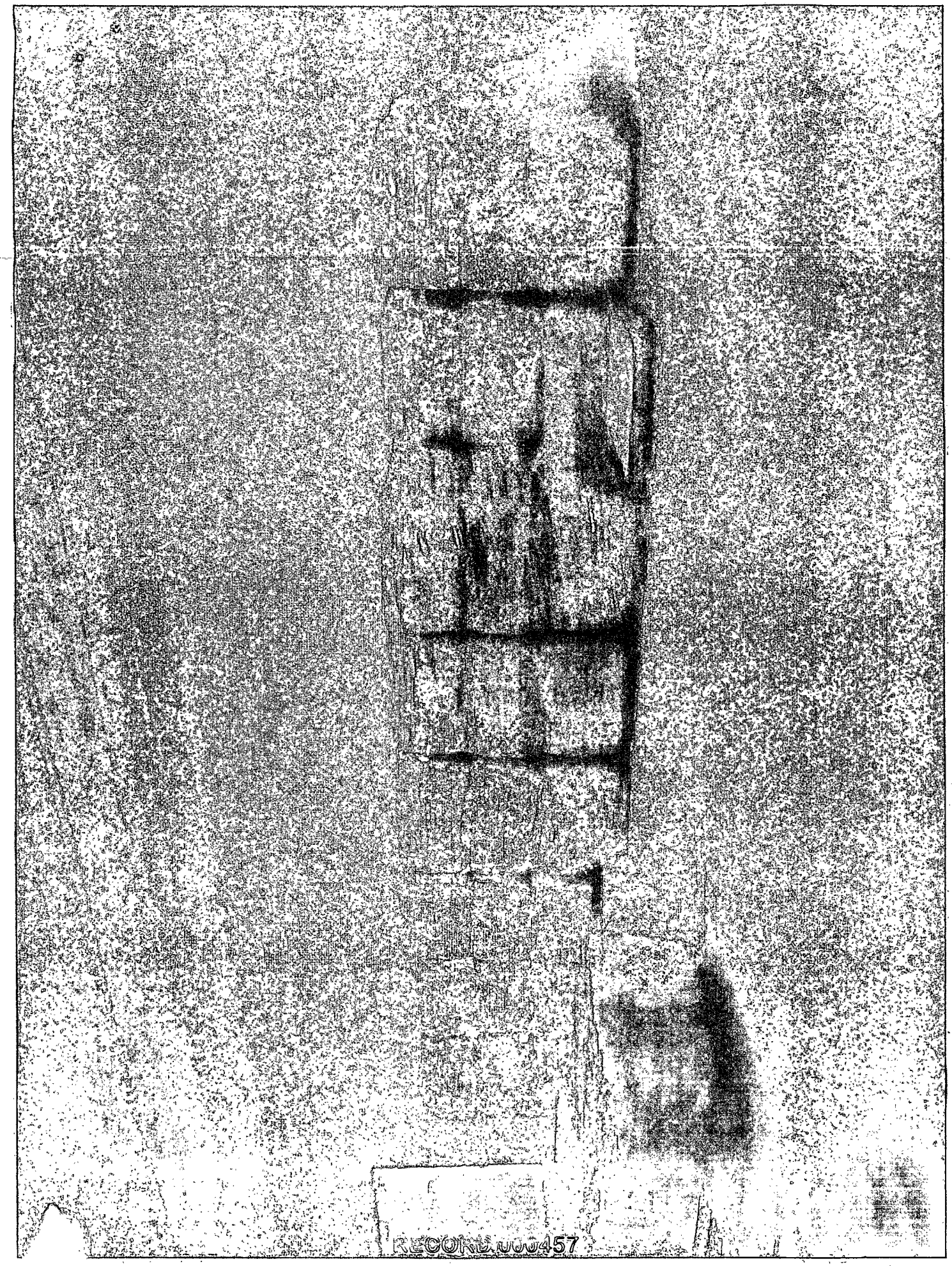
RECORD

RECORD 000454


R 00455



RECORD 0456



RECORD 457

EXHIBIT D

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-_____

Finished Bales

		Stacks		
Area A	Row 1	2x3		Ref: Finished Bales - Area A - img_2711.jpg
	Row 2	3x3		
	Total		15	
Area B	Row 1	6x3		Ref: Finished Bales - Area B - img_2709.jpg
	Row 2	6x3		
	Row 3	3x3		
	Total		45	
Area C	Row 1 B	13x3		Ref: Finished Bales - Area C - img_2758.jpg
	Row 1 T	6x3		
	Total		57	
Area D	Row 1 B	13x3		Ref: Finished Bales - Area D - img_2748.jpg
	Row 1 T	13x3		Ref: Finished Bales - Area D - img_3019.jpg
	Row 2 B	11x3		
	Row 2 T	11x3		
	Row 3	10x3		Ref: Finished Bales - Area D - img_3017.jpg
	Row 4	3x3		Ref: Finished Bales - Area D - img_3018.jpg
	Total		183	
Area E	Row 1	10x3		Ref: Finished Bales - Area E - img_2762.jpg
	Row 2	14x3		Ref: Finished Bales - Area E - img_2897.jpg
	Row 3	14x3		
	Total		114	
Area F	Row 1	12x3		Ref: Finished Bales - Area F - img_2743.jpg
	Row 2	9x3		Ref: Finished Bales - Area F - img_2763.jpg
	Row 3	9x3		Ref: Finished Bales - Area F - img_2825.jpg
	Row 4	3x3		Ref: Finished Bales - Area F - img_2900.jpg
	Total		99	Ref: Finished Bales - Area F - img_2901.jpg
Estimated Total Finished Bales			513	

Motorized Equipment and Farm Implements

1 Tow Motor with forks	Ref: Equipment - 1 Tow Motor with forks - img_2868.jpg
3 Tow Motors with compression lift	Ref: Equipment - 1 Tow Motor with compression Lift - img_2740.jpg Ref: Equipment - Two Tow Motors with compression lift - img_2835.jpg Ref: Equipment - Two Tow Motors with compression lift - img_2898.jpg
1 Lull Lift Basket	Ref: Equipment - 1 Lull Lift Basket - img_2753.jpg
1 New Holland Workmaster Tractor	Ref: Equipment - New Holland Workmaster Tractor - img_2754.jpg
1 floor sweeper	Ref: Equipment - 1 floor sweeper - img_2759.jpg
1 disc-bine circular mower	Ref: Equipment - 1 disc-bine circular mower - img_2985.jpg Ref: Equipment - 1 disc-bine circular mower - img_2988.jpg
5 combine stripper heads	Ref: Equipment - 5 Combine Stripper Heads - img_2986.jpg Ref: Equipment - 5 Combine Stripper Heads - img_2987.jpg
1 bale spike	Ref: Equipment - 1 bale spike - img_2880.jpg
5 rakes	Ref: Equipment - 4 rakes - img_3025.jpg Ref: Equipment - 1 rake - img_2979.jpg
1 scissor lift	Ref: Equipment - 1 scissor lift - img_2827.jpg
1 boom lift	Ref: Equipment - 1 boom lift - img_2891.jpg

Production Equipment (Uninstalled)

- 2 Obermaier Cake Presses
- 2 Obermaier dryer lines with additional fine opener
- 2 Cake lifts/breakers (1 for each dryer)
- 2 Cake Extractors
- 3 Hydro Extractors
- ~ 15 Wet Processing Containers
- One 2+2 Bale Opener
- Metal Studs for Partition Wall
- Hollow Metal Door Frames for Patition Wall

Production Equipment (Installed)

- 2 - Bale Busters
- 3 - LaRoche Opening Lines
- 1 - LaRoche Decortication Fine Opening Lines
- 2 - 25 hp Air Compressors
- 2 Balers — Ref: Installed - Balers - img_2741.jpg
- Filtration System with associated equipment
- 6 - Dust Filters with pulse jet controls
- 125 hp vacuum pump
- Central High Vacumm waste and dust collection system
- ~10 Conveyors
- Refurbished Air Washer
- Office HVAC System
- Control Room HVAC System
- 1 - 2500 kVA 4160 V to 4000 A 480/277 V substation
- Motor Control Centers for the production equipment
- Control Cabinets for the LaRoche Line

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

C.A. NUMBER: 2013 CP 21 2722

OMEGA CONSTRUCTION, INC.,

Plaintiff,

vs.

CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.

Defendant.

AFFDAVIT OF BROCK HENNINGS

FILED
2013 OCT 16 AM 11:18
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

PERSONALLY APPEARED BEFORE ME Brock Hennings who, being duly sworn, deposes and says as follows:

1. I am the Senior Project Manager of Omega Construction, Inc. ("Omega"). Omega is a corporation organized and existing under the laws of the State of North Carolina. It also does business in South Carolina. I have personal knowledge of all matters

2. On or about May 23, 2012, Omega, as Design-Builder, entered into Design-Build contract with Defendant Crailar, Inc., d/b/a/ Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailer"). This contract set forth Omega and Crailar's rights and obligations with respect to the design and construction of Crailar's manufacturing facility located in Pamplico, South Carolina ("Pamplico Facility"). (Exhibit A to Affidavit of Greg Marshall, Contract).

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

3. Despite timely demands for payment, Crailar has failed and refused to pay the amount due and owing to Omega under the contract. (Exhibit B to Affidavit of Greg Marshall, Verified Statement of Account).

4. On October 1, 2013, I learned through Greg Marshall that Crailar had suddenly and without notice closed the Pamplico Facility.

5. I attempted to contact Tom Robinson at Crailar by telephone to ascertain the status of the company and its intent/ability to pay what it owed to Omega. Through Tom Robinson, Crailar's Chief Operating Officer, I learned that Crailar closed its operations on September 30, 2013 and laid off all of its employees. Mr. Robinson indicated that the closure was intended to be temporary, for the purpose of "retooling" the Pamplico Facility. Mr. Robinson indicated that some of the equipment in the facility has been repossessed. He offered no written guarantees of payment or return of operations to the United States.

6. Crailar's sudden closure and effective abandonment of the Pamplico Facility before making final payment to Omega causes immediate and irreparable harm to Omega.

7. Currently, there are approximately 12.5 million pounds of raw flax material, approximately 510 bales of decorticated flax fiber, farm equipment, motorized plant equipment, and installed and uninstalled production equipment located at the Pamplico Facility. (Exhibit C to Affidavit of Greg Marshall, Photographs) (Exhibit D to Affidavit of Greg Marshall, List of Equipment). If Crailar is allowed to remove these materials and equipment from the Pamplico Facility by transporting this material overseas, selling it, or otherwise, Omega will be

deprived of its recourse against these substantial assets to recover the contract amount due.

8. A temporary restraining order issued against Crailar under the circumstances will prevent it from disposing of assets that could be applied to satisfy the contract debt owed to Omega.

FURTHER AFFIANT SAYETH NOT.

Brock Hennings

Sworn to and subscribed before me this
14th day of October, 2013

Notary Public, State of North Carolina

Anjanette L Hodges
Notary Public, North Carolina
Surry County
My Commission Expires
12-9-15

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

C.A. NUMBER: 2013-CP-21-2722

OMEGA CONSTRUCTION, INC.,

Plaintiff,

vs.

CRAILER, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.

Defendant.

FILED
2013 OCT 31 AM 11:32
CONNIE REECE SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

SUPPLEMENTAL AFFIDAVIT OF D. GREG MARSHALL

PERSONALLY APPEARED BEFORE ME D. Greg Marshall who, being duly sworn, deposes and says as follows:

1. I am the Chief Financial Officer of Omega Construction, Inc. ("Omega"). Omega is a corporation organized and existing under the laws of the State of North Carolina. It also does business in South Carolina. I have personal knowledge of all matters set forth herein.

2. On or about May 23, 2012, Omega, as Design-Builder, entered into Design-Build contract with Defendant Crailar, Inc., d/b/a/ Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar"). This contract set forth Omega and Crailar's rights and obligations with respect to the design and construction of Crailar's manufacturing facility located in Pamplico, South Carolina ("Pamplico Facility"). (Exhibit A to October 14, 2013 Affidavit of Greg Marshall).

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

3. Despite timely demands for payment, Crailar has failed and refused to pay the amount due and owing to Omega under the contract. (Exhibit B to October 14, 2013 , Verified Statement of Account).

4. Omega has made several attempts to reach an agreement with Crailar concerning the debt owed in order to avoid legal action. On October 1, 2013, I spoke with Ryan Leverenz (Director of Corporate Communications). Mr. Leverenz indicated that he had spoken to Guy Prevost (Corporate Controller and Compliance Officer) and was told that Omega did not have to worry about the balance owed on the contract, and that legal action was not necessary. Omega needed written assurances of this statement, but none were forthcoming.

5. At Mr. Leverenz's suggestion, I called Guy Prevost directly a few hours later. Mr. Prevost said that Crailar intended to enter into an Escrow Agreement that the parties had discussed before in order to secure payment for Crailar's outstanding debt. I had personally made edits to the proposed Escrow Agreement in September and provided those to Crailar, but I had received no response to those edits.

6. Attached is a true and correct copy of electronic mail correspondence and a proposed Escrow Agreement on which I was copied. (Exhibit C).

7. Also attached is a copy of the Escrow Agreement with the redlined changes that I made in September. (Exhibit D).

8. Because of the shockingly abrupt closure of Crailar's Pamplico Facility on September 30, 2013, and the fact that Crailar will not respond with written assurances to secure payment - despite acknowledging its debt - Omega's interest

in the contract amount owed is subject to immediate and irreparable harm if Crailar removes all material of value sufficient to satisfy its debt from the Pamplico Facility to an overseas location.

9. I have previously described the materials and equipment in my prior affidavit. While I do not know the precise values of the materials and equipment, Omega is only seeking to enjoin the removal of materials and/or equipment sufficient to satisfy the debt Crailar owes.

10. To this end, I have made a good faith effort to establish those values to the best of my knowledge, information, and belief. The farm equipment is worth around $30-$35,000. The processed bales are worth around $125,000. (513 bales @ 700lbs each x $0.35 per pound). The uninstalled production equipment is the most valuable, and also the equipment that Crailar could most easily move to its European facility. I would assume that the value of it has to be over $1,000,000, and possibly as much as $2,000,000. I do not have an educated assumption as to the value of the unprocessed bales or the installed production equipment.

FURTHER AFFIANT SAYETH NOT.

D. Greg Marshall

Sworn to and subscribed before me this
30th day of October, 2013

Notary Public, State of North Carolina

Anjanette L Hodges
Notary Public, North Carolina
Surry County
My Commission Expires
12-19-13

EXHIBIT C

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-21-2722

Gmail by Google

Fwd: FW: Omega & Crailar

Ginger Goforth <ginger@lazenbylawfirm.com> Wed, Oct 30, 2013 at 6:58 PM
To: Ginger Goforth <Ginger@lazenbylawfirm.com>

----Original Message----
From: Steven L. Smith [mailto:Ssmith@smithparsons.com]
Sent: Wednesday, September 18, 2013 4:56 PM
To: Greg Marshall
Subject: FW: Omega & Crailar

Please see attached.

STEVEN L. SMITH
SMITH PARSONS
6060 Piedmont Row Dr. S., Suite 150
Charlotte, NC 28287
Direct: (704) 926-3757
Mobile: (704) 604-6287
Fax: (704) 557-9932
Email: Ssmith@SmithParsons.com
WEB: www.SmithParsons.com

----Original Message----
From: Killen, Russell B. [mailto:russellkillen@parkerpoe.com]
Sent: Wednesday, September 18, 2013 3:27 PM
To: Steven L. Smith
Subject: RE: Omega & Crailar

Steve:

Here is a draft of the escrow agreement. We still need to specifically define the change order work, but I was hoping Omega could help with that. Let me know what you think.

Russell

Russell Killen
Partner

Wells Fargo Capitol Center | 150 Fayetteville Street | Suite 1400 | Raleigh, NC 27601
Phone: 919.890.4151 | Fax: 919.834.4564 | www.parkerpoe.com

----Original Message----
From: Steven L. Smith [mailto:Ssmith@smithparsons.com]

RECORD 000468

Sent: Monday, September 16, 2013 11:08 AM
To: Killen, Russell B.
Cc: 'Greg Marshall'
Subject: RE: Omega & Crailar

Hey Russ: Can you please forward the proposed escrow agreement that we discussed?

STEVEN L. SMITH
SMITH PARSONS
6060 Piedmont Row Dr. S., Suite 150
Charlotte, NC 28287
Direct: (704) 926-3757
Mobile: (704) 604-6287
Fax: (704) 557-9932
Email: Ssmith@SmithParsons.com
WEB: www.SmithParsons.com

—Original Message—
From: Killen, Russell B. [mailto:russellkillen@parkerpoe.com]
Sent: Tuesday, September 10, 2013 2:37 PM
To: Killen, Russell B.; Steven L. Smith
Cc: 'Greg Marshall'
Subject: RE: Omega & Crailar

Steve;

I have heard from Ted and would like to talk this through with you. Please call me when you have a minute.

Russell

Russell Killen
Partner

Wells Fargo Capitol Center | 150 Fayetteville Street | Suite 1400 | Raleigh, NC 27601
Phone: 919.890.4151 | Fax: 919.834.4564 | www.parkerpoe.com

—Original Message—
From: Killen, Russell B.
Sent: Tuesday, September 10, 2013 10:49 AM
To: 'Steven L. Smith'
Cc: Greg Marshall
Subject: RE: Omega & Crailar

Steve;

At this point, I still do not have confirmation on anything. Sorry.

Russell

—Original Message—
From: Steven L. Smith [mailto:Ssmith@smithparsons.com]
Sent: Tuesday, September 10, 2013 8:24 AM
To: Killen, Russell B.
Cc: Greg Marshall

RECORD 000469

Subject: Omega & Crailar

Good morning Russ: can you please give me an update on the escrow deposit into your trust account and our meeting on site?

Sent from my iPhone

IRS CIRCULAR 230
NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or
(ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

PRIVILEGED AND CONFIDENTIAL: This electronic message and any attachments are confidential property of the sender. The information is intended only for the use of the person to whom it was addressed. Any other interception, copying, accessing, or disclosure of this message is prohibited.
The sender takes no responsibility for any unauthorized reliance on this message. If you have received this message in error, please immediately notify the sender and purge the message you received. Do not forward this message without permission. [ppab_v1.0]

Omega_Crailar Escrow Agreement.DOC
42K

ESCROW AGREEMENT

This Escrow Agreement ("**Escrow Agreement**") is made and entered into this ___ day of November, 20___ ("**Effective Date**") by and among **Crailar Technologies, Inc.**, a_____, and its successors and assigns ("**Owner**"), **Omega Construction, Inc.**, a_____, and its successors and assigns ("**Contractor**"), and_____, a _____, its successors and assigns ("**Escrow Agent**"). Owner, Contractor and Escrow Agent may be referred to individually as a "**Party**" and collectively as the "**Parties**".

BACKGROUND

Contractor and Owner have entered into an Agreement dated _____("**Agreement**") regarding the expansion of a manufacturing facility. Owner has agreed to tender to Escrow Agent a deposit in the amount of _____ Dollars ($_____) ("**Escrow Funds**") to be held and disbursed by Escrow Agent in accordance with this Escrow Agreement. Escrow Agent has agreed to accept, hold and disburse the Escrow Funds and any earnings on the Escrow Funds in accordance with this Escrow Agreement.

AGREEMENT

In consideration of Ten Dollars ($10.00), the mutual covenants made in this Escrow Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner, Contractor, and Escrow Agent agree as follows:

Appointment; Acceptance. Owner and Contractor appoint Escrow Agent to serve as escrow agent under this Escrow Agreement. Escrow Agent accepts such appointment and, upon receipt of the Escrow Funds to Escrow Agent, agrees to hold, invest and disburse the Escrow Funds in accordance with the Agreement and this Escrow Agreement.

Receipt and Deposit of Escrow Funds. Escrow Agent shall receive the Escrow Funds from Contractor as provided in the Agreement. Upon receipt of the Escrow Funds and a completed IRS Form W-9, Escrow Agent shall deposit the Escrow Funds into an interest-bearing account with a federally-insured institution of Escrow Agent's choice.

Change Order Work. [DEFINE]

Disbursement. Upon completion of the Change Order Work, Contractor and Owner authorize the disbursement and delivery of the Escrow Funds by Escrow Agent in accordance with the terms and provisions for payment for Change Order Work under the Agreement and this Escrow Agreement. Upon receipt of any written demand from Contractor claiming the Escrow Funds as payment for Change Order Work, Escrow Agent promptly shall forward a copy of the demand to Owner. If the Owner fails to deliver written objection to disbursement of the funds within ten (10) days of receipt of the request from Escrow Agent, then Escrow Agent shall deliver the Escrow Funds to the Contractor, and Escrow Agent shall be fully released and discharged from any further duty or obligation under this Escrow Agreement. Except as

otherwise provided herein, Escrow Agent shall not disburse the Escrow Funds unless it receives written approval of such disbursement from the other Party or an order issued entered by any court with respect to the Escrow Funds.

Liability of Escrow Agent. Escrow Agent undertakes to perform only such duties as are expressly set forth in this Escrow Agreement or as necessary to carry out the Agreement. Escrow Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth in this Escrow Agreement. Escrow Agent shall not be liable for any action taken or omitted by it in good faith, except to the extent a court of competent jurisdiction determines that Escrow Agent's negligence or willful misconduct was the cause of any loss to Contractor or Owner.

Escrow Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Escrow Funds, without determination by Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance, or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment, or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment, or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if Escrow Agent complies with any such order, writ, judgment, or decree, it shall not be liable to any of the Parties to this Escrow Agreement or to any other person or entity by reason of such compliance even though such order, writ, judgment, or decree may be subsequently reversed, modified, annulled, set aside, or vacated.

Escrow Fee. Owner and Contractor shall each pay to Escrow Agent a service fee in the amount of $_____ for serving as escrow agent under the Agreement upon disbursement of the Escrow Funds.

Termination. This Escrow Agreement shall be terminated and liability of Escrow Agent shall cease upon the disbursement of the Escrow Funds, or by written notice of such termination by the Parties to Escrow Agent.

Indemnification. Owner and Contractor jointly agree to hold harmless and indemnify Escrow Agent for all its reasonable expenses, costs, and reasonable attorneys' fees incurred under this Escrow Agreement and the transactions contemplated by the Agreement, unless resulting from the willful misconduct or negligence of Escrow Agent.

Binding Effect; Interpretation; Governing Law. All terms and conditions of this Escrow Agreement shall be binding upon the respective successors, and assigns of the Parties. Contradictions between this Escrow Agreement and the Agreement shall be resolved in favor of this Escrow Agreement. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Notices. To be effective, any notice or other communication required, permitted, or contemplated by this Escrow Agreement must be in writing and must be sent by email, certified mail (return-receipt requested), hand delivery, overnight delivery service (with proof of delivery), or commercial courier (with proof of delivery) to the following addresses. Any notice given by

facsimile or email also shall be delivered by certified mail, overnight delivery service, hand delivery or commercial courier within two (2) days of the original transmission. Any Party may change its address(es) by giving five (5) days prior notice to the other Party of such change. Notice shall be deemed delivered or received on confirmation of receipt of transmission if sent by facsimile or email; three (3) days after the postmark if sent by certified mail; the next day that is not a Saturday, Sunday, or legal holiday if sent by overnight delivery service, or upon receipt if delivered by commercial courier hand delivery.

If to Owner:

_____
_____
_____
E-mail: _____
Fax: _____

With a Required Copy to:

Parker Poe Adams & Bernstein LLP
Attention: Sam C. Moses
401 S. Tryon Street, Suite 3000
Charlotte, NC 28202
E-mail: sammoses@parkerpoe.com
Fax: (704) 334-4706

If to Contractor:

_____
_____
_____
E-mail: _____
Fax: _____

With a Required Copy to:

Smith Parsons & Vickstrom, PLLC
Attention: Steven L. Smith
6060 Piedmont Row Dr. S, Suite 150
Charlotte, NC 28287
E-mail: ssmith@smithparsons.com
Fax: (704) 557-9932

If to Escrow Agent:

_____
_____
_____
E-mail: _____
Fax: _____

Severability. If any provision of this Escrow Agreement is held to be invalid or unenforceable, then such provision will be fully severable from this Escrow Agreement, and the remaining provisions of this Escrow Agreement will remain in full force and effect and will not be affected thereby. In lieu of such invalid or unenforceable provision, there shall be added automatically as a part of this Escrow Agreement a provision as similar in terms to such invalid or unenforceable provision as may be reasonably possible and valid and enforceable.

Counterparts. This instrument may be signed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Owner, Contractor and Escrow Agent have caused this Escrow Agreement to be duly signed under seal on the day and year first above written.

OWNER:

OMEGA CONSTRUCTION, INC.

By: _____ (SEAL)

CONTRACTOR:

CRAILAR TECHNOLOGIES, INC.

By: _____ (SEAL)

Print Name: _____

Title: _____

ESCROW AGENT:

_____

By: _____(SEAL)

Print Name: _____

Title: _____

EXHIBIT D

Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.
In the Common Pleas Court for Florence County
C.A. No: 2013-CP-21-2722

ESCROW AGREEMENT

This Escrow Agreement ("**Escrow Agreement**") is made and entered into this ___ day of SeptemberNovember, 20___ ("**Effective Date**") by and among **Crailar Technologies, Inc.**, a_____, and its successors and assigns ("**Owner**"), **Omega Construction, Inc.**, a North Carolina Corporation, and its successors and assigns ("**Contractor**"), and_____, a _____, its successors and assigns ("**Escrow Agent**"). Owner, Contractor and Escrow Agent may be referred to individually as a "**Party**" and collectively as the "**Parties**".

BACKGROUND

Contractor and Owner have entered into an Agreement dated _____("**Agreement**") regarding the expansion of a manufacturing facility. Owner has agreed to tender to Escrow Agent a deposit in the amount of Three Hundred Eighty Two Thousand Three Hundred Ninety Six Dollars ($382,396.00) ("**Escrow Funds**") to be held and disbursed by Escrow Agent in accordance with this Escrow Agreement. Escrow Agent has agreed to accept, hold and disburse the Escrow Funds and any earnings on the Escrow Funds in accordance with this Escrow Agreement.

AGREEMENT

In consideration of Ten Dollars ($10.00), the mutual covenants made in this Escrow Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner, Contractor, and Escrow Agent agree as follows:

Appointment; Acceptance. Owner and Contractor appoint Escrow Agent to serve as escrow agent under this Escrow Agreement. Escrow Agent accepts such appointment and, upon receipt of the Escrow Funds to Escrow Agent, agrees to hold, invest and disburse the Escrow Funds in accordance with the Agreement and this Escrow Agreement.

Receipt and Deposit of Escrow Funds. Escrow Agent shall receive the Escrow Funds from ContractorOwner as provided in the Agreement. Upon receipt of the Escrow Funds and a completed IRS Form W-9, Escrow Agent shall deposit the Escrow Funds into an interest-bearing account with a federally-insured institution of Escrow Agent's choice.

Change Order Work. [DEFINE The Owner and Contractor have agreed to the Change Order Work to be completed and documented in PCR #28 for a partition wall and PCR #30 for wiring and fire protection of cyclones.]

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Disbursement. Upon completion of the Change Order Work, Contractor and Owner authorize the disbursement and delivery of the Escrow Funds by Escrow Agent in accordance with the terms and provisions for payment for Change Order Work under the Agreement and this Escrow Agreement. Upon receipt of any written demand from Contractor claiming the

Escrow Funds as payment for Change Order Work, Escrow Agent promptly shall forward a copy of the demand to Owner. If the Owner fails to deliver written objection to disbursement of the funds within fiveten (5~~10~~) business days of receipt of the request from Escrow Agent, then Escrow Agent shall deliver the Escrow Funds to the Contractor, and Escrow Agent shall be fully released and discharged from any further duty or obligation under this Escrow Agreement. Except as otherwise provided herein, Escrow Agent shall not disburse the Escrow Funds unless it receives written approval of such disbursement from the other Party or an order issued entered by any court with respect to the Escrow Funds.

Liability of Escrow Agent. Escrow Agent undertakes to perform only such duties as are expressly set forth in this Escrow Agreement or as necessary to carry out the Agreement. Escrow Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth in this Escrow Agreement. Escrow Agent shall not be liable for any action taken or omitted by it in good faith, except to the extent a court of competent jurisdiction determines that Escrow Agent's negligence or willful misconduct was the cause of any loss to Contractor or Owner.

Escrow Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Escrow Funds, without determination by Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance, or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment, or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment, or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if Escrow Agent complies with any such order, writ, judgment, or decree, it shall not be liable to any of the Parties to this Escrow Agreement or to any other person or entity by reason of such compliance even though such order, writ, judgment, or decree may be subsequently reversed, modified, annulled, set aside, or vacated.

Escrow Fee. Owner and Contractor shall each pay to Escrow Agent a service fee in the amount of $_____ for serving as escrow agent under the ~~—~~Agreement upon disbursement of the Escrow Funds.

Termination. This Escrow Agreement shall be terminated and liability of Escrow Agent shall cease upon the disbursement of the Escrow Funds, or by written notice of such termination by the Parties to Escrow Agent.

Indemnification. Owner and Contractor jointly agree to hold harmless and indemnify Escrow Agent for all its reasonable expenses, costs, and reasonable attorneys' fees incurred under this Escrow Agreement and the transactions contemplated by the Agreement, unless resulting from the willful misconduct or negligence of Escrow Agent.

Binding Effect; Interpretation; Governing Law. All terms and conditions of this Escrow Agreement shall be binding upon the respective successors, and assigns of the Parties. Contradictions between this Escrow Agreement and the Agreement shall be resolved in favor of this Escrow Agreement. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Notices. To be effective, any notice or other communication required, permitted, or contemplated by this Escrow Agreement must be in writing and must be sent by email, certified mail (return-receipt requested), hand delivery, overnight delivery service (with proof of delivery), or commercial courier (with proof of delivery) to the following addresses. Any notice given by facsimile or email also shall be delivered by certified mail, overnight delivery service, hand delivery or commercial courier within two (2) days of the original transmission. Any Party may change its address(es) by giving five (5) days prior notice to the other Party of such change. Notice shall be deemed delivered or received on confirmation of receipt of transmission if sent by facsimile or email; three (3) days after the postmark if sent by certified mail; the next day that is not a Saturday, Sunday, or legal holiday if sent by overnight delivery service, or upon receipt if delivered by commercial courier hand delivery.

If to Owner:

_____
_____
_____
E-mail: _____
Fax: _____

With a Required Copy to:

Parker Poe Adams & Bernstein LLP
Attention: Sam C. Moses
401 S. Tryon Street, Suite 3000
Charlotte, NC 28202
E-mail: sammoses@parkerpoe.com
Fax: (704) 334-4706

If to Contractor:

_____
_____
_____
E-mail: _____
Fax: _____

With a Required Copy to:

Smith Parsons & Vickstrom, PLLC
Attention: Steven L. Smith
6060 Piedmont Row Dr. S, Suite 150
Charlotte, NC 28287
E-mail: ssmith@smithparsons.com
Fax: (704) 557-9932

If to Escrow Agent:

_____
_____
_____
E-mail: _____
Fax: _____

Severability. If any provision of this Escrow Agreement is held to be invalid or unenforceable, then such provision will be fully severable from this Escrow Agreement, and the remaining provisions of this Escrow Agreement will remain in full force and effect and will not be affected thereby. In lieu of such invalid or unenforceable provision, there shall be added automatically as a part of this Escrow Agreement a provision as similar in terms to such invalid or unenforceable provision as may be reasonably possible and valid and enforceable.

Counterparts. This instrument may be signed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Owner, Contractor and Escrow Agent have caused this Escrow Agreement to be duly signed under seal on the day and year first above written.

OWNER:

OMEGA CONSTRUCTION, INC.

By: _____ (SEAL)

CONTRACTOR:

CRAILAR TECHNOLOGIES, INC.

By: _____ (SEAL)

Print Name: _____

Title: _____

ESCROW AGENT:

_____

By: _____(SEAL)

Print Name: _____

Title: _____

PPAB 2168430v1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C.A. No. 2013-CP-21-2722
	)	
Omega Construction, Inc.,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF GUY PREVOST**
	)	
vs.	)	
	)	
Crailar, Inc., d/b/a Crailar Technologies, Inc. f/k/a Naturally Advanced Technologies US, Inc.,	)	
	)	
Defendants.	)	

GUY PREVOST, being duly sworn, deposes and says:

1. I am over the age of eighteen and am under no disability which would render me incompetent to make this affidavit. I have personal knowledge of all the matters stated in this affidavit, except where stated upon information and belief, and all statements made are true and correct.

2. I am Corporate Controller & Compliance Officer for Crailar Technologies Inc.

3. Crailar, Inc. ("Crailar") is the United States subsidiary of Crailar Technologies Inc. Crailar was formerly known as Naturally Advanced Technologies US, Inc.

4. In my duties as Corporate Controller & Compliance Officer, I oversee business operations, and am responsible for issuing financial statements for Crailar, among other things.

5. Crailar operates a facility located in Pamplico, South Carolina (the "Pamplico Facility"),

6. Most of the equipment and other assets located in the Pamplico Facility are fully pledged to the holders of Crailar's debt obligations under debentures that have been issued for its benefit to raise capital for its operations.

7. Currently at the Pamplico Facility, there is 11,500,000 pounds, more or less, of raw flax fiber (the "Raw Flax") in storage.

8. I certify that the company paid approximately $1,696,500 for the Raw Flax located at the Pamplico Facility. Additionally, the Company has approximately 330,000 pounds of decorticated flax located at the Pamplico Facility worth an estimated $99,000.

9. Based on the information set forth in Paragraphs 7 and 8, I attest that the fair market value of the Raw Flax and decorticated flax described herein is greater than $285,000.

Further this Affiant sayeth not.

This the 31st day of October, 2013.

GUY PREVOST

SWORN to and subscribed before me
this the 31st day of October, 2013.

Notary Public

My Commission expires: Does Not Expire

Paul P. Gauthier
Barrister & Solicitor
201 – 4430 Chatterton Way
Victoria BC V8X 5J2

From:
Sent:
To:
Subject:

Dear Counselors,

Judge Seals is granting the Plaintiff's motion. However, in lieu of assets the Defendant may be bonded in the amount of $285,000 or the Defendant may identify and certify via affidavit unencumbered assets that value the $285,000 which may be subject to this order. Mr. Lazenby, please prepare an order, e-mail a copy to me, and mail a hard copy to Judge Seals chambers along with a self-addressed stamped envelope within 10 days.

Kind Regards,

Jordan W. Hyman
Law Clerk to the Honorable William H. Seals, Jr.
Circuit Court Judge At-Large Seat 6
208 West Dozier Street
Marion, South Carolina 29571
Ph: (843) 423-0446
Cell: (843) 421-1903
Fax: (843) 423-0535

From:
Sent:
To:
Cc:
Subject:

Jordan,

Because the existing TRO expires this Saturday, November 2, can Judge Seals sign a form order extending the existing TRO until a formal order can be issued?

D. Alan Lazenby
Lazenby Law Firm, LLC
Post Office Box 6099 (29304)
340 E. Main Street Suite 240
Spartanburg, SC 29302
alan@lazenbylawfirm.com
Office: (864) 804-5050
Mobile: (864) 415-2753
Fax: (864) 804-5051

On Oct 31, 2013, at 2:42 PM, "Seals, William Law Clerk (Jordan W. Hyman)" <wsealslc@sccourts.org> wrote:

> Dear Counselors,
>
> Judge Seals is granting the Plaintiff's motion. However, in lieu of assets the Defendant may be bonded in the amount of $285,000 or the Defendant may identify and certify via affidavit unencumbered assets that value the $285,000 which may be subject to this order. Mr. Lazenby, please prepare an order, e-mail a copy to me, and mail a hard copy to Judge Seals chambers along with a self-addressed stamped envelope within 10 days.
>
> Kind Regards,
>
> **Jordan W. Hyman**
> Law Clerk to the Honorable William H. Seals, Jr.
> Circuit Court Judge At-Large Seat 6
> 208 West Dozier Street
> Marion, South Carolina 29571
> Ph: (843) 423-0446
> Cell: (843) 421-1903
> Fax: (843) 423-0535

From:
Sent:
To:
Cc:
Subject:

Jordan,

Omega's position is that since the Court allowed me 10 days to prepare an Order, that it naturally follows that the existing order should be extended.

We need time to verify the value of the materials. My understanding is that there is no market for the raw material other than Crailar; and that it is prohibitively expensive for Crailar to ship the materials to other plans. If there is no market for this material then the material has zero "fair market value."

Perhaps Lawrence and I can communicate this morning to try to work out the security issue.

Alan

On Fri, Nov 1, 2013 at 10:52 AM, Hershon, Lawrence M. <lawrencehershon@parkerpoe.com> wrote:

Jordan:

I have just been informed by Mr. Lazenby this morning by email that the attached proposed order was sent to you late yesterday afternoon by another attorney in his office for extending the TRO for a ten day period.

As was discussed on the record at the hearing, my understanding was that Omega did not intend to put a restraint on all assets of Crailar. Instead, Omega only desired to put a restraint on $285,000 worth of assets. My client has executed the attached affidavit, stating that the raw flax and certain decorticated flax are unencumbered and have a value well in excess of $285,000. My client respectfully requests that any order entered concerning the TRO or any injunctive relief limit the assets subject to the order to the flax referenced in the affidavit. Otherwise, millions of dollars worth of equipment and other items may be subject to the order (and the current bond procured by Omega is not sufficient to cover these assets).

Please let me know if you would like to discuss further. I am available for a telephone conference if the judge so requests.

Best regards,

Lawrence Hershon

Lawrence Hershon
Associate

1201 Main Street | Suite 1450 | Columbia, SC 29201
Phone: 803.253.8918 | Fax: 803.255.8017 | www.parkerpoe.com | vcard | map

From: Seals, William Law Clerk (Jordan W. Hyman) [mailto:wsealslc@sccourts.org]
Sent: Thursday, October 31, 2013 2:42 PM
To: alan@lazenbylawfirm.com; Hershon, Lawrence M.
Subject: TRO - Omega v. Crailor

Dear Counselors,

Judge Seals is granting the Plaintiff's motion. However, in lieu of assets the Defendant may be bonded in the amount of $285,000 or the Defendant may identify and certify via affidavit unencumbered assets that value the $285,000 which may be subject to this order. Mr. Lazenby, please prepare an order, e-mail a copy to me, and mail a hard copy to Judge Seals chambers along with a self-addressed stamped envelope within 10 days.

Kind Regards,

Jordan W. Hyman

Law Clerk to the Honorable William H. Seals, Jr.

Circuit Court Judge At-Large Seat 6

208 West Dozier Street

Marion, South Carolina 29571

Ph: (843) 423-0446

Cell: (843) 421-1903

Fax: (843) 423-0535

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--

D. Alan Lazenby
Lazenby Law Firm, LLC
Post Office Box 6099 (29304)
340 E. Main Street Suite 240
Spartanburg, SC 29302
alan@lazenbylawfirm.com
Office: (864) 804-5050
Mobile: (864) 415-2753
Fax: (864) 804-5051

Gmail by Google

Re: Omega v. Crailar TRO/Temporary Injunction

Seals, William Law Clerk (Jordan W. Hyman) <wsealslc@sccourts.org> Tue, Nov 12, 2013 at 11:39 AM
To: Ginger Goforth <ginger@lazenbylawfirm.com>
Cc: "Hershon, Lawrence M." <lawrencehershon@parkerpoe.com>, Alan Lazenby <alan@lazenbylawfirm.com>

Counselors,

Judge Seals will give an additional 10 days for you two to work out the details of the proposed order. Mr. Lazenby, please fax an order to this effect to Judge Seals office along with a self addressed stamped envelope for its return to Florence COC.

Jordan W. Hyman
Law Clerk to the Honorable William H. Seals, Jr.
Circuit Court Judge At-Large Seat 6
208 West Dozier Street
Marion, SC 29571
Ph: (843) 423-0446
Cell: (843) 421-1903

On Nov 12, 2013, at 11:20 AM, "Ginger Goforth" <ginger@lazenbylawfirm.com<mailto:ginger@lazenbylawfirm.com>> wrote:

Jordan,

It is Omega's position that Crailar has known since October 31 that Judge Seals granted the temporary injunction, and that it was required to identify $285,000 worth of assets sufficient to satisfy this ruling. Omega submitted the proposed order without specifying what property secures Omega's interest because Crailar will not identify sufficient assets, despite negotiations between the parties between October 31 and November 8. There is only a narrow and specialized market for the material Crailar has identified. It is worthless to Omega, and Crailar knows this. Further, Crailar issued a press release today, attached hereto, indicating in part as follows: "The Company will postpone the completion of a fully integrated facility in South Carolina until it exceeds the capacity of its European facility or a strategic partner desires a dedicated facility and supports the $14 million build-out in South Carolina." Crailar is not on any kind of timetable to return to South Carolina, is essentially leaving the flax material at Pamplico to rot, and is trying to foist it off as security. Omega will not agree to accept the flax as security. Please let me know if I need to file a formal motion for extension today, and I will do so. Omega has no desire to secure more than that to which it is entitled, but the security must be appropriate.

Thank you,

Ginger

http://www.crailar.com/company/press/crailar-finalizes-purchase-european-processing-facility

Ginger D. Goforth
Lazenby Law Firm, LLC
340 E. Main Street, Suite 240
Spartanburg, SC 29302
P.O. Box 6099 (29304)
ginger@lazenbylawfirm.com<mailto:ginger@lazenbylawfirm.com>
Office: (864) 804-5050
Mobile: (864) 316-6499
Fax: (864) 804-5051

On Tue, Nov 12, 2013 at 10:55 AM, Hershon, Lawrence M. <lawrencehershon@parkerpoe.com<mailto:lawrencehershon@parkerpoe.com>> wrote:
Jordan:

I hope you are doing well.

As my client is on west coast time, it will take some time for my client to have a response to the proposed order, which was provided on a Friday at 3:00 PM going into a holiday weekend. My client's offices were closed on Monday. I will not have a revised affidavit on the sales value of the assets until later today. However, there are several concerns I have with the proposed order. Is it best to email those concerns to you?

As for the request for an extension of the TRO, my client cannot consent to its outright extension under the same terms that have been in place for the last 20 days. First of all, with all due respect, Omega's counsel waited 8 days from the hearing (and into a holiday weekend) to provide the proposed order. This fact should not prejudice my client. Second, the current order covers all assets, but the current bond only covers $285,000 worth of assets. A previous affidavit I sent from Guy Prevost certifies the value of the flax on-site to be well in excess of $285,000 (I have re-attached this affidavit for your review). Again, I plan to get you an affidavit that not only certifies the cost of the flax but also certifies the likely market value of the flax after processing. My client respectfully requests that the property involved under any extension of the current order or entry of a new order be limited to a portion of the flax.

Please let me know if you need any further information.

Best regards,

Lawrence Hershon

Lawrence Hershon
Associate

[cid:]

1201 Main Street | Suite 1450 | Columbia, SC 29201
Phone: 803.253.8918<tel:803.253.8918> | Fax: 803.255.8017<tel:803.255.8017> | www.parkerpoe.com<http://www.parkerpoe.com> |
vcard<http://www.parkerpoe.com/vcard.php?PeopleID=56> | map<http://maps.google.com/maps?q=1201%20Main%20Street%
2CColumbia%2CSC%2C28201%2CUnited%20States>
From: Ginger Goforth [mailto:ginger@lazenbylawfirm.com<mailto:ginger@lazenbylawfirm.com>]
Sent: Tuesday, November 12, 2013 10:17 AM
To: wsealslc@sccourts.org<mailto:wsealslc@sccourts.org>
Cc: Hershon, Lawrence M.
Subject: Omega v. Crailar TRO/Temporary Injunction

Jordan,

I am writing to follow up on the proposed order that we sent on Friday, November 8. As you know, the TRO granted by Judge Seals expires today. If Judge Seals is not prepared to sign the order today and needs additional time to review, we need to extend the TRO for the period necessary to accomplish that. I am copying opposing counsel on this motion for his input, and to determine whether, if additional time is needed, he will provide the consent called for under Rule 65, or whether we will need to file another motion. Thank you for your assistance.

- Ginger

Ginger D. Goforth
Lazenby Law Firm, LLC
340 E. Main Street, Suite 240
Spartanburg, SC 29302
P.O. Box 6099 (29304)
ginger@lazenbylawfirm.com<mailto:ginger@lazenbylawfirm.com>
Office: (864) 804-5050<tel:%28864%29%20804-5050>
Mobile: (864) 316-6499<tel:%28864%29%20316-6499>
Fax: (864) 804-5051<tel:%28864%29%20804-5051>

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LAZENBY LAW FIRM, LLC

ATTORNEYS AT LAW

D. ALAN LAZENBY
GINGER D. GOFORTH

POST OFFICE BOX 6099 (29304)
340 E. MAIN ST., SUITE 240
SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051

November 27, 2013

VIA EMAIL ONLY
Lawrence M. Hershon
Parker Poe Adams & Bernstein, LLP
P.O. Box 1509
Columbia, SC 29202-1509

Re: ***Omega Construction, Inc. v. Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc.***
In the Court of Common Pleas for Florence County
C.A. No: 2013-CP-21-2722

Dear Mr. Hershon:

Omega has obtained confirmation of the salvage value credits due to Crailar, and I would like to pass them on to you. The credit from Bahnson for the HVAC system is $91,521.65. The credit from Adams Electric for electrical work is $5,000.00. This reduces Crailar's contract liability to Omega to $188,907.00. Based upon Crailar's values for the truck, tractor, and scale used by the court, the updated amount Crailar is required to bond is $93,725.10.

Omega is also proposing a settlement offer. In short, Omega will accept transfer of the three pieces of equipment and a $60,000.00 cash payment to settle the parties' obligations under the contract. The collateral values Crailar has assigned to the equipment are demonstrably more than what Omega could recognize from selling it; therefore, Omega has more realistically valued the collateral at $65,500.00. This proposal would result in an approximately $63,000.00 discount for settlement.

Attached is a spreadsheet summary detailing both the settlement offer and the salvage value credit. Please contact me to discuss at your earliest convenience.

Sincerely,

Ginger Goforth

GDG: jeh
Enclosure

Ginger D. Goforth
ginger@lazenbylawfirm.com

Omega Construction, Inc.
Crailar - Project #12-004
Salvage Credit

Unpaid contract balance before salvage credit	$ 285,428.65
Less salvage value credits:	
Bahnson - HVAC	(91,521.65)
Adams Electric - Electrical	(5,000.00)
	(96,521.65)
Unpaid contract balance after salvage credit	$ 188,907.00
Less value for collateral:	
Chevy Colorado	28,575.00
Holland Tractor	21,935.00
Truck Scale	44,243.25
	94,753.25
Remaining amount for bond to be posted by Crailar	$ 94,153.75
Remaining amount based on rounded balance of $285,000	$ 93,725.10

Settlement Offer Summary:	**Omega Values**	**Crailar Values**
Unpaid balance before salvage value credit	$ 285,428.65	$ 285,000.00
Salvage value credit	(96,521.65)	(96,521.65)
Unpaid balance after salvage value credit	$ 188,907.00	$ 188,478.35
Less value of collateral	(65,500.00)	(94,753.25)
Remaining balance	$ 123,407.00	$ 93,725.10
Settlement discount	(63,407.00)	(33,725.10)
Settlement offer	$ 60,000.00	$ 60,000.00

Bond No. 9117908

FILED
2013 OCT 23 PM 1:50
CONNIE REEL-SHEARIN
CCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
OMEGA CONSTRUCTION, INC.,)
)
Plaintiff,)
)
vs.)
)
CRAILAR, INC., d/b/a CRAILAR TECHNOLOGIES, INC., f/k/a NATURALLY ADVANCED TECHNOLOGIES US, INC.)
)
Defendant.)

MOTION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

C.A. No: 2013-cp-21-2122

We, Plaintiff Omega Construction, Inc. ("Omega"), plaintiff-principal, and Fidelity and Deposit Company of Maryland, surety, acknowledge ourselves bound unto the defendant Crailar, Inc., d/b/a/ Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies, Inc. ("Crailar") in the sum of Three Hundred Seventy Nine Thousand Six Hundred Twenty and 12/100 ---------- ($379,620.12), subject to the following conditions:

That Omega is seeking a restraining order against Crailar, which is now about to be issued;

That, if Crailar should later be found to have been wrongfully restrained, the costs and damages proved to be incurred by Crailar shall be paid by Omega;

That, in the event of Omega's failure to pay all or part of any sum owed to Crailar because of the above stated occurrence, the surety is bound and does guarantee to pay such amounts owed to Crailar for damages or costs.

Done this 15th day of October 2013.

CERTIFIED A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Signed, sealed, and delivered in the presence of:

Lisa Singleton, Asst. Secretary

Angela M. Yount

Omega Construction, Inc.

By: D. Greg Marshall, Secretary/Treasurer

Plaintiff

Fidelity and Deposit Company of Maryland

By: Debra S. Ritter
Debra S. Ritter, Attorney-in-Fact

Surety

APPROVAL

The above undertaking by Plaintiff who is joined by surety is hereby approved:

Dated: 10-23-13

S/ Michael Nettles

Presiding Judge

FILED
2013 OCT 23 PM 1:50
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

I HEREBY CERTIFY THIS IS A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **THOMAS O. MCCLELLAN, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Raymond J. GARRUTO, Debra S. RITTER, Ramona FEWELL, Martin D. PALLAZZA, Brad W. GIBSON and Angela M. YOUNT, all of Charlotte, North Carolina, EACH** its true and lawful agent and Attorney-*in*-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND,** this 27th day of February, A.D. 2013.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: _____
Assistant Secretary
Eric D. Barnes

_____
Vice President
Thomas O. McClellan

State of Maryland
City of Baltimore

On this 27th day of February, A.D. 2013, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **THOMAS O. MCCLELLAN, Vice President, and ERIC D. BARNES, Assistant Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
Constance A. Dunn, Notary Public
My Commission Expires: July 14, 2015

POA-F 177-0134B

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V. Section 8. Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 15th day of October, 20 13.

Geoffrey Delisio

Geoffrey Delisio, Vice President

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2013-CP-21-2722
Appellate Case No. 2013-002722

Omega Construction, Inc. .....Respondent,

v.

Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a
Naturally Advanced Technologies US, Inc., ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Lawrence M. Hershon
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1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(803) 255-8000
Attorney for Appellant

June 9, 2014
Columbia, South Carolina

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JUN 30 2014
SC Court of Appeals