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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Mikell Scarborough, Master in Equity

Case No. 2016-CP-10-2955

Appellate Case No. 2021-000272

TCC of Charleston, Inc. ..... *Plaintiff and Appellant/Respondent*.

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam,. ..... *Defendants and Respondents/Appellants*.

RECORD ON APPEAL
VOL. 1 of 6

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FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 16-CP-10-02955

TCC of Charleston, Inc., v. Concord and Cumberland, LLC, et al,

PLAINTIFF DEFENDANT

FILED
2016 NOV -4 PM 2:53
JULIE ARMSTRONG
CLERK OF COURT

CHECK ONE:

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

This case was before the Court on November 3, 2016 for a hearing on Plaintiff's Motion to Stay and Compel Arbitration, filed June 6, 2016. Before the call of the motion, the Court was advised that the matter had been resolved on November 2, 2016. A Supplemental Consent Order is to be submitted by attorney Andrew K. Epting.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled**

		(List amount(s) below)
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

AK Jagg
Circuit Court Judge

2128
Judge Code

11/3/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20___ and a copy mailed first class or placed in the appropriate attorney's box on this _____day of _____, 20___to attorneys of record or to parties (when appearing pro se) as follows:

Andrew K. Epting, Jr., Esq.

PLAINTIFF

F. Cordes Ford, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Phyllis Norton

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2016-CP-10-2955

TCC OF CHARLESTON, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	**ORDER**
	)	
Defendants.	)	

FILED
2017 JUN -3 PM 3:28

WHEREAS, the Plaintiff filed a motion to stay and compel arbitration in the above-styled

action, and whereas the parties have consented to an arbitration of the dispute between Plaintiffs and Defendant CONCORD & CUMBERLAND HPR ("Regime"), and stay of Plaintiffs foreclosure request as to the remaining Defendants, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. Macgillivray, Teresa Macgillivray, Pamela L. Vaughn, Nelia A. Patricio, Truste of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam, therefore this matter is stayed as to all Defendants to allow the arbitration to proceed between Regime and Plaintiffs.

IT IS SO ORDERED.

S/ Roger Young
The Honorable Roger M. Young Sr.

Charleston, South Carolina
12/30/, 2016

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

WE SO CONSENT:

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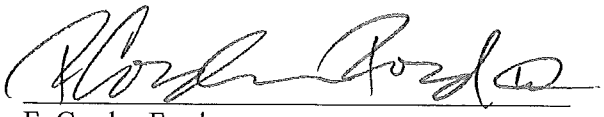
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For Purposes of This Motion, ATTORNEYS
FOR REMAINING DEFENDANTS

IN THE MATTER OF THE ARBITRATION BETWEEN

TCC OF CHARLESTON, INC., Plaintiff,	)	**Civil Action No. 2016-CP-10-2955**
v.	)	**CORRECTED ARBITRATION AWARD**
CONCORD & CUMBERLAND HPR, Defendant.	)	

This matter comes before the undersigned Arbitration Panel pursuant to Concord & Cumberland HPR's ("HPR") Motion for Change of Award. For the reasons set forth below, HPR's Motion for Change of Award is granted in the following respects. This Corrected Arbitration Award corrects, amends, and supplements this Panel's prior Arbitration Award dated April 16, 2019. The Post Award Order dated July 12, 2019, is withdrawn.

In finding the sum of $2,023,074.45 recoverable by TCC of Charleston, Inc. ("TCC") in the Arbitration Award dated April 16, 2019, the Panel included the amounts in PCO 143 (TCC Exhibit 124), PCO 144R (TCC Exhibit 123), and PCO 146 (TCC Exhibit 125), as part of the recovery to TCC. In calculating interest for the Post Award Order, the Panel mistakenly referred back to Pay Application No. 17, and the sums therein, instead of the above exhibits or TCC Exhibit 128.[1]

[1] Exhibit 128 references PCO 144. However, the value included in TCC Exhibit 128 for PCO 144 is $128,041.00, which is the amount of PCO 144R rather than the value of PCO 144.

In reviewing HPR's Motion to Correct Award, this Panel also realized it had erroneously included $9,608.00 in the Arbitration Award for the transom door based on PCO 145 (TCC Exhibit 131 and TCC Exhibit 128). The claim for the transom door was withdrawn during the hearings. Accordingly, the Panel's Arbitration Award dated April 16, 2019, should be corrected to deduct the amount of the transom door claim.

THEREFORE, THE PANEL ISSUES THE FOLLOWING CORRECTED ARITRATION AWARD:

This matter is before the undersigned pursuant to the Order of Judge Roger M. Young, Sr., dated December 30, 2016, to stay Case No. 2016-CP-10-2955 (the "Lawsuit") and compel arbitration of a dispute between TCC of Charleston, Inc. ("TCC") and Concord & Cumberland HPR ("HPR") (cumulatively the "Parties"), the Arbitration Agreement entered into between the Parties on January 18, 2017 (the "Arbitration Agreement"), and appointment in accordance with S.C. Code Ann. § 15-48-30.

The merits hearing was conducted January 21 - 24, 2019. Each party was represented by counsel and presented exhibits and witness testimony. TCC called as witnesses John David Griffith, Chris Burrell, Ryan Tomberlin, Gary Moore, and Zan Edens. HPR called as witnesses Trey McCraw and Shawn Mellin. At the conclusion of the hearing, the Panel requested that TCC provide a summary or itemization of its damages claim and that each party present proposed Orders. Each side provided a proposed Order on or before March 21, 2019, and the hearing was closed at that time.

Based upon the evidence presented; after careful consideration of all the testimony, exhibits, submissions, arguments of counsel; proposed orders submitted by the parties; and review

of the applicable law, the Panel makes the following Findings relevant to this proceeding and issues this Corrected Arbitration Award.

Findings

On February 27, 2014, HPR contracted with TCC to perform a scope of work at 175 Concord. The contract was cost plus a fee, with a guaranteed maximum price ("GMP") of $3,923,939.00. The contract consisted of an A102 and A201 as modified by the parties. HPR designated Tom Mather as its initial owner's representative and the project architect was Shawn Mellin of Glick Boehm and Associates ("GBA").

The scope of work for the contract was developed by GBA based upon GBA's investigations performed in prior litigation of HPR and the individual unit owners against the original developer, contractor, and subcontractors. Generally, TCC was to declad the building, apply waterproofing, replace the windows, and apply new cladding.

A Notice to Proceed was issued on July 28, 2014. The contract required the work to be substantially complete 306 days after the Notice to Proceed, to-wit: May 30, 2015. Substantial completion actually occurred on March 8, 2016.

It is undisputed that the condition of the building was different than what TCC contemplated when it originally submitted its bid. During the course of the work, at least 134 proposed change orders ("PCOs") were requested by TCC. $1,953,145.00 of the PCOs were paid by HPR, increasing the total contract to $5,877,084.00 as of February 2016. The paid PCOs were paid on a cost-plus basis.

This dispute involves architect approved but unpaid PCOs; architect approved but unpaid retainage; and, remaining unapproved PCOs. TCC is entitled to be paid PCOs 143, 144R, 146, and unpaid retainage. TCC performed additional work outside the original scope of work which

was not approved and was not paid. TCC was inefficient in its prosecution of some of the additional work and is only entitled to be paid a portion of the remaining unapproved PCOs. The Panel finds based on the testimony of TCC and HPR that the work performed by TCC and its subcontractors was inefficient in the amount of 25% of the remaining unapproved amounts claimed.

Effect of Conditional Lien Waivers Accompanying Payment Application No. 17 and Prior Payment Applications

HPR has maintained in its proposed Arbitration Award, its Motion for Reconsideration, and its Motion for Change of Arbitration Award that the Conditional Release and Waiver of Lien executed by TCC and accompanying Payment Application No. 17 which HPR paid, as well as others executed by TCC, bars a significant portion of recovery, "at least $996,180.71", sought by TCC. Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project.

The Panel finds that TCC provided Conditional Release and Waiver of Liens with each application for payment. Each Conditional Release and Waiver of Lien contained the following:

> The undersigned TCC of Charleston, Inc. in consideration of receipt of payment in the amount of $_____, for materials, labor and services rendered and supplied as of _____ (the date of the period covered by the Payment Application), and does hereby release and waive all claims and liens existing as of _____ (the date of the period covered by the Payment Application), against Concord & Cumberland HPR C/O McAlister Preferred Properties on account of, or in any way resulting from or in connection with construction located at 175 Concord St., Charleston, SC in the County of Charleston, State of South Carolina.

The Panel finds that some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by HPR which arose and existed as of the date of the execution

of the Conditional Release and Waiver of Liens. Knowing that TCC had signed Conditional Release and Waiver of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and, made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens. HPR cannot now claim that the Conditional Release and Waiver of Liens bar TCC's claims.

Correction of Award

The corrected total award is based, in part, on the sum of approved and unpaid PCOs in the amounts of $258,799.00 (PCO 143), $128,041.00 (PCO 144R), and $266,168.00 (PCO 146) plus retainage in the amount of $305,565.00 as itemized in TCC Exhibit 161. These sums total $958,573.00. Additionally, a portion of the disputed amount of $1,417,322.87 and a portion of the stone tower is also awarded. However, both parties testified that PCO 145 for the transom door in the amount of $9,608.00 (TCC Exhibit 131) should not be included.

Based on the evidence presented and testimony of both parties, the Panel concludes and finds that the disputed claims and work performed by TCC, including the stone tower had an inefficiency factor of 25 percent (25%) of the amount claimed. TCC is also entitled to receive 8.25 percent (8.25%) for data processing fees and profit on the corrected award. The total award to TCC is calculated as follows:

A. TCC's award is based on the unadjusted sum of $258,799.00 (PCO 143) + $128,041.00 (PCO 144R) + $266,168.00 (PCO 146) + $305,565.00 (Retainage) + $1,417,322.87 (Disputed amount from Exhibit 161) + $32,540.00 (Stone Wall) = $2,408,435.87.

B. Less the disputed unpaid PCOs by 25%, including 8.25% profit and data processing on the 25% deduction due to TCC's inefficiencies.

$1,417,322.87 – ($1,417,322.87 x 25%) (1.0825) = $1,033,759.87. The inefficiency adjustment is $383,563.00 including O&P and data processing.

C. The stone tower adjustment is $32,540.00 – ($32,540.00 x 25%) (1.0825) = $23,733.86. NOTE: The inefficiency adjustment is $8,806.14 including O&P and data processing.

D. Calculated Corrected Award:

$958,573.00	Approved and unpaid PCOs excluding transom door
$1,033,759.87	Disputed amount from Exhibit 161 with inefficiency deduction
$23,733.86	Adjusted stone tower with inefficiency deduction
$2,016,066.73	Corrected Award

E. The corrected total award to TCC with all adjustments exclusive of interest and fees and excluding counsel fees incurred in the conduct of the arbitration is $2,016,066.73.

Attorney Fees

Litigants are not entitled to recover attorney fees absent a written agreement to do so or statutory authority allowing for the recovery of attorney fees. The Order of Judge Roger M. Young, Sr., dated December 30, 2016, provides in pertinent part "the parties have consented to an arbitration of the dispute between Plaintiffs and Defendant CONCORD & CUMBERLAND HPR ("Regime") and stay of Plaintiffs (*sic*) foreclosure request as to the remaining Defendants." Section 5 of the Arbitration Agreement between TCC and HPR states as follows:

> 5. *Fees and Expenses of Arbitrators* - All fees and expenses incurred and charged by the Arbitrators prior to the hearing shall be borne equally between the Parties, with Trident bearing one-half and the HPR bearing one-half. However, *the Arbitrators shall assess, in whole or in part, their fees and expenses incurred* in connection with the Arbitration as a part of their award in accordance with S.C. Code Ann. § 15-48-110 and the fee provision contained in the Mechanic's Lien Laws. *(emphasis added).*

S.C. Code Ann. § 15-48-110 grants to an arbitrator limited jurisdiction to award "the arbitrator's expenses, and fees, together with other expenses." S.C. Code Ann. § 27-3-20 requires that TCC's lien must be filed against the property owners rather than the HPR. Accordingly, the language in Section 5 of the Arbitration Agreement mandates that this Panel award "their fees and

expenses incurred in connection with the Arbitration … in accordance with" the prevailing party fee provision "in the Mechanic's Lien Laws."

The construction contract between TCC and HPR does not contain a prevailing party attorney fee provision. No statutory authority has been provided to the Panel as a basis to award attorney fees. Accordingly, this Panel finds it is without jurisdiction to entertain a Motion for Attorney Fees. Both TCC's and HPR's requests for attorney fees are denied without prejudice to either TCC or HPR to seek attorney fees before the Court of Common Pleas for Charleston County, South Carolina.

S.C. Code Ann. § 15-48-110 Arbitrators Expenses and Fees, Other Expenses

Section 5 of the Arbitration Agreement mandates that this Panel make an award of the Panel's "fees and expenses incurred in connection with the Arbitration." The Panel finds in accordance with S.C. Code Ann. § 15-48-110 and the prevailing party fee provision contained in the Mechanic's Lien Laws that TCC is entitled to recover from the HPR its deposit of $44,250.00 paid by it. Upon HPR paying TCC the amount of the deposit ($44,250.00), any funds remaining in the Elmore Goldsmith, P.A. Trust Account for arbitrator fees and expenses shall, at the conclusion of the arbitrators' service, be paid to the HPR.

S.C. Code Ann. § 15-48-110 also provides for an award of "other expenses, not including counsel fees incurred in the conduct of the arbitration." The Panel has reviewed TCC's claimed costs and finds that TCC is entitled to and awards TCC $21,691.02 for other expenses, not including counsel fees incurred in the conduct of the arbitration.

Correction of Interest Calculation

Article 15.2 of AIA Document A102-2007, *Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price* dated February 27, 2014, as modified, between TCC and HPR provides:

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

TCC seeks interest at 5.5% from March 8, 2016. HPR contends that Panel does not have jurisdiction to award interest under the parties Arbitration Agreement; that a sum certain due was not known until the arbitration award; and, that the amount awarded arising under Article 15.2 must be specified.

PCOs 143, 144R, and 146, were all approved by the architect no later than August 29, 2017. The project was substantially complete on March 8, 2016. Through no fault of TCC, retainage in the amount of $305,565.00 was never paid. This Arbitration Panel finds TCC is entitled to recover interest on PCOs 143, 144R, 146 and retainage totaling $958,573.00 since September 29, 2017, at the rate of 4% compounded annually through August 1, 2019.

IT IS THEREFORE ORDERED:

1. TCC is entitled to recover against HPR the sum of $2,016,066.73 for all claims asserted in this proceeding including, but not limited to, approved and unapproved PCOs and retainage.

2. TCC and HPR's respective motions for an award of their attorney fees are denied without prejudice to seek attorney fees before the Court of Common Pleas as the prevailing party under S.C. Code Ann. § 29-5-10, *et seq*.

3. TCC is entitled to recover its arbitrator deposit in the amount of $44,250.00 against HPR. Upon HPR paying TCC the amount of the deposit

($44,250.00), any funds remaining in the Elmore Goldsmith, P.A. Trust Account for arbitrator fees and expenses shall, at the conclusion of the arbitrators' service, be paid to the HPR.

4. TCC is entitled to recover its expenses, not including counsel fees, incurred in the conduct of the arbitration in the amount of $21,691.02 against HPR pursuant to S.C. Code Ann. § 15-48-110.

5. TCC is entitled to recover interest on the sum of PCOs 143, 144R, and 146 and retainage, totaling $958,573.00, since September 29, 2017, at the rate of 4% compounded annually through August 1, 2019 in the amount of $71,667.31. Interest shall accrue at the rate of $112.90 per day thereafter until (1) this Corrected Arbitration Award is satisfied and paid in full; or (2) until judgment is entered on this Corrected Arbitration Award, whichever first occurs.

AND IT IS SO ORDERED.

August 12, 2019

Alan O. Campbell, Arbitrator

John L. McCants, Arbitrator

L. Franklin Elmore, Arbitrator

ELECTRONICALLY FILED - 2020 Jan 30 5:05 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON**	)	**IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT**
TCC OF CHARLESTON, INC. Plaintiff, v. CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam, Defendants.	)	Case No.: 2016-CP-10-2955 **ORDER ON MOTION TO LIFT STAY AND MOTIONS TO VACATE OR CORRECT ARBITRATION AWARD**

ELECTRONICALLY FILED - 2020 Jan 30 5:05 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorneys:	Jaan Rannik, Esq., and Andrew Epting, Jr., Esq.
Defendant Concord and Cumberland, LLC's Attorney:	Cordes Ford, Esq.
Defendant Concord and Cumberland HPR's Attorney:	Andrew Walden, Esq.
Date of Hearing:	December 16, 2019
Court Reporter:	Lorraine Harris

This matter came before the Court on December 16, 2019 for a hearing on TCC of Charleston's ("TCC's") Motion to Lift Stay, filed June 17, 2019 and the Concord & Cumberland HPR's ("the HPR's") Motion to Vacate or Modify Arbitration Award, filed July 16, 2019.[1] After reviewing the materials and authorities filed with this Court and considering the record and arguments presented at the hearing, the Court rules as follows.

FINDINGS OF FACT

This is a construction contract payment dispute arising from a repair project at condominiums located at 175 Concord Street in Charleston, South Carolina (the "Project"). The HPR was the Project owner. TCC was the Project's general contractor. The dispute centers on TCC's final pay application, Pay Application eighteen (18), and TCC's resulting claim for $2,385,503.57. The parties do not dispute payment in full of the first seventeen (17) pay applications.

The dispute was referred to binding arbitration by agreement. After the hearing, issuance of an initial Award, and exchange and consideration of subsequent motions, the Arbitration Panel (the "Panel") issued a Corrected Arbitration Award granting TCC $2,016,066.73, plus interest and

[1] While this Order refers to the HPR's "motion" (singular), the HPR filed two separate motions to vacate — one filed on July 16, 2019 relating to the initial award delivered by the arbitrators, and one filed November 18, 2019 relating to the corrected award signed by the arbitrators on August 12, 2019. The only award properly before the Court is the corrected award, and this award forms the basis for the Court's ruling on the HPR's motions.

costs. TCC commenced this action by filing a lawsuit in Charleston County against the HPR on June 6, 2016. TCC amended the Complaint on June 10, 2016 to add the individual condominium unit owners as captioned herein. Contemporaneously with filing the initial Complaint on June 6, 2016, TCC filed a Motion to Stay and Compel Arbitration. The HPR consented to Arbitration in a Consent Order filed with this Court on December 30, 2016, and the arbitration proceeded on the claims between TCC and the HPR.

The Parties entered into an Arbitration Agreement on January 18, 2017, which provides in relevant part, "this dispute is to be decided by final and binding arbitration pursuant to S.C. Code § 15-48-10 et. seq. …" The Panel agreed to issue a "Reasoned Award" as stated in Panel Order No. 1, dated April 19, 2017. The arbitration hearing was held January 21 – 24, 2019, and the Panel issued its initial Award on April 16, 2019. After the exchange of post-hearing motions and the Panel's issuance of a Post Award Order, the HPR submitted a Motion to Change Award to the Panel on July 15, 2019. To preserve its right to judicial review, the HPR also filed an initial Motion to Vacate with this Court.

Subsequently, the Panel issued a Corrected Arbitration Award on August 19, 2019. The HPR then submitted a Motion to Change the Corrected Arbitration Award, asserting the Panel's manifest disregard of well-settled contract law, which resulted in the Panel's October 23, 2019 "Order on HPR Motion for Change of Corrected Arbitration Award." The HPR then filed the present Motion to Vacate Corrected Arbitration Award on November 18, 2019 and its Memorandum of Law in support on December 11, 2019.

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CONCLUSIONS OF LAW

I. Motion to Lift Stay

On January 3, 2016, Judge Roger M. Young signed a consent order staying this matter pending binding arbitration between TCC and the HPR. That arbitration has taken place and ended with a Corrected Arbitration Award signed on August 12, 2019. The arbitration having taken place, the stay is no longer in effect by the terms of the consent order signed by Judge Young. Moreover, as agreed to by counsel for the HPR, the HPR's filing of their motion to vacate the arbitration award is itself a consent to lift the stay.

II. Motion to Vacate or Correct the Corrected Arbitration Award

A. Legal Standard

Because "[a]rbitration is a favored method of settling disputes in South Carolina," Pittman Mortg. Co., Inc. v. Edwards, 327 S.C.72, 76 (1997), "[t]he scope of judicial review for an arbitrator's decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all." Group III Mgmt., Inc. v. Suncrete of Carolina, Inc., 425 S.C. 141, 149 (Ct. App. 2018) (internal quotations omitted). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." Pittman, 327 S.C. at 76.

Reviewing an arbitration award, the court's function is limited "to determin[ing] whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it." Id. at 150 (internal quotation omitted). "Even a clearly erroneous interpretation of the contract cannot be disturbed." Gissel v. Hart, 382 S.C. 235, 241 (2009) (internal quotation omitted).

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"Therefore, as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." Group III, 425 S.C. at 151 (quoting United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 38 (1987)).

A court may vacate an arbitration award only under very narrow circumstances: the four statutory grounds enumerated in S.C. Code Ann. § 15-48-130(a);[2] and one common law ground—manifest disregard of the law, as stated in Gissel v. Hart, 382 S.C. 235, 241 (2009).

Regarding the former, "[a]rbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate." Pittman, 327 S.C. at 77. It is the scope of the arbitration agreement, and not the pleadings, that determines what matters have been referred to the arbitrators. Id.

Regarding manifest disregard of the law, "[a] court may vacate an arbitration award under the manifest disregard standard only when a plaintiff has shown that: (1) the disputed legal principle is clearly defined and is not subject to reasonable debate; and (2) the arbitrator refused to apply that legal principle." Group III, 425 S.C. at 154–55. More precisely, "manifest disregard of the law is established only where the arbitrator[] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same." Id. at 155 (alterations in original). The manifest disregard standard "is not an invitation to review the merits of the underlying arbitration." Id. (internal quotation omitted).

With regard to modification of an arbitration award, a court may modify the award only "so as to effect its intent," S.C. Code Ann. § 15-48-140(b), and only if one of three grounds set

[2] Of which only one—the arbitrators exceeding their authority—is advanced by the HPR as grounds for vacating this award; accordingly, the other grounds set forth in this statute are not discussed.

forth in S.C. Code Ann. § 15-48-140(a) is applicable. These grounds are: an evident mistake in the calculation of figures or the description of any person, thing, or property referred to in the award; award by the arbitrators on a matter not submitted to them, so long as correcting the award does not affect the merits; or imperfection in the form of the award unrelated to the merits of the controversy.

B. Public Policy Behind the Exacting Legal Standard

There is a strong State and Federal policy in favor of arbitration of disputes. Pittman, 327 S.C. at 75; Trident Tech. College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 103 (1985). The Parties agreed that each would appoint their own arbitrator and that the party-appointed arbitrators would jointly select the third arbitrator. This is a case involving construction, and the HPR selected John McCants, Esq., and TCC selected Frank Elmore, Esq., each known for his extensive experience in construction litigation. Mr. McCants and Mr. Elmore selected Alan Campbell, an engineer, as the third arbitrator. The qualifications of this panel to preside over a full arbitration proceeding on the merits in their area of expertise is an example that justifies the strong policy in favor of arbitration. After four (4) days of testimony, during which 200 exhibits were submitted into evidence, the panel issued a unanimous decision in favor of TCC.

Given the panel's experience in disputes of this nature, it is not without significance or logic that the Parties stipulated to final and binding arbitration. See AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 348 (2011) (recognizing arbitration's benefit of giving parties the "ability to choose expert adjudicators to resolve specialized disputes."). Notwithstanding this stipulation, the Court continues and considers the HPR's motion.

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C. HPR's Arguments for Vacating or Modifying the Award

1. Not A Reasoned Award

The HPR argues that the arbitrators failed to deliver a "reasoned award" as required by the arbitration agreement, requiring vacating or modification of the award. South Carolina courts have not directly defined a "reasoned award." However, the Supreme Court of South Carolina held, "[a]rbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" Pittman, 327 S.C. at 77, 488 S.E.2d at 338.

The Court finds that the nine (9) page order submitted by the arbitrators explains the basis for the amounts awarded and the grounds for the award. The factual inferences and legal conclusions are sufficient to support the arbitrators' findings, and the award therefore constitutes a reasoned award within the meaning of the parties' arbitration agreement. Accordingly, the HPR's Motion to Vacate is heard and respectfully Denied on this ground.

2. Manifest Disregard of Applicable Law

The HPR argues that the arbitrators manifestly disregarded the law in declining to enforce the lien waiver attached to Pay Application 17 and in "wrongfully eviscerat[ing] the GMP"[3] referred to in the contract between TCC and the HPR. A review of the applicable law and of the arbitrator's final award shows the HPR's position to be untenable.

As this Court noted during the hearing, the arbitrators made express findings that are consistent with the applicable law and provided reasoning supporting those findings. For example, with regard to the lien waiver, the arbitrators dedicated an entire page of their order to a discussion of why the lien waiver was not enforceable in the circumstances, stating:

[3] "GMP" stands for Guaranteed Maximum Price.

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> Knowing that TCC had signed Conditional Release and Waiver of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens. HPR cannot now claim that the Conditional Release and Waiver of Liens bar TCC's claims.

Corrected Award at 5. The Court finds no error or manifest disregard of the law in the panel's finding, especially in light of a contemporaneous email from HPR's agent confirming the agreement.

In its initial Award, filed December 11, 2019, as to the contract price, the panel found that "[i]t is undisputed that the condition of the building was different than what TCC contemplated when it originally submitted its bid" and that certain proposed change orders "were paid on a cost-plus basis" pursuant to agreements between TCC and agents of the HPR. Award at 3. The Court finds no error or manifest disregard of the law in the panel's finding that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis. Further, as the issue of the contract price was not corrected or reversed by the Corrected Award,

These findings by the panel indicate that, far from disregarding the law, the panel considered and applied the law, and reached a result that the HPR simply disagrees with. The HPR has not carried its burden of showing the arbitrators manifestly disregarded the law, and this argument for vacating the arbitration award is unavailing. Accordingly, the HPR's Motion to Vacate is heard and respectfully Denied as to this ground.

3. Exceeding Authority

The HPR also argues that the award should be vacated, or in the alternative modified, because the arbitrators exceeded their authority in awarding $29,000.00 relating to the "Stone

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tower," a portion of the exterior of the property not in the original scope of the contract. The Court disagrees.

As noted *supra*, arbitrators only exceed their authority when they rule on something not submitted to them. Here, as the Court noted during oral argument, the language of the referral in the arbitration agreement is very broad, applying to "certain disputes [that] have arisen regarding performance and payment on the Project," with "Project" being referred to in the agreement as "exterior repairs to Concord & Cumberland located at 175 Concord Street, Charleston, South Carolina." The Stone Tower work relates to the exterior of the building and is within the scope of the referral to the panel. To the extent there is doubt about the scope of the referral, the doubts are to be resolved in favor of arbitration. See Faltaous v. Anderson Ocean Club Dev., LLC, 388 S.C. 45, 48, 693 S.E.2d 434, 435 (Ct. App. 2010) ("[a]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.").

Moreover, the HPR acknowledges that TCC asked for this precise relief in their pretrial brief, that the issue was tried, that the relief was asked for requested by TCC in its post-trial proposed order to the panel.

The Court therefore finds that the award relating to the Stone Tower was within the scope of the arbitrators' authority, as the Parties gave them this authority. The arbitrators did not exceed their authority and this basis for vacating or modifying the award likewise is unavailing. Accordingly, the HPR's Motion to Vacate is heard and respectfully Denied as to this ground.

4. Evident Miscalculation

The South Carolina Arbitration Act grants the Court authority to modify or correct an award if some technical issue with the award means that its intent would not be effective without modification. See S.C. Code Ann. § 15-48-140(b) ("If the application is granted, the court shall

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modify and correct the award so as to effect its intent…"). The Court finds no such technical issue, such as any "evident miscalculation of figures," "evident mistake in the description of any person, thing, or property," imperfection in the form of award, or any other basis provided under the statute. The award is not subject to modification or correction. Accordingly, the HPR's Motion to Vacate is heard and respectfully Denied as to this ground.

III. Conclusion

Precedent is clear, even were the Court to believe the arbitrators committed error on these topics, the United States Supreme Court has stated, "[i]t is not enough… to show that the [arbitrator] committed an error—or even a serious error." Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp., 559 U.S. 662, 671 (2010). It is not the prerogative of this Court to substitute its own judgment for that of the arbitrators who presided over the arbitration proceeding. Accordingly, having reviewed the arbitration panel's award and considering the record and the arguments of counsel it is hereby ordered that the Plaintiff's Motion to Lift Stay is Granted, and the HPR's Motion to Vacate or Modify is Denied.

AND IT IS SO ORDERED.

_____
Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

January _____, 2020
Charleston, South Carolina

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Charleston Common Pleas

Case Caption:	Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al
Case Number:	2016CP1002955
Type:	Order/Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

ELECTRONICALLY FILED - 2020 May 01 2:36 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

TCC OF CHARLESTON, INC. Plaintiff, v. CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No.: 2016-CP-10-02955 **ORDER ON CONCORD & CUMBERLAND HPR'S MOTIONTO TO ALTER/AMEND**

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Jaan Rannik, Esq., and Andrew Epting, Jr., Esq.
Defendants Concord and Cumberland, LLC's Attorney:	Cordes Ford, Esq.

ELECTRONICALLY FILED - 2020 May 01 2:36 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

Defendant Concord and Cumberland HPR's Attorney:	Andrew Walden, Esq.
Date of Hearing:	December 16, 2019
Court Reporter:	Lorraine Harris

THIS MATTER comes before the Court by way of Defendant Concord & Cumberland HPR's (hereinafter "HPR") Motion to Reconsider, Alter, or Amend Judgment pursuant to Rule 59 (e), SCRCP, filed February 10, 2020. HPR asks the Court to Amend its Order, January 30, 2020 Denying HPR's Motion to Vacate or Modify and Granting Plaintiff's Motion to Lift Stay. HPR filed its Motion to Reconsider on February 10, 2020. TCC filed its response in opposition to HPR's Motion on March 12, 2020. HPR filed its reply to TCC's response on April 22, 2020. Having considered HPR's Motion, as well as the various interests balanced by the Court at the time of the ruling, HPR's Motion to Reconsider, Alter, or Amend is hereby Denied. [1]

FINDINGS OF FACT AND PROCEDURAL HISTORY

On February 27, 2014, HPR contracted with TCC to perform a scope of work at 175 Concord. The contract was cost plus a fee, with a guaranteed maximum price ("GMP") of $3,923,939.00. Corrected Arbitration Award at 3. The contract consisted on an A102 and A201 as modified by the parties. Id. HPR designated Tom Mather as its initial owner's representative and the project architect was Shawn Mellin of Glick Boehm and Associates ("GBA"). Id. Generally, TCC was to declad the building, apply waterproofing, replace the windows, and apply new cladding. Id.

A Notice to Proceed was issued on July 28, 2014. Id. The contract required the work to be substantially completed 306 days after the Notice to Proceed, specifically May 30, 2015. Id.

[1] This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

Substantial competition occurred on March 8, 2016. Id. It is undisputed that the condition of the building was different from what TCC contemplated when it originally submitted its bid. Id. During the course of the work, at least 134 proposed change orders ("PCOs") were requested by TCC. Id. $1,953,145.00 of the PCOs were paid by HPR, increasing the total contract to $5,877,084.00 as of February 2016. Id. The paid PCOs were paid on a cost-plus basis. Id. This dispute involves architect approved but unpaid PCOs, architect approved but unpaid retainage, and remaining unapproved PCOs. Id.

The matter came before an arbitration panel by the Order of the Honorable Roger M. Young, Sr. dated December 30, 2016, staying the case and compelling arbitration between the parties. Id. at 2. The Arbitration Panel ("the Panel") conducted a merits hearing on January 21 – 24, 2019. Each part was represented by counsel and presented exhibits and witness testimony. The Panel issued an Award on April 16, 2019. Id. The Panel subsequently issued a Corrected Arbitration Award on August 12, 2019 which "corrects, amends, and supplements" its April 16, 2019 Award. Id. at 1. HPR filed a Motion to Change the Corrected Arbitration Award on September 7, 2019, which the Panel denied in its October 23, 2019 order.

On June 17, 2019, TCC filed a Motion to Lift Stay, and on July 16, 2019, HPR filed a Motion to Vacate or Modify the Panel's Corrected Arbitration Award. A hearing was held on December 16, 2019 before this Court, and on January 30, 2020, the Court issued an Order Granting TCC's Motion to Lift Stay and Denying HPR's Motion to Vacate the Panel's Corrected Arbitration Award.

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CONCLUSIONS OF LAW

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

I. HPR's contention that the Court's January 30, 2020 Order relies on new findings of fact as to the Conditional Release and Waiver of Liens is without merit.

HPR argues:

> The Court's Order is improperly based on new findings of fact. On page 8, the Court states: "The Court finds no error or manifest disregard of the law in the panel's findings, especially in light of a contemporaneous email from HPR's agent confirming the agreement." The Panel made no such finding regarding any "contemporaneous email," and the Court has no legal basis to make the finding in its Order.

Motion to Reconsider at 3 (emphasis omitted). HPR's argument is based on the contested Conditional Release and Waiver of Liens ("Lien Waivers") accompanying each pay application, specifically Pay Application 17.

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In its Corrected Arbitration Award, the Panel found that the Lien Waivers were not enforceable in the present circumstances, stating:

> Knowing that TCC had signed Conditional Release and Waiver of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens. HPR cannot now claim that the Conditional Release and Waiver of Liens bar TCC's claims.

Corrected Award at 5. The record reflects that Lien Waivers were provided with every payment application over the course of the project. However, when issues began to arise with the scope of the project and PCOs, the parties came to an agreement whereby they would resolve certain matters at the conclusion of the project. Corrected Award at 4. ("Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project.")

TCC asserts that this agreement was memorialized by an email between counsel for the parties. The Court did not introduce new evidence or make new findings of fact by referring to this email. However, in light of the fact that the Panel did not explicitly reference the email in its Corrected Award, the Court will clarify that it did not rely on the email in issuing its January 30, 2020 Order. Referencing the email was merely a reflection of the entire record the Panel had access to in reaching its Corrected Award and ultimate conclusion that HPR was estopped from claiming the protections of the Lien Waiver. The Court's reference to the email was harmless error as the Court had a separate basis for concluding there was no manifest disregard of the law by the Panel. As a result, the Court's Order dated January 30, 2020 is modified at Page eight (8) to redact any reference to the email of HPR's agent, as it was not a specific finding of the Panel and not relied upon in this Court's final ruling on the merits.

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However, absent consideration of the email, there was sufficient evidence of HPR and TCC's conduct for the Panel to conclude that the Lien Waivers were not controlling, namely, "that TCC had signed Conditional Release and Waivers of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and, made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens." Corrected Award at 5.

Additionally, and more importantly, the Court can discern no manifest disregard of the law or any other violation of S.C. Code Ann. § 15-48-130(a) that would empower the Court to vacate the Panel's Corrected Award. The Panel's conclusion that HPR is estopped from asserting that the Lien Waivers bar TCC's claim is not predicated on a violation of statutory law or a manifest disregard of the law, and therefore the Court will not disturb the Panel's conclusions. Further, as explained supra, the Court did not rely on any new evidence or findings of fact in reaching this conclusion, and referenced the email merely in an observatory capacity based on the entirety of the record presented to the Panel, but in no way relied upon the email to reach its decision. Accordingly, HPR's Motion is respectfully Denied as to this ground.

II. HPR's contention that the Court's January 30, 2020 Order relies on new findings of fact as to the GMP and out-of-scope items is without merit.

Similar to the argument supra, HPR argues that the Court relied on new findings of fact in concluding that there was no evidence of error or manifest disregard of the law in the Panel's finding that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis.

The parties contracted for a guaranteed maximum contract price of $3,923,030.00. Corrected Award at 3. However, the Panel found that the condition of the building was different from what TCC contemplated when it originally submitted its bid. Id. To address the difference in the condition of the building, TCC submitted at least 134 PCOs, and those PCOs were paid on a

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cost-plus basis. Id. This additional work and cost increased the total contract price to $5,877,084.00. Id.

As addressed supra, the Panel found, "[c]redible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project." Corrected Award at 4. Evidently, sufficient proof existed for the Panel to conclude, "TCC performed additional work outside the original scope of work" which entitled TCC to be paid "a portion of the remaining unapproved PCOs." Id. at 3-4.

However, in light of the fact that the Panel did not use the exact phrase, "that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis," the Court will clarify. While the Panel phrased the increase to the GMP as "additional costs at the end of the project" on a "cost-plus" basis, and the Court phrased the increase to the GMP as "overcome" by an agreement to be compensated on a "time and material basis," the difference between the two phrasings is merely semantic, and both phrasings have the same effect. Specifically, that TCC and HPR agreed to address outstanding PCOs and claims at the end of the project, which led to the increase in the GMP. See Corrected Award at 3. ("It is undisputed that the condition of the building was different than what TCC contemplated when it originally submitted its bid. During the course of the work, at least 134 proposed change orders ('PCOs') were requested by TCC. $1,953,145.00 of the PCOs were paid by HPR, increasing the total contract to $5,877,084.00 as of February 2016. The paid PCOs were paid on a cost-plus basis."); see id. at 4. ("Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project."). While the Court may have used

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different phrasing, the difference is merely semantic, and the Court did not misstate the substance of the Panel's findings.

Therefore, the Court cannot discern how it introduced new findings of fact that would preclude it from ruling that the Panel made no error or manifestly disregarded the law in concluding that by the agreement of the parties, the additional work and costs overcame the contract's GMP. Finally, the Court can discern no manifest disregard of the law or any other violation of S.C. Code Ann. § 15-48-130(a) that would empower the Court to vacate the Panels' Corrected Award. Accordingly, HPR's Motion is Denied as to this ground. However, to the extent necessary the January 30, 2020 Order of this Court is modified at Page eight (8) to reflect the exact findings of the Panel, which state: "It is undisputed that the condition of the building was different than what TCC contemplated when it originally submitted its bid. During the course of the work, at least 134 proposed change orders ("PCOs") were requested by TCC. $1,953,145.00 of the PCOs were paid by HPR, increasing the total contract to $5,877,084.00 as of February 2016. The paid PCOs were paid on a cost-plus basis[;]" "TCC performed additional work outside the original scope of work…[;]" and, "Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project." Corrected Award at 3-4.

III. HPR's contention that the Court did not rule on HPR's argument as to the Panel's October 23, 2019 Order on HPR's Motion for Change of Corrected Arbitration Award is without merit.

After the Panel issued its Corrected Award on August 12, 2019, HPR filed a Motion for Change of Corrected Award on September 7, 2019 ("Motion to Change Corrected Award"), arguing that the Panel made erroneous findings regarding the Lien Waivers and that the Panel awarded upon a matter not submitted to it. Order on HPR Motion for Change of Corrected

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Arbitration Award at 1. The Panel issued an Order denying HPR's Motion for Change on October 23, 2019. HPR correctly notes that the Court inadvertently failed to discuss its argument regarding the Panel's October 23, 2019 Order in the Court's January 30, 2020 Order.

In its Corrected Award, the Panel found "'that some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens." Corrected Award at 4-5. In its Motion to Change Corrected Award, HPR argued that the Panel found that "'some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens' *of Payment Application No. 17*." Order on HPR Motion for Change at 1 (emphasis in original).

This is not what the Panel found. HPR interjected "of Payment Application No. 17" into the Panel's finding where the Panel made no such finding. The Panel addresses this interjection in its October 23, 2019 Order, finding that in its Corrected Award, the Panel concluded that TCC and HPR agreed, prior to Payment Application No. 17, that some of the outstanding PCOs and TCC's claims for additional costs would have to be resolved at the end of the project. The Panel further explained:

> Rather, this Panel found from the evidence presented that prior to the submission of Payment Application No. 17 'TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project.' This Panel also found evidence that prior to Payment Application No. 17 'some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens' that had been executed by TCC.

Order on HPR Motion for Change of Corrected Award at 1.

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HPR argues "any agreement between TCC and HPR that could have somehow indicated that HPR waived, or was not enforcing the Release precedes, not succeeds, Pay Application 17 and the accompanying Release. Clearly, even if there was an agreement to agree that HPR would pay additional costs, such agreement would be superseded by the explicit terms of the later Release." Motion to Reconsider at 9.

However, this argument was considered and rejected by the Panel. Evidently, sufficient proof existed for the Panel to conclude that HPR and TCC's agreement to address certain PCOs and costs at the conclusion of the project, coupled with HPR's conduct of paying PCOs and claims after the execution of other Lien Waivers, estopped HPR from claiming the protections of the Lien Waiver as to Pay Application No. 17. See Corrected Award at 4-5. ("Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project…Knowing that TCC had signed Conditional Release and Waiver of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and, made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens.") The Court finds that the Panel did not err or manifestly disregard the law in reaching that conclusion. Accordingly, HPR's Motion is Denied as to this ground.

IV. HPR's contention that the Court did not rule on the Release document itself is without merit.

HPR argues, "[t]he Court did not rule on or address the Release document itself…" and, "if the Court maintains its denial of the Motion to Vacate, it must do so having determined and held, consistent with the Panel's factual findings, that the Release was an unambiguous contract, executed by TCC under oath, which was last in time as compared to any other agreement or action

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that the Panel found the HPR to have undertaken and upon which the Panel based its disregard of the Release." Motion to Reconsider at 4.

HPR's argument is based on a misapprehension of the Court's scope of authority in ruling on a motion to vacate an arbitration award. Because "[a]rbitration is a favored method of settling disputes in South Carolina," Pittman Mortg. Co., Inc. v. Edwards, 327 S.C.72, 76 (1997), "[t]he scope of judicial review for an arbitrator's decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all." Group III Mgmt., Inc. v. Suncrete of Carolina, Inc., 425 S.C. 141, 149 (Ct. App. 2018) (internal quotations omitted). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." Pittman, 327 S.C. at 76.

In reviewing an arbitration award, the court's function is limited "to determin[ing] whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it." Id. at 150 (internal quotations omitted). Therefore, it is not within the scope of this Court's authority to rule on or address the Release document itself. Rather, the Court's only duty is to determine whether the Panel ruled on the Release document without exceeding its power or manifestly disregarding the law.[2] The Court conducts a thorough inquiry to determine whether the Panel exceeded its power or manifestly disregarded the law on Pages 7 – 10 of its January 30, 2020 Order.

Therefore, the Court will not entertain HPR's invitation to substitute its interpretation of the Release for the interpretation reached by the Panel in issuing its Corrected Award. Accordingly, HPR's Motion to Reconsider is Denied as to this ground.

[2] The Court must also consider whether the Panel violated any of the remaining three statutory grounds enumerated in S.C. Code Ann. § 15-48-130(a) in reaching its award, however, the arbitrators exceeding their authority was the only statutory ground advanced by HPR for vacating the Corrected Award.

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V. HPR's contention that the Court did not rule on whether the manifest disregard standard was met is without merit.

HPR contends, "the Court did not consider the circumstances that meet the manifest disregard standard… The Court's Order does not consider or rule upon whether the manifest disregard standard is met by an arbitration panel's disregard of unambiguous contract provisions…." Motion to Reconsider at 4.

The Court addressed HPR's manifest disregard argument on Pages 7 – 8 of its January 30, 2020 Order. Specifically, the Court found that the Panel made express findings consistent with the applicable law and provided reasoned support of those findings. Order on Motion to Lift Stay and Motions to Vacate or Correct Arbitration Award at 7. The Court found, "far from disregarding the law, the panel considered and applied the law, and reached a result that the HPR simply disagrees with. The HPR has not carried its burden of showing the arbitrators manifestly disregarded the law, and this argument for vacating the arbitration award is unavailing." Id. at 8.

Therefore, the Court finds without merit the HPR's argument that the Court failed to rule upon whether the manifest disregard standard was met. Accordingly, HPR's Motion to Reconsider is Denied as to this ground.

CONCLUSION

Except as otherwise clarified by the Court supra, HPR's Motion seeks only to reargue the issues on the same basis previously presented to the Court and presents no novel facts, arguments, or theories in support of the Motion to Alter or Amend the Judgment. Except as addressed supra, HPR has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, HPR's Motion is heard and respectfully Denied.

AND IT IS SO ORDERED.

_____
Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

April_____, 2020
Charleston, South Carolina
At Chambers

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Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al

Case Number: 2016CP1002955

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

ELECTRONICALLY FILED - 2020 Aug 11 10:59 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON**	)	**IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT**
TCC OF CHARLESTON, INC. Plaintiff, v. CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam, Defendants.	)	Case No.: 2016-CP-10-2955 **PROPOSED ORDER ON PENDING MOTIONS AND ORDER OF REFERENCE**

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This case was filed June 6, 2016. A stay was consented to and entered on January 30, 2017 to allow for arbitration; following arbitration, there was no consent to move the case forward prior to the entry of Judge Jefferson's May 1, 2020 order.

Before this Court are (i) TCC of Charleston, Inc.'s ("TCC's") motion to amend the complaint based on the arbitration award and the order of May 1, 2020, (ii) summary judgment motions by the Concord & Cumberland HPR ("the HPR") and Ms. Betty Beatty ("Ms. Beatty") respectively, and (iii) the HPR's motion to deposit funds with the Court. The Court has also been made aware of discovery served by TCC following the lifting of the stay.

Rule 15(b) provides that leave to amend a pleading should be freely given, and the Court grants TCC's motion to amend. Given the pending amendment, pending discovery requests, and the lack of a final judgment, the Court finds it would be inappropriate to consider the remaining motions at this time.

Further, it appears to the Court that the parties' disputes are best decided by the Master in Equity, who should entertain the present motions at the appropriate time along with such other issues as exist or arise between the parties.

NOW THEREFORE:

1. TCC's motion to amend is granted;
2. This matter is referred to the Master in Equity for all purposes, including for a decision at the appropriate time on the HPR's and Ms. Beatty's motions for summary judgment and the HPR's motion to deposit funds.

AND IT IS SO ORDERED!

This _____ day of _____, 2020

_____
The Hon. Jennifer B. McCoy
Judge, Ninth Judicial Circuit

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Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al

Case Number: 2016CP1002955

Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

The South Carolina Court of Appeals

TCC of Charleston, Inc., Respondent,

v.

Concord and Cumerland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam, Defendants,

Of Which Concord & Cumberland HPR is the Appellant.

Appellate Case No. 2020-000875

ORDER

Because the underlying orders on appeal are not immediately appealable, this appeal is dismissed. *See* S.C. Code Ann. § 15-48-200 (2005). The remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

FILED
Sep 11 2020

cc:
F. Cordes Ford, IV, Esquire
Henry E. Grimball, Esquire
Robert Andrew Walden, Esquire
Jaan Gunnar Rannik, Esquire
Michelle N Endemann, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
TCC OF CHARLESTON, INC.,	)	CASE NO. 2016-CP-10-2955
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISO J.MACGILLNRAY, TERESA MACGILLIVRAY, PAMELA L.VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K.HENDERSON, JAMES R. CLARICE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL,II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMSPON F/KA MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	**ORDER GRANTING PARTIAL SUMMARY JUDGMENT TO BETTY L. BEATTY**
	)	
Defendants.	)	
	)	

In this action, TCC of Charleston, Inc. ("TCC") seeks to recover from the defendants the value of work performed under a written contract with Concord and Cumberland HPR (the

"HPR"), for extensive repairs to condominium units located at 175 Cumberland Street in Charleston, South Carolina. TCC asserts causes of action for mechanic's lien foreclosure, breach of contract and "Equity."

PROCEDURAL BACKGROUND

This matter came before me on November 5, 2020, upon the motion of Betty L. Beatty ("Beatty") for summary judgment upon TCC's first cause of action for mechanic's lien. Her motion is based upon the grounds that TCC's lien dissolved due to its failure to serve its lien upon her within 90 days of the last date it provided labor or materials for the property. This motion was originally filed on May 8, 2020, was briefed and was fully argued before the Honorable Jennifer B. McCoy on May 28, 2020. Judge McCoy declined to rule upon the motion and referred the case to me by order dated August 11, 2020, to decide *inter alia*, this motion.

A hearing was held on November 5, 2020, where Beatty was represented by Edward D. Buckley, Jr. TCC was represented by Andrew K. Epting, Jr. Having reviewed the parties' respective memoranda, attachments and exhibits, and having considered the oral arguments of counsel, I hereby grant Beatty's motion. For the reasons set forth below, TCC's First Cause of Action for Foreclosure of Mechanic's Lien is dismissed, and the Lien filed June 10, 2016 shall be removed from the public record, that lien having dissolved as a matter of law.

RELEVENT LAW

A. Summary Judgment

Rule 56(c) of the South Carolina Rules of Civil Procedure provides for judgment as a matter of law where "there is no genuine issue as to any material fact." "A party against whom a claim, counterclaim, or cross-claim is asserted, or a declaratory judgment is sought may, at any

time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Rule 56(b), SCRCP.

Summary judgment is appropriate when "the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SRCP.

"'The purpose of summary judgment is to expedite disposition of cases [that] do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (S.C. 2001).

B. Perfecting a Mechanic's Lien

Mechanic's liens are creatures of statute, and the requirements of the statute must be strictly followed. *Kitchen Planners, LLC v. Friedman*, ___ S.E.2d ___ No. 2017-001522, 2020 WL 3551777, at *3 (S.C. Ct. App. July 1, 2020). Sections 29–5–10 to 440 of the South Carolina Code (2007 & Supp. 2019) set forth the requirements for establishing and enforcing a mechanic's lien. The statutes establish three (3) distinct steps in that process, namely (1) creation, (2) perfection, and (3) enforcement of the lien. *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., LLC*, 409 S.C. 331, 340, 762 S.E.2d 561, 565 (S.C. 2014). For the lien to become valid, the lien must be perfected and enforced in compliance with South Carolina's mechanic's lien statutes. The lien arises inchoate when the labor is performed or material is furnished, but the lien has not been perfected until the statutory requirements are met. *Id.* at 341, 762 S.E.2d at 256.

To perfect and enforce the lien against the property, the person claiming it must: (1) record and serve a certificate of lien within ninety (90) days after he ceases to furnish labor or materials; (2) bring suit to foreclose the lien within six (6) months after he ceases to furnish labor

or materials; and (3) file notice of pendency of the action within six (6) months after he ceases to furnish labor and materials. If the person claiming the lien fails to take any one of these steps, the lien against the property is dissolved. *Kitchen Planners*, 2020 WL 3551777, at *4 (quoting *Shelley Construction Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (S.C. Ct. App. 1985)).

Of import here, Section 29–5–100 of the South Carolina Code provides that certain inaccuracies in the claimant's statement of account do not invalidate the lien. However, that statute mentions only inaccuracies in two (2) categories: (1) inaccuracies relating to the property description if the property can be reasonably recognized, or (2) in stating the amount due for labor or materials. As explained further below, Section 29–5–100 references no other permitted inaccuracies.

RELEVANT FACTUAL BACKGROUND

TCC originally filed suit against the HPR, filing its Summons, Verified Complaint, Notice and Certificate of Mechanic's Lien, Statement of Account, Lis Pendens, and Motion to Stay and Compel Arbitration on June 6, 2016. In its Verified Complaint and Statement of Account TCC stated that it last furnished materials on March 17, 2016. Apparently realizing that it could not enforce a mechanic's lien against the HPR under South Carolina Law, Plaintiff filed an Amended Summons and Amended Verified Complaint, Amended Notice and Certificate of Mechanic's Lien and Amended Statement of Account adding each unit owner, including Beatty, as a defendant on June 10, 2016. TCC included in its Amended Verified Complaint and Statement of Account that March 17, 2016 was the date of last furnishing. Ms. Beatty was served via process server on June 22, 2016; the transmittal letter from TCC's counsel to Beatty is dated June 21, 2016. Thus, Beatty was served ninety-six days after the March 17th date asserted by

TCC. Ms. Beatty moved for partial summary judgment on the grounds that there is no dispute of material fact that service was not timely under the mechanic's lien statute and that she is entitled to judgment upon the FIRST CAUSE OF ACTION for mechanic's lien foreclosure as a matter of law.

The March 17th date of last furnishing is crucial to perfection of TCC's lien. TCC has attested under oath, on the public record, and on four (4) occasions that March 17, 2016, was the date it ceased providing labor or materials. In response to Beatty's motion, TCC contends that date is incorrect and that it should be allowed to present evidence contradicting its prior sworn statements and public record filings which state unequivocally that March 17, 2016, was the date it ceased work.

TCC filed its summons and verified complaint on June 6, 2016. That complaint asserted claims against the HPR only. The complaint, in paragraph 9, reads as follows:

> 9. That in accordance with their agreements the Plaintiff furnished the agreed-upon material and services to the Defendants which were used in the work, and on related structures on the subject property, that material and services improved the property, and *the last date of such furnishing materials and services was March 17, 2016.*

(emphasis added).

TCC's president, John David Griffith, verified the Complaint by VERIFICATION dated May 19, 2016. In the Verification, Mr. Griffith swore under oath that he was an officer of TCC, and that he had been authorized by TCC to make the verification. As to the facts of the Complaint, he swore to the following:

> "… I have read the foregoing Complaint and know the contents thereof and that based upon my own personal knowledge, the facts therein are true and correct."

This was … the *first* sworn attestation that March 17, 2016 was the date TCC ceased work.

TCC attached its Statement of Account to the Complaint as Exhibit "A". In Exhibit "A", paragraph 4, TCC's president, Mr. Griffith president swore under oath on May 19, 2016, to the following:

> 4. That the last day work was performed or materials provided to the property described in EXHIBIT B was March 17, 2016.

This was the *second* sworn attestation that March 17, 2016 was the date TCC ceased work.

Four days after filing its verified Complaint and sworn Statement of Account, TCC filed an Amended Complaint on June 10, 2016, which Amended Complaint purports to assert claims against the HPR and all the owners of units within the HPR. Paragraph 10 of the Amended Complaint contained the identical language which is quoted above as paragraph 9 of the original Complaint, alleging that "[T]he last date of such furnishing of materials and services was March 17, 2016.

Mr. Griffith, TCC's president, on June 10, 2016, again verified the Amended Complaint, attesting unequivocally that "[B]ased upon my own personal knowledge, the facts as alleged therein are true and correct." This was the *third* sworn attestation under oath that March 17, 2016 was the date TCC ceased work. Moreover, TCC attached to its Amended Complaint its certified statement of account as Exhibit "A" it's verified statement of account signed by its president, Mr. Griffith. This was TCC's *fourth* sworn attestation under oath that March 17, 2016 was the date it ceased work.

Several months after the Amended Complaint was filed, the mechanic's lien claims were stayed by order of Judge Roger M. Young, Sr. filed December 30, 2016, while TCC and the HPR took their contractual dispute to arbitration as required under the terms of their contract. Of import here, the Panel of Arbitrators determined that March 8, 2016, was the date of substantial

completion of TCC's work, and it awarded pre-award interest from that date. The Panel of Arbitrators made no findings regarding the last date labor or materials were supplied to the project. After the panel of arbitrators issued its final, corrected award, the stay was lifted by order of the Honorable Deadra L. Jefferson, filed January 30, 2020. From June 2016 until May 2020, TCC made no effort to either change, amend, or contradict the four (4) sworn statements that March 17, 2016 was the date of last work.

The instant motion was filed by Beatty on May 8, 2020. On May 22, 2020, TCC filed its "Objection to Proceeding," Memorandum in Opposition to Pending Summary Judgments Motions and Response to Motion to Deposit Funds.[1] TCC also moved on May 15, 2020 for leave to amend its complaint. Notably, this proposed Second Amended Complaint removed any reference to the date upon which TCC last performed work or provided materials, instead alleging in Paragraph 12 that TCC timely gave the Defendants notice of the statement of account and timely served and filed its lien relative to the date of last work as determined by the Panel of Arbitrators.

The Honorable Judge Jennifer McCoy scheduled a hearing on these motions for May 28, 2020. On May 22, 2020, six (6) days prior to the scheduled hearing, TCC filed an affidavit from TCC's project superintendent, Ryan Tomberlin, which directly contradicts the four (4) prior sworn statements of TCC's president regarding alleged dates TCC performed work at the project. The only explanation in Mr. Tomberlin's affidavit for Mr. Griffith's contradictory testimony is found in paragraph 3, stating:

> 3. TCC believed substantial completion of the project was March 17, 2016.

[1] The HPR had filed a motion to deposit the amount of the arbitrators' award into court pursuant to Rule 67 SCRCP.

The four (4) sworn statements by TCC's president make no mention of the term substantial completion. Instead, Mr. Griffith swore in each prior statement that he was an officer of TCC, that he had been authorized by the corporation to make the statement on its behalf, and that the last date of service was March 17, 2016. TCC, through Mr. Tomberlin's affidavit, made no effort to explain why Mr. Griffith swore to the facts as he did. Notably, Mr. Griffith, TCC's president, has made no effort to explain or correct his prior sworn statements.

This motion and the other motions were argued before Judge McCoy on May 28, 2020. However, she declined to rule on them. Instead, she granted TCC's motion to amend and authorized it to file a Second Amended Complaint which deletes all reference to any date of cessation of work at the project, and entered an order of August 11, 2020 directing that this Court is to decide the remaining motions, including Beatty's motion for summary judgment. This Court scheduled those motions for hearing on November 5, 2020.

On October 1, 2020, four (4) months after the parties argued this motion before Judge McCoy and a month before this Court's hearing, TCC filed a motion to amend its statement of account. The proposed revised statement of account, prepared for the signature of Mr. Griffith, is unsigned. It does, however, delete any reference to the date when TCC ceased working on the project. Even if signed, the proposed statement of account would directly contradict the testimony given by Mr. Griffith in four (4) filings provided to this court and filed of record, and it offers no explanation regarding his prior attestations.

TCC filed a subsequent Memorandum in Opposition to Beatty's motion on October 27, 2020. In this Memorandum, TCC made no effort to present testimony from Mr. Griffith to explain why he swore under oath that the last date of work was March 17, 2016. Instead, TCC refiled the affidavit of Mr. Tomberlin and a number of Exhibits, including a document identified

as EXHIBIT D which purports to be a payroll summary for Heather Dagg, listing her hours for the months of December, 2016 and January, 2017.

Argument was presented on November 5, 2020. The Court has reviewed the parties' respective memoranda, attachments and exhibits, and considered the oral arguments of counsel. Beatty's motion is now ripe for disposition. The Court GRANTS Beatty's motion for summary judgment for the reasons set forth below.

LEGAL ANALYSIS

In order to defeat Beatty's motion for summary judgment, TCC seeks to contradict or disprove its prior sworn statements. It seeks to amend the statement of account in order to eliminate the March 17, 2016, date which it swore to be true and correct. By doing so, TCC has asked the Court to disregard the date provided in the two (2) statements of account filed of record. TCC has submitted an affidavit and other documents contradicting its prior testimony in order to create an issue of fact. TCC must be held to the date that it attested and swore to in multiple documents filed of record. There is no question that the date of service of process, June 22, 2016, is more than ninety days after March 17, 2016, the date TCC has sworn to be the last day it provided labor and materials. Therefore, Beatty is entitled to partial summary judgment.

A. TCC cannot change the date asserted in its statement of account.

TCC, in its opposition to Beatty's motion and in its motion to amend its statement of account, argues that Section 29–5–100 expressly allows correction of inaccuracies in the statement of account. TCC also argues that the statement of account is subject to amendment since, under our rules of civil procedure, the amendment of the pleadings should be liberally allowed. However, neither Section 25–5–100 nor our rules of civil procedure allow a mechanic's lien claimant to alter the date of last service set forth in its statement of account.

1. An incorrect date of completion is not considered a nonfatal inaccuracy under Section 29-5-100.

Section 29-5-100 contemplates nonfatal inaccuracies in a statement of account and states that errors in the property description and in the amount due will not invalidate the statement of account. The statute is silent as to an inaccuracy as to the dates of work, and the Court cannot read into the statute an exception that would allow TCC to amend its statement of account to change the date it verified as its last day of work. The rules of statutory interpretation are clear: the General Assembly is presumed to intend for the words of a statute to mean what they say. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (S.C. 2000). Likewise, where the General Assembly chose not to include words within a statute, this Court cannot add language to the plain language of the statute. *Id.* By omitting timing errors among those inaccuracies which will be forgiven, I must presume the legislature meant to do so. Accordingly, Section 29–5–100 provides no basis for TCC to correct its date of last completion.

2. Statements of Account are not pleadings which may be amended.

TCC cites Rule 15, SCRCP, as the general legal authority allowing amendments to pleadings in support of its effort to delete the last date of service from the proposed amended statement of account. Amendments to the pleadings in a mechanic's lien are allowed under Section 29–5–180 of the mechanic's lien statute. However, after a thorough analysis of South Carolina case law, the Court is unable to find a single instance of a party being allowed to amend its statement of account. Moreover, the Court is unable to find a single instance of a party even moving to amend its statement of account. This dearth of authority makes sense, because a statement of account is not a pleading and thus is not subject to amendment under Rule 15, SCRCP. Rule 7 of our South Carolina Rules of Civil Procedure is entitled "Pleadings Allowed," and section (a) of the Rule delineates the form of pleadings recognized in this state. The rule

makes no mention of a statement of account. After listing the pleadings allowed, the Rule specifically states that no other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c). Rule 7, SCRCP. Therefore, a statement of account is not a pleading as defined by Rule 7, SCRCP, and cannot be amended under Rule 15, SCRCP.

B. The Court cannot disregard TCC's four sworn statements that March 17, 2016 was the date of last furnishing.

The filing of a mechanic's lien places a cloud upon the title to real property by providing record notice of the nature of the claim. In *Preferred Savings and Loan Ass'n., Inc. v. Royal Garden Resort, Inc.,* the Court of Appeals held that the date of cessation of labor must pre-date the notice of lien. 295 S.C. 268, 273, 368 S.E.2d 78, 81 (S.C. Ct. App. 1988), *aff'd*, 301 S.C. 1, 389 S.E.2d 853 (S.C. 1990). The court recognized that matters of public record must be reliable for title examiners who find a lien of record. *Id.* Moreover, in reaching its holding, the court cited with approval the North Carolina case of *Strickland v. General Building and Masonry Contractors, Inc.*, 22 N.C.App. 729, 207 S.E.2d 399 (N.C. Ct. App. 1974).

Our mechanic's lien statute does not require that the statement of account include a date when labor and materials were last provided. S.C. Code Ann. § 29-5-90 (1976). However, in order to effectuate the policy considerations discussed in *Preferred Savings*, a claimant who includes a date of last performing work in their statement of account must be held to it. In *Strickland v. Gen. Bldg. & Masonry Contractors, Inc.*, the North Carolina Court of Appeals addressed that very same issue. 22 N.C. App. at 731, 207 S.E.2d at 400. There, the claimant filed his notice and claim of lien on July 27, 1973 with a statement stating that the materials were last furnished upon the property on March 28, 1973. *Id.* This was well beyond North Carolina's requirement that the claim of lien be filed no later than 120 days after the furnishing of last labor.

N.C. Gen. Stat. Ann. § 44A-12 (2019). North Carolina, like South Carolina, does not require that a claimant state in his claim of lien the date of last furnishing. *Compare* S.C. Code Ann. § 29-5-90 (1976) *with* N.C. Gen. Stat. Ann. § 44A-12 (2019). The North Carolina Court of Appeals in *Strickland* held that, even though the date of last furnishing is not required by statute, it cannot be treated as "a mere surplusage" because to do so "would do injury to the purpose of the lien statute," because it would require title examiners to go outside the public record to discover the true date of last furnishing which, in turn, would "impose an undue burden on the title examiner and would damage the principle of reliance upon the public record." *Id.* at 400–01.

The case of *Beach & Adams Builders, Inc. v. Northeastern Bank*, 28 N.C. App. 80, 220 S.E.2d 414, (N.C. Ct. App. 1975), was decided after *Strickland* and is similarly persuasive and involved similar facts to this case before the Court. In that case, the plaintiff contractor, having entered the date of November 16, 1972, in its Claim of Lien, argued that it should be allowed to show, in a trial on the merits, that the actual date of last furnishing was a date other than that set forth in its Claim of Lien. *Id.* at 83, 220 S.E.2d at 416. The North Carolina Court of Appeals rejected the plaintiff's argument that the date of last furnishing was not statutorily required, and, therefore, was "mere surplusage" which should be disregarded. *Id.* at 84, 220 S.E.2d at 417. The court recognized that title examiners would, barring an obvious error, reasonably rely on the date actually furnished. *Id.*

The *Beach & Adams Builders* court considered the plaintiff's verified complaint as an affidavit but noted that the verified complaint "merely presents a bare allegation that the date of last furnishing is different from that stated in the claim of lien. *Id.* at 85, 220 S.E.2d at 417. The court concluded its analysis by holding that "[B]arring an obvious error easily discernable to the

title examiner, *the plaintiff is bound by the date stated in his Claim of Lien.*" *Id.* (emphasis added).

Here, TCC did not serve Betty Beatty until June 22, 2016. Anyone examining the title would see that TCC swore to March 17, 2016, as the last date of furnishing. TCC did not file the affidavit of service until November 3, 2020. Anyone examining title to the property between June 10, 2016 and November 3, 2020 would conclude that Beatty had not been served and that the lien was dissolved. After the affidavit was filed, the examiner would conclude that the service of process occurred more than 90 (ninety) days after the date set forth in the sworn statements of account and the verified complaints, and that the lien was expired. Therefore, the public record advises anyone examining it that the lien had expired. In order to effectuate the policy reasons articulated by our Court of Appeals in *Preferred Savings* and by the North Carolina Court of Appeals in *Strickland* and *Beach & Adams Builders*, TCC must be held to the March 17, 2020 date asserted in its statement of account.

C. TCC cannot create a question of fact through contradictory sworn testimony.

The Court now turns to TCC's efforts to submit evidence directly contradicting the sworn testimony of its president and authorized agent, John David Griffith. As stated *infra*, TCC has submitted the affidavit of TCC's project superintendent to contradict the sworn testimony of TCC's president in an effort to create a question of fact. TCC couches that effort as the equivalent of an amended pleading or a clarifying affidavit.

A verified complaint is not a pleading whose facts are subject to simple amendment like a normal complaint. Like the North Carolina Court of Appeals in *Beach & Adams Builders*, our appellate courts have recognized that a properly worded verified complaint is the equivalent of an affidavit. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (S.C. 2003); *see* also *Al-Mujahidin*

v. Franklin, No. CV 9:15-1978-BHH, 2016 WL 3440602 (D.S.C. June 23, 2016). In *Al-Mujahidin*, Judge Hendricks adopted the United States Magistrate Judge's report and recommendation to granted summary judgment by refusing to consider an affidavit contradicting previous sworn testimony in a verified complaint. 2016 WL 3440602 at *1. "Plaintiff cannot save his claim from summary judgment by submitting a sworn statement that contradicts not only his previous sworn allegations in his verified Complaint, but also his own exhibits…" *Al-Mujahidin v. Franklin*, No. CV 9:15-1978-BHH-BM, 2016 WL 3462520, at *3 (D.S.C. May 31, 2016), *report and recommendation adopted*, No. CV 9:15-1978-BHH, 2016 WL 3440602 (D.S.C. June 23, 2016) (citing *Bickerstaff v. Vassar College*, 196 F.2d 435 (2d Cir. 1999) ("It is beyond cavil that a party may not create an issue of fact by submitting an affidavit in opposition to a summary judgment motion that … contradicts affiant's previous testimony."); *Kennedy v. Allied Mutual Ins. Co.,* 952 F.2d 262 (9th Cir. 1991) (party cannot create issue of fact by contradicting prior sworn testimony)).

Here, TCC swore to and filed of record two statements of account contradicting the same date of cessation as the verified complaint and the verified amended complaint. It is necessary to determine whether the Tomberlin affidavit should be considered when deciding Beatty's motion. Therefore, it is necessary to determine whether the Tomberlin affidavit is a contradictory, sham affidavit or a clarifying affidavit. The South Carolina Supreme Court has set forth six factors to be considered in differentiating between a sham affidavit and a correcting or clarifying affidavit: (1) Whether an explanation is offered for the statement that contradicts prior sworn statements; (2) the importance to the litigation of the fact about which there is a contradiction; (3) whether the non-movant had access to the fact prior to the previous sworn testimony; (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made

in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; and (6) when, in relation to summary judgment, the second affidavit is submitted. *McMaster v. Dewitt*, 411 S.C. 138, 767 S.E.2d 451 (S.C. Ct. App. 2014).

As to the first *McMaster* factor, TCC has offered no explanation for contradicting Mr. Griffith's multiple sworn statements as to the last date labor or materials were supplied. Mr. Griffith has provided no affidavit explaining why his prior sworn testimony should not bind his company. Additionally, the affidavit of Ryan Tomberlin sidesteps this factor, simply stating: "TCC believed substantial completion of the project was March 17, 2016." The sworn statements of TCC's president make no mention of the term "substantial completion" and, instead, unequivocally attest to March 17, 2016 as "[T]he last day work was performed or materials provided to the property…." Therefore, TCC has failed to provide an explanation for the contradictory statements.

As to the second *McMaster* factor concerning the importance of the contradictory fact to the litigation, the date on which TCC last worked on the project is central to the perfection of its lien. When TCC attested on the public record to the March 17 date in its Amended Complaint and the second statement of account on June 10, 2016, it was fully aware that it had approximately a week to preserve its lien by serving the unit owners. On June 10, 2016, TCC reaffirmed its previous representation to the public and this court that March 17 was the operative date and that time was running short to perfect its lien.

The third *McMaster* factor considers whether TCC had access to the facts prior to the previous sworn testimony. TCC obviously had access to the information needed to establish when its work was performed at the project prior to the filing of the Griffith sworn statements.

Here, TCC cannot contend that at the time of Mr. Griffith's four (4) sworn statements it did not or could not know what work it was doing at the project and when.

The fourth *McMaster* factor, the frequency and degree of variation between the prior sworn statements and the proffered affidavit weighs in favor of excluding the Tomberlin affidavit. TCC has previously sworn on four (4) occasions that March 17, 2016 was the date of last furnishing. The testimony of TCC's president varies greatly from that of Mr. Tomberlin by seeking to eliminate this date altogether, again with no attempt to explain the unequivocal certainty expressed by Mr. Griffith as to the last date of work.

As to the fifth *McMaster* factor, there is no indication that Mr. Griffith was confused when he attested on each of the prior four (4) occasion to the date of last labor or materials at the project. He has made no effort to inform the Court why it should allow his prior testimony to be contradicted. In fact, in its motion to amend statement of account, filed October 1, 2020, TCC attached as Exhibit 2 an unsigned amended statement of account. That exhibit, if signed and attested by Mr. Griffith, would constitute an affidavit, albeit contradictory. While it deletes any reference to dates, it offers no explanation for doing so and does not state that Mr. Griffith was confused at the time of his four (4) prior attestations.

With regard to the final *McMaster* factor addressing when in relation to summary judgment the affidavit was filed, the Tomberlin affidavit was submitted six (6) days before the hearing scheduled before Judge McCoy. The Motion to Amend Statement of Account was filed more than four months later, and the payroll summary for Heather Dagg was submitted October 27, 2020. The timing of these submissions indicate a last minute effort to present a genuine issue of material fact to prevent the entry of summary judgment. The Court finds that all six

McMaster factors weigh against the consideration of the Tomberlin affidavit. Accordingly, the Court, in its discretion, disregards that affidavit.

D. TCC's Exhibit D provides no basis for denying Beatty's motion.

Finally, the Court finds that the payroll summary of Heather Dagg provides no basis for denying Beatty's motion. Like the contradictory affidavits, TCC has made no effort to explain Exhibit D at all, stating in its memorandum only that "[O]ther work continued until January 23, 2017. Exh. D." Even accepting as true the information contained in Exhibit D, it is of no assistance to TCC in opposing Beatty's motion. Each of the dates where Ms. Dagg had worked is *after* the date of TCC's lien. Work performed or materials provided after the filing of a mechanic's lien cannot constitute a portion of the lien, nor can the subsequent work or materials extend the deadlines the statutes contain. The date of cessation of the labor for which the claimant seeks payment must be a date before the notice of lien is filed and not after. *Preferred Savings*, 295 S.C. at 273, 368 S.E.2d at 81.

CONCLUSION

In June 2016, TCC filed upon the public record four sworn statements representing to the parties, the public record, and everyone examining those records that March 17, 2016, was the last day labor and materials were supplied to the project. Beatty was served June 22, 2016, after TCC's lien dissolved by operation of law on June 16, 2016. The Court holds that a lien claimant who chooses to include a date of last service in his verified statement of account is bound by the date the claimant chose to insert and cannot retroactively perfect a dissolved lien by amending the statement of account. Accordingly, there is no dispute of material fact that TCC failed to perfect its lien and that its lien dissolved by operation of law.

For the reasons set forth above, Beatty's motion is granted, and IT IS HEREBY ORDERED as follows:

1) Judgment is entered in favor of Beatty upon TCC's FIRST CAUSE OF ACTION;
2) The *Lis Pendens* and mechanic's lien upon Beatty's unit shall be removed from the public record within five (5) days of the entry of this order;
3) Having prevailed by successfully defeating TCC's mechanic's lien foreclosure action, Beatty is entitled to her attorney's fees pursuant to Section 29-5-10(a) South Carolina Code; and
4) Beatty shall submit an affidavit in support of her claim for attorney's fees to the court within fifteen (15) days of the date this order is entered.

IT IS SO ORDERED.

_____
Mikell R. Scarborough
Master-in-Equity
Charleston County

Dated:_____

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
TCC OF CHARLESTON, INC.,)	CASE NO. 2016-CP-10-2955
)	
Plaintiff,)	
)	
vs.)	
)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISO J.MACGILLNRAY, TERESA MACGILLIVRAY, PAMELA L.VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K.HENDERSON, JAMES R. CLARICE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL,II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMSPON F/KA MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	**ORDER GRANTING PARTIAL SUMMARY JUDGMENT TO BETTY L. BEATTY**
)	
Defendants.)	
)	

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In this action, TCC of Charleston, Inc. ("TCC") seeks to recover payment from the defendants for work performed under a written contract with Concord and Cumberland HPR (the "HPR"), for extensive repairs to condominium units located at 175 Cumberland Street in Charleston, South Carolina. TCC asserts causes of action for mechanic's lien foreclosure, breach of contract and "Equity."

This matter came before me upon the motion of Betty L. Beatty ("Beatty" or "Mrs. Beatty") for summary judgment upon TCC's first cause of action for mechanic's lien foreclosure. Mrs. Beatty owns a unit at 175 Cumberland Street. Her motion is based upon the grounds that TCC's lien dissolved due to TCC's failure to serve its lien upon her within the time required under S.C. Code §29-5-90. This motion was originally filed on May 8, 2020, was briefed and was fully argued before the Honorable Jennifer B. McCoy on May 28, 2020. Judge McCoy declined to rule upon the motion and referred the case to me by order dated August 11, 2020, to decide *inter alia*, this motion.

A hearing was held in this court on November 5, 2020, and a second hearing was held on January 27, 2021, so that the court could rule upon all outstanding motions. Beatty was represented by Edward D. Buckley, Jr. and TCC was represented by Andrew K. Epting, Jr. and Jaan Rannik in both hearings. Having reviewed the court record, the parties' respective motions, memoranda, attachments and exhibits, affidavits, written objections and rebuttals to those objections, and having considered the oral arguments of counsel, and the applicable law, I hereby grant Beatty's motion. For the reasons set forth below, TCC's First Cause of Action for Foreclosure of Mechanic's Lien is dismissed, and the Lien filed in this action shall be removed from the public record, that lien having dissolved as a matter of law. Having prevailed in

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defeating TCC's mechanic's lien claim against her, Beatty is entitled to an award of reasonable attorney's fees and costs pursuant to S.C. Code §29-5-20(A).

APPLICABLE LAW

A. Summary Judgment

Rule 56(c) of the South Carolina Rules of Civil Procedure provides for judgment as a matter of law where "there is no genuine issue as to any material fact." "A party against whom a claim, counterclaim, or cross-claim is asserted, or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Rule 56(b), SCRCP. Summary judgment is appropriate when "the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRP. "'The purpose of summary judgment is to expedite disposition of cases [that] do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (S.C. 2001).

B. Perfecting a Mechanic's Lien

Mechanic's liens are creatures of statute, and the requirements of the statute must be strictly followed. *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724, 729 (S.C. Ct. App. 2020). Sections 29–5–10 to 440 of the South Carolina Code (2007 & Supp. 2019) set forth the requirements for establishing and enforcing a mechanic's lien. The statutes establish three (3) distinct steps in that process, namely (1) creation, (2) perfection, and (3) enforcement of the lien. *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., LLC*, 409 S.C. 331, 340, 762 S.E.2d 561, 565. For the lien to become enforceable, the lien must be perfected and enforced in compliance with South Carolina's mechanic's lien statutes. The lien arises inchoate when the

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labor is performed or material is furnished, but the lien has not been perfected until the statutory requirements are met. *Id.* at 341, 762 S.E.2d at 256. The procedures for enforcing a mechanic's lien must be strictly followed; the court is "not at liberty to depart from the plain meaning of the language contained in the mechanic's lien statute." *Morehead Construction, Inc. v. Enterprise Bank of South Carolina,* 410 S.C. 386, 765 S.E.2d 1 (Ct. App. 2014).

To perfect and enforce the lien against the property, the person claiming it must: (1) record and serve a certificate of lien, containing a sworn statement of account within ninety (90) days after he ceases to furnish labor or materials; (2) bring suit to foreclose the lien within six (6) months after he ceases to furnish labor or materials; and (3) file notice of pendency of the action within six (6) months after he ceases to furnish labor and materials. If the person claiming the lien fails to take any one of these steps, the lien against the property is dissolved by operation of law. *Kitchen Planners*, 432 S.C. at 267, 851 S.E.2d at 729 (Ct. App. 2020). Here, the uncontroverted facts establish that TCC failed to serve the lien upon Beatty within 90 days of March 17, 2016, the date sworn under oath to be the last date of work. TCC's president has sworn to this fact under oath in four (4) sworn statements: two (2) verified complaints and two (2) sworn statements of account. TCC sought to perfect and enforce a lien for work performed no later than March 17, 2016. That lien expired on June 15th, prior to service of the lien upon Mrs. Beatty on June 22, 2016.

BACKGROUND

TCC originally filed suit against the HPR, filing its Summons, Verified Complaint, Notice and Certificate of Mechanic's Lien, Statement of Account, and Motion to Stay and Compel Arbitration on June 6, 2016. TCC filed a Lis Pendens on June 10, 2016. In its Verified

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Complaint and sworn Statement of Account TCC stated that it last furnished labor or materials on March 17, 2016. Apparently realizing that it could not enforce a mechanic's lien against the HPR under South Carolina Law, Plaintiff filed an Amended Summons and Amended Verified Complaint, Amended Notice and Certificate of Mechanic's Lien and Amended Statement of Account adding each unit owner, including Beatty, as a defendant on June 10, 2016. An Amended Lis Pendens was filed on June 16, 2016. TCC realleged under oath in its Amended Verified Complaint and Statement of Account that March 17, 2016 was the date of last furnishing labor or materials. Mrs. Beatty was served via process server on June 22, 2016; the transmittal letter from TCC's counsel to Beatty is dated June 21, 2016. Thus, Beatty was served ninety-seven days after the March 17th date asserted by TCC. Mrs. Beatty moved for partial summary judgment on the grounds that there is no dispute of material fact that service was not timely under the mechanic's lien statute and that she is entitled to judgment upon the FIRST CAUSE OF ACTION for mechanic's lien foreclosure as a matter of law.

The March 17th date of last furnishing labor and materials is crucial to perfection of TCC's lien. TCC has attested under oath, on the public record, and on four (4) occasions, that March 17, 2016, was the date it ceased providing labor or materials for which it sought to perfect and enforce its lien. In response to Beatty's summary judgment motion, TCC contends that date is incorrect and that it should be allowed to present evidence contradicting its prior sworn statements and public record filings which state unequivocally that March 17, 2016, was the date it ceased work.

TCC's original summons and verified complaint, dated May 19, 2016, was filed on June 6, 2016. That complaint asserted claims against the HPR only. The complaint, in paragraph 9, reads as follows:

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> 9. That in accordance with their agreements the Plaintiff furnished the agreed-upon material and services to the Defendants which were used in the work, and on related structures on the subject property, that material and services improved the property, and *the last date of such furnishing materials and services was March 17, 2016.*

(emphasis added).

TCC's president, John David Griffith, verified the Complaint by VERIFICATION dated May 19, 2016. In the Verification, Mr. Griffith swore under oath that he was an officer of TCC, and that he had been authorized by TCC to make the verification. As to the facts of the Complaint, he swore to the following:

> "… I have read the foregoing Complaint and know the contents thereof and that based upon my own personal knowledge, the facts therein are true and correct."

TCC's president also swore to that fact in TCC's Statement of Account attached to the Complaint as Exhibit "A". In Exhibit "A", paragraph 4, TCC's president, Mr. Griffith swore under oath to the following:

> 4. That the last day work was performed or materials provided to the property described in EXHIBIT B was March 17, 2016.

Four days after filing its verified Complaint and sworn Statement of Account, TCC filed an Amended Complaint on June 10, 2016, which Amended Complaint purports to assert claims against the HPR and all the owners of units within the HPR. Paragraph 10 of the Amended Complaint contains the identical language which is quoted above as paragraph 9 of the original Complaint, alleging that "[T]he last date of such furnishing of materials and services was March 17, 2016."

Mr. Griffith, TCC's president, on June 10, 2016, again verified the Amended Complaint, attesting unequivocally that "[B]ased upon my own personal knowledge, the facts as alleged

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therein are true and correct." This was the *third* sworn attestation under oath that March 17, 2016 was the date TCC ceased work. TCC attached to its Amended Complaint as Exhibit "A", a second sworn statement of account dated June 10, 2016, and signed by its president, Mr. Griffith. This was TCC's *fourth* sworn attestation under oath that March 17, 2016 was the date it ceased work. The June 10, 2016 statement of account was filed with the Charleston County Register of Deeds at Book 0560, Page 116.[1]

Several months after the Amended Complaint was filed, the mechanic's lien claims were stayed by order of Judge Roger M. Young, Sr. filed December 30, 2016, while TCC and the HPR took their contractual dispute to arbitration as required under the terms of their contract. The Panel of Arbitrators determined that March 8, 2016, was the date of substantial completion of TCC's work, and awarded interest from that date. The Panel of Arbitrators made no findings regarding the last date labor or materials were supplied to the project. After the panel of arbitrators issued its final, corrected award, the stay was lifted by order of the Honorable Deadra L. Jefferson, filed January 30, 2020. Judge Jefferson also found that March 8, 2016, was the date of substantial completion. From June 2016 until May 2020, TCC made no effort to either change, amend, or contradict its four (4) sworn statements that March 17, 2016 was the date of last work.

The instant motion was filed by Beatty on May 8, 2020. On May 22, 2020, TCC filed its "Objection to Proceeding," Memorandum in Opposition to Pending Summary Judgment Motions and Response to Motion to Deposit Funds. TCC also moved on May 15, 2020 for leave to amend its complaint. Notably, this proposed Second Amended Complaint removed any reference to the date upon which TCC last performed work or provided materials, instead alleging in Paragraph 12 that TCC timely gave the Defendants notice of the statement of account

[1] *See* TCC's Motion to Amend Statement of Account filed October 1, 2020.

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and timely served and filed its lien relative to the date of last work as determined by the Panel of Arbitrators. The Panel of Arbitrators made no finding regarding the date of last work. The only date contained within the Panel of Arbitrators' corrected award is March 8, 2016, which the panel determined to be the date of substantial completion.

The Honorable Judge Jennifer McCoy scheduled a hearing on these motions for May 28, 2020. On May 22, 2020, six (6) days prior to the scheduled hearing, TCC filed an affidavit from TCC's project superintendent, Ryan Tomberlin, which directly contradicts the four (4) prior sworn statements of TCC's president regarding alleged dates TCC performed work at the project. The only explanation in Mr. Tomberlin's affidavit for Mr. Griffith's contradictory testimony is found in paragraph 3, stating:

> 3. TCC believed substantial completion of the project was March 17, 2016.

The four (4) sworn statements by TCC's president make no mention of the term substantial completion. Instead, Mr. Griffith swore in each prior statement that he was an officer of TCC, that he had been authorized by the corporation to make the statement on its behalf, and that the last date it provided labor and materials for the project was March 17, 2016. TCC, through Mr. Tomberlin's affidavit, made no effort to explain why Mr. Griffith swore to the facts as he did. Notably, Mr. Griffith, TCC's president, made no effort to explain or correct his prior sworn statements prior to the May 28, 2020 hearing.

This motion and others were argued before Judge Jennifer B. McCoy on May 28, 2020. However, she declined to rule on them. Instead, she granted TCC's motion to amend and authorized it to file a Second Amended Complaint which deletes all reference to any date of cessation of work at the project. She entered an order of August 11, 2020, referring this matter

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to me and directing that this Court decide the remaining motions, including Beatty's motion for summary judgment. This Court scheduled those motions for hearing on November 5, 2020.

On October 1, 2020, four (4) months after the parties argued this motion before Judge McCoy and a month before this Court's hearing, TCC filed a motion to amend its statement of account. The proposed revised statement of account, prepared for the signature of Mr. Griffith, is unsigned. It does, however, delete any reference to the date when TCC ceased working on the project. Even if signed, the proposed statement of account would directly contradict the testimony given by Mr. Griffith in four (4) filings provided to this court and filed of record, and it offers no explanation regarding his prior attestations. Exhibit 3 to the motion is an affidavit of Mr. Griffith dated September 25, 2020, which states in pertinent part, the following: 1) That he was involved in the Concord and Cumberland project from its beginning, and he signed the verified complaint and statement of account relating to the project; 2) that when he signed the statement of account, he referred to the date of substantial completion; and 3) that additional work was performed through August, 2017.

TCC filed a subsequent Memorandum in Opposition to Beatty's motion on October 27, 2020. In its Memorandum, TCC did not explain why Mr. Griffith swore under oath that the last date of work was March 17, 2016. Instead, TCC refiled the affidavit of Mr. Tomberlin and a number of Exhibits, including a document identified as EXHIBIT D which purports to be a payroll summary for Heather Dagg, listing her hours for the months of December, 2016 and January, 2017.

At the November 5, 2020 hearing, the Court issued its oral ruling which, among other things, granted Beatty's summary judgment motion. As requested by the court, Beatty submitted a proposed order granting her motion, and she submitted an attorney's fee affidavit in support of

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her claim for fees. TCC objected to the proposed order on November 30, 2020, filing with the court a document entitled "TCC Omnibus Response and Objections to Filings and Submittals of Betty Beatty." Beatty responded to TCC's "Omnibus Response" by letter dated December 3, 2020. The court scheduled the hearing on January 27, 2021 to hear all outstanding motions.

Argument was presented before me on November 5, 2020, and again on January 27, 2021. The Court has considered the record, the parties' respective memoranda, attachments and exhibits, written objections and rebuttals to objections, and considered the oral arguments of counsel and the applicable law.

LEGAL ANALYSIS

Mechanic's liens are purely statutory and can only be acquired and enforced in accordance with the conditions of the statute creating them. *Shelley v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct. App. 1985). The lien arises inchoate when the labor is performed or material is furnished. However, to be valid, the lien must be perfected and enforced in compliance with the Mechanic's Lien Statutes, S.C. Code §29-5-10 to 430.

In order to defeat Beatty's motion for summary judgment, TCC seeks to contradict or disprove its prior sworn statements. It seeks to amend the statement of account in order to eliminate the March 17, 2016, date which it swore to be true and correct. By doing so, TCC has asked the Court to disregard the date provided in the statement of account filed of record. TCC has submitted an affidavit and other documents contradicting its prior testimony in order to create an issue of fact. TCC must be held to the date that it attested and swore to in multiple documents filed of record. There is no question that the date of service of process, June 22, 2016, is more than ninety days after March 17, 2016, the date TCC has sworn to be the last day it provided labor and materials. The lien TCC filed and sued upon sought payment for work

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performed on or before March 17, 2016. That lien was served upon Beatty on the 97th day after the last date of work for which TCC claimed a lien, and the lien constituted a cloud upon the title to Mrs. Beatty's property.

A. TCC cannot change the date asserted in its statement of account.

TCC, in its opposition to Beatty's motion and in its motion to amend its statement of account, argues that Section 29–5–100 expressly allows correction of inaccuracies in the statement of account. TCC also argues that amendment of the statement of account is proper, because the amendment of the statement of account, as a pleading, should be liberally allowed. However, neither S.C. Code §29–5–100 nor our rules of civil procedure allow a mechanic's lien claimant to alter the date of last work or materials set forth in its sworn statement of account, which must, by statute, be filed of record and which, upon filing, becomes a cloud upon the title to the owner's property. (emphasis supplied).

1. An incorrect date of completion is not considered an excusable inaccuracy under Section 29-5-100.

S.C. Code §29-5-100 contemplates and excuses certain inaccuracies in a statement of account. That section states that certain errors in the property description or in the amount due will not invalidate the statement of account. The statute is silent as to an inaccuracy as to the dates of work, and the Court cannot read into the statute an exception that would allow TCC to amend its statement of account to change the date it verified as its last day of work. The rules of statutory interpretation are clear: the General Assembly is presumed to intend for the words of a statute to mean what they say. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (S.C. 2000). Likewise, where the General Assembly chose not to include words within a statute, this Court cannot add language to the plain language of the statute. *Id.* By omitting timing errors among those inaccuracies which will be forgiven, I must presume the legislature meant to do so.

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Accordingly, Section 29–5–100 provides no basis for TCC to alter or delete its date of last work at the project. On its face, the lien TCC filed, recorded in the public record, and sued upon, seeks payment for work performed no later than March 17, 2016.

2. Statements of Account are not pleadings which may be amended.

TCC cites Rule 15, SCRCP, in support of its effort to amend its statement of account to delete the last date of furnishing materials or labor. Amendments to the pleadings in a mechanic's lien action are allowed under Section 29–5–180 of the mechanic's lien statute and Rule 15, SCRCP. However, TCC has not submitted any South Carolina case law allowing amendment of the last date of performing labor or providing materials service in a lien claimant's statement of account. The Court has been unable to find any as well. This dearth of authority makes sense, because a statement of account is not a pleading and thus is not subject to amendment under Rule 15, SCRCP. Rule 7 of our South Carolina Rules of Civil Procedure is entitled "Pleadings Allowed," and section (a) of the Rule delineates the form of pleadings recognized in this state. The rule makes no mention of a statement of account. After listing the pleadings allowed, the Rule specifically states that no other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c). Rule 7, SCRCP. Therefore, a statement of account is not a pleading as defined by Rule 7, SCRCP, and cannot be amended under Rule 15, SCRCP. Amendments are permitted, if at all, pursuant to S.C. Code §29-5-100 and only to correct inaccuracies in the property description or the amount of the lien.

B. The Court cannot disregard TCC's four sworn statements that March 17, 2016 was the date of last furnishing work or materials.

The filing of a mechanic's lien places a cloud upon the title to real property by providing record notice of the nature of the claim. In *Preferred Savings and Loan Ass'n., Inc. v. Royal*

Garden Resort, Inc., 295 S.C. 268, 273, 368 S.E.2d 78, 81 (S.C. Ct. App. 1988), *aff'd*, 301 S.C. 1, 389 S.E.2d 853 (S.C. 1990), the Court of Appeals held that the date of cessation of labor must pre-date the notice of lien. (emphasis supplied). The court recognized that matters of public record must be reliable for title examiners who find a lien of record. *Id.* In reaching its holding, the court cited with approval the North Carolina case of *Strickland v. General Building and Masonry Contractors, Inc.*, 22 N.C.App. 729, 207 S.E.2d 399 (N.C. Ct. App. 1974).

Our mechanic's lien statute does not require that the statement of account include a date when labor and materials were last provided. S.C. Code Ann. § 29–5–90 (1976). However, in order to effectuate the policy considerations discussed in *Preferred Savings*, a claimant who includes a date of last performing work in their statement of account must be held to it. In *Strickland,* the North Carolina Court of Appeals addressed this very issue. There, the claimant filed his notice and claim of lien on July 27, 1973 with a statement declaring that materials were last furnished upon the property on March 28, 1973. *Id.* This was beyond North Carolina's requirement that the claim of lien be filed no later than 120 days after the furnishing of last labor. N.C. Gen. Stat. Ann. § 44A-12 (2019). North Carolina, like South Carolina, did not require that a claimant state in his claim of lien the date of last furnishing labor or materials. *Compare* S.C. Code Ann. §29-5-90 (1976) *with* N.C. Gen. Stat. Ann. §44A-12 (2019). The North Carolina Court of Appeals in *Strickland* held that, even though the date of last furnishing is not required by statute, it cannot be treated as "a mere surplusage," because to do so "would do injury to the purpose of the lien statute." It would require title examiners to go outside the public record to discover the true date of last furnishing which, in turn, would "impose an undue burden on the title examiner and would damage the principle of reliance upon the public record." *Id.* at 400–01.

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The South Carolina Court of Appeals recently affirmed the above stated law in the *Kitchen Planners* case, *supra*. In *Kitchen Planners,* a contractor filed a complaint and a lien stating that it provided labor and materials "beginning in or around March 16, 2015 and continuing through August 18, 2015. The contactor served the owner with the lien on November 17, 2015 ----- 91 days later ----- and the owner then filed a motion to dismiss the mechanic's lien as untimely. The Circuit Court dismissed the foreclosure action, and the contractor appealed. The contractor argued that it could cure the timeliness issue by amending its pleadings to assert a later date when it actually finished work on the project. The Court of Appeals disagreed and affirmed the Circuit Court. In doing so, the Court of Appeals found that the contractor was bound by the dates asserted in its pleadings and on the face of the lien. Thus Kitchen Planners' lien dissolved, because it failed to serve the lien within ninety (90) days of the last date it supplied labor or materials on the project.

Here, TCC did not serve Betty Beatty until June 22, 2016. Anyone examining the title would see that TCC swore to March 17, 2016, as the last date of furnishing materials or labor. TCC did not file the affidavit of service evidencing service of the lien upon Mrs. Beatty until November 3, 2020, more than four (4) years after serving her. Anyone examining title to the property between June 10, 2016 and November 3, 2020 would conclude that Beatty had not been served and that the lien was dissolved. After the affidavit of service was filed, the examiner would conclude that the service of process occurred more than 90 (ninety) days after the date set forth in the sworn statements of account and the verified complaints, and that the lien was expired. Therefore, the public record advises anyone examining it that the lien had expired. In order to effectuate the policy reasons articulated by our Court of Appeals in *Preferred Savings*,

and *Kitchen Planners*, TCC must be held to the March 17, 2020 date asserted in its sworn statement of account. TCC's lien dissolved before it was served on Mrs. Beatty.

ATTORNEY'S FEES

Beatty has prevailed in defeating TCC's mechanic's lien claim. She is, therefore, entitled to an award of her attorney's fees. While the amount of fees to be awarded is discretionary, the question of her entitlement to fees is not. *Utilities Construction Co., Inc. v. Wilson,* 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996).

In determining a reasonable attorney's fee, the court has considered the following six factors: 1) the nature, extent and difficulty of the case; 2) the time necessarily devoted to the case; 3) the professional standing of counsel; 4) the contingency of compensation; 5) the beneficial results obtained; and 6) the customary legal fees for similar services. *Jackson v. Speed,* 326 S.C. 289, 486 S.E.2d 750 (1997).

I have reviewed the affidavit of Edward D. Buckley, Jr. and have reviewed, *in camera*, detailed time records entered upon his firm's billing software. I have also reviewed the court record in this case.

1. Nature, extent and difficulty of the case.

This case presented a multi-million dollar mechanic's lien claim and involved the potential interplay of the arbitration award in TCC's contract claim, application of the provisions of the mechanic's lien statutes, competing claims for attorney's fees, the filing of record by the plaintiff of multiple sworn statements, which it subsequently sought to retract, and hearings before a circuit judge and this court. It was complex, difficult and hotly contested.

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2. The time necessarily devoted to the case.

Beatty's counsel has presented *in camera* his firm's detailed itemized records reflecting the hours each attorney or legal staff member expended upon each task as described in the narrative billing entry for each task. The hourly rate for each billing entry is included as well. Each expense is itemized upon the billing records.

The total time expended by Mr. Buckley, his partners, associates and professional staff, from June 23, 2016, through February 1, 2021, equals 265.2 hours. I have reviewed each time entry and the itemized costs to determine the reasonableness of the time entered and the costs incurred.

3. Professional Standing of Counsel.

The court is familiar with the professional standing of Beatty's counsel, and they are experienced, well qualified and well respected in the legal community. Attorneys practicing in this court fall upon a scale representing a wide range of experience and competence from inexperienced or minimally qualified to highly skilled advocates. Beatty's attorneys are at the top of that scale.

4. Contingency of Compensation.

Beatty's counsel is not working on a contingent fee basis, so this factor is not applicable.

5. Beneficial Results Obtained.

Beatty's counsel succeeded in defeating a lien claim where the contractor had obtained an arbitration award in excess of $2,000,000.00 against the HPR. Opposing counsel had presented to the Panel of Arbitrators an attorney's fee affidavit seeking fees of approximately $900,000.00 in 2019, and if the plaintiff had prevailed upon its lien claim, its fees to date likely

would have exceeded $1,000,000.00 over and above its unpaid contract claim. Beatty's condominium is now free of liens, and she does not face the prospect of owing additional attorney's fees to the plaintiff. These results are very beneficial to Mrs. Beatty.

6. Fees Customarily Charged in Similar Cases.

The hourly rates and tasks performed in defense of this case are within the range of fees charged by comparable attorneys for comparable services. The total fees sought by Beatty's counsel, $78,453.50, pales in comparison to the fees previously sought by plaintiff's counsel in connection with the arbitration award.

Based upon the foregoing factors, I have determined that Beatty is entitled to reasonable attorney's fees in the sum of $ 75,000.00 together with costs in the amount of $ 1000 .

CONCLUSION

In June 2016, TCC filed upon the public record four sworn statements representing to the parties, the court, and everyone examining those records that March 17, 2016, was the last day labor and materials were supplied to the project. TCC sought to perfect and sue upon a lien for work performed on or before March 17, 2016. Beatty was served June 22, 2016, after TCC's lien dissolved by operation of law on June 16, 2016. The Court holds that a lien claimant who chooses to include a date of last service in his verified statement of account filed with the Register of Deeds is bound by the date the claimant chose to insert and cannot retroactively perfect a dissolved lien by amending its statement of account to delete that date. There is no dispute of material fact that TCC failed to perfect its lien and that its lien dissolved by operation of law.

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For the reasons set forth above, Beatty's motion is granted, and IT IS HEREBY ORDERED as follows:

1) Judgment is entered in favor of Beatty upon TCC's FIRST CAUSE OF ACTION for mechanic's lien foreclosure;
2) The *Lis Pendens* and mechanic's lien upon Beatty's unit shall be removed from the public record within five (5) days of the entry of this order;
3) Having prevailed by successfully defeating TCC's mechanic's lien foreclosure action, Beatty is entitled to her attorney's fees pursuant to S.C. Code § 29-5-10(a); and
4) Beatty is awarded attorney's fees and costs in the amount of $76,000.00 and the Clerk of Court shall enter judgment against TCC of Charleston, Inc. in that amount in favor of Betty L. Beatty.

IT IS SO ORDERED.

_____
Mikell R. Scarborough
Master-in-Equity
Charleston County

Dated: _____

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Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al

Case Number: 2016CP1002955

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-10-2955
TCC OF CHARLESTON, INC. Plaintiff, vs. CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JOHN FREEMAN, JO-ANN COOPER, BETTY Y. SEGAL, by and through her Assignee, DONALD D. LEONARD, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam, Defendants.	)	**ORDER**

THIS MATTER came before me for a hearing on the following motions pursuant to an Order of Reference issued by Judge McCoy on August 11, 2020:

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(1) Defendant Concord & Cumberland HPR's Motion for Summary Judgment as to Plaintiff's Foreclosure of Mechanic's Lien Cause of Action, filed December 6, 2019;

(2) Defendant Betty L. Beatty's Motion for Partial Summary Judgment, filed May 8, 2020;

(3) Concord and Cumberland HPR's Motion to Deposit Funds, filed May 11, 2020;

(4) TCC of Charleston, Inc.'s Motion to Confirm Arbitration Award and to Stay Granting of Requested Relief, filed July 30, 2020;

(5) TCC's Motion for Attorneys' Fees, filed September 11, 2020;

(6) Concord and Cumberland HPR's Motion to Dismiss Plaintiff's Second Amended Complaint and Motion for Attorneys' Fees, filed September 14, 2020;

(7) TCC of Charleston Inc.'s Motion to Amend Statement of Account, filed October 1, 2020; and

(8) Remaining Defendants' Motion for Summary Judgment, filed January 17, 2021.

The hearing began in person on November 5, 2020, in the Master in Equity's courtroom located at 100 Broad Street, Courtroom 2A, Charleston, SC 29401, and reconvened after additional briefing via videoconference on January 27, 2021. Present for the hearing were counsel for TCC of Charleston, Inc. ("TCC"), counsel for Concord & Cumberland HPR ("HPR"), and counsel for all unit owner Defendants.

I have received extensive briefing and memoranda of law from the parties and, after studying the record, motions, memoranda, correspondence, statutes, and case law diligently, and

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hearing the oral arguments of counsel on two separate occasions, I find, conclude, and hold as a matter of the law the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case arises from a repair project at condominiums located at 175 Concord Street in Charleston, South Carolina. The HPR hired TCC as the general contractor and, at the end of the project, a contractual dispute arose as to payment. TCC commenced the present action against the HPR on June 6, 2016, by filing a Notice and Certificate of Mechanic's Lien, sworn Statement of Account, and verified Complaint. Subsequently, on June 10, 2016, TCC filed an Amended Notice and Certificate of Mechanic's Lien, sworn Statement of Account, and verified Amended Complaint adding all of the individual property owners to the case. In both verified Complaints, and in the attached Statements of Account, TCC swore under oath that the last date of furnishing materials and services on this project was March 17, 2016. The HPR and certain unit owners answered the Amended Complaint and admitted that March 17, 2016, was, indeed, TCC's last date of furnishing materials and services on this project. TCC first served some unit owners with the mechanic's lien and pleadings starting on June 22, 2016.

Following the initial pleadings, the HPR consented to arbitration, which was ordered by Judge Roger M. Young, Sr. on December 30, 2016. Judge Young stayed the foreclosure action against the unit owner Defendants, pending the arbitration. Over the next 3 years, TCC and the HPR arbitrated all claims against the HPR, which resulted in an Arbitration Award and, subsequently, a Corrected Arbitration Award of $2,016,066.73 for all claims, plus interest and arbitration costs. However, somewhat complicating matters, the Arbitration Panel, while finding that the Horizontal Property Regime Act at S.C. Code § 27-31-230 required that TCC's lien must

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be filed against the property owners rather than the HPR, expressly reserved the award of attorney's fees based on prevailing party status to the Circuit Court.

The HPR moved to vacate or correct the Corrected Arbitration Award in the Circuit Court on other grounds, which motions were denied by Judge Deadra L. Jefferson. However, Judge Jefferson did not expressly confirm the Corrected Arbitration Award. TCC did not file any motion to vacate or correct any portion of the Corrected Arbitration Award.

This case has a complicated procedural history, but the important facts relevant to these motions as outlined above specifically include the following facts dispositive of this case: (1) TCC swore under oath, in two verified Complaints and two Statements of Account, that March 17, 2016, was the date of last furnishing labor or materials on the project, which was admitted by the HPR and certain unit owners in their answers; (2) ninety days following March 17, 2016, is June 15, 2016; and (3) TCC first served its mechanic's lien on June 22, 2016, seven days too late pursuant to S.C. Code Ann. § 29-5-90. Further, the record reflects that the Amended Lis Pendens was both executed and filed on June 16, 2016. The Amended Lis Pendens is listed among the documents that the process server received and thereafter served on defendant parties beginning on June 22, 2016. As such, the process server could not have received the documents for service until June 16, 2016 at the earliest, and this is one day after the lien had statutorily dissolved.

The law is clear on this issue. A mechanic's lien is a creature of statute and arises inchoate. *See Butler Contracting, Inc. v. Court St., LLC*, 369 S.C. 121, 130, 631 S.E.2d 252, 257 (2006) ("A mechanic's lien is purely statutory. Therefore, the requirements of the statute must be strictly followed."); *see also Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985) (stating "mechanic's liens are purely statutory and can only be acquired and enforced in accordance with the conditions of the statute creating them," and that "[t]he lien

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arises, inchoate, when the labor is performed or the materials are furnished."); *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 341, 762 S.E.2d 561, 566 (2014) ("[W]hen the labor is performed or material is furnished, the right exists but the lien has not been perfected.") (quoting *Butler Contracting*, 369 S.C. at 128, 631 S.E.2d at 256). "For an inchoate lien to become valid, the lien must be perfected and enforced in compliance with South Carolina's mechanic's lien statutes." *Id.* at 342 (citing *Preferred Sav. & Loan Ass'n v. Royal Garden Resort, Inc.*, 301 S.C. 1, 389 S.E.2d 853 (1990)). The Court in *Shelley Constr. Co.*, *supra*, succinctly outlined the steps to perfect the lien as follows:

> [T]o perfect and enforce the lien against the property, the person claiming it must: (1) serve and record a certificate of lien within ninety days after he ceases to furnish labor or materials...; (2) bring suit to foreclose the lien within six months after he ceases to furnish labor or materials ...; and (3) file notice of pendency of the action within six months after he ceases to furnish labor or materials ....
>
> 287 S.C. at 27, 336 S.E.2d at 490.

Relevant to the specific facts of this case is step (1), which is enumerated in S.C. Code Ann. § 29-5-90, and provides that a person seeking to enforce a mechanic's lien must file and serve "upon the owner ... a statement of a just and true account of the amount due" "within ninety days after [a contractor] ceases to labor on or furnish labor or materials for such building . . . ." Otherwise, the "lien shall be dissolved." *Id.*; *see also Butler Contracting*, 369 S.C. at 131, 631 S.E.2d at 257 ("The deadline to serve ... a mechanic's lien begins running from the date the last material was furnished ...."). Therefore, the date of last furnishing materials and labor and the date of service of the mechanic's lien are crucially important.

The South Carolina Court of Appeals recently affirmed the above stated law in *Kitchen Planners, LLC v. Friedman,* 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020*)*, which is particularly relevant to this case.

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In *Kitchen Planners*, a contractor filed a pleading and lien stating that it provided labor and materials on a project "in or around March 16, 2015 and continuing through August 18, 2015." The contractor served the owner with the lien on November 17, 2015 – 91 days later – and the owner then filed a motion to dismiss the mechanic's lien as being untimely. The Circuit Court dismissed the foreclosure action, and the contractor appealed. The contractor argued that it could cure the timeliness issue by amending its pleadings to assert a later date when it actually finished work on the project. The Court of Appeals disagreed and affirmed the Circuit Court. In doing so, the Court of Appeals found that the contractor was bound by the dates asserted in its pleadings and on the face of the lien. *Id.* at *5. Thus, Kitchen Planners failed to serve and file its mechanic's lien within ninety days of the last date it supplied materials or labor on the project. *Id.* at *8.

i. TCC of Charleston, Inc.'s Motion to Amend Statement of Account

TCC seeks to amend its Statement of Account to reflect a later date of last furnishing labor or materials on the project. TCC argues that the date originally submitted was the date of substantial completion and that TCC has since provided additional labor or materials on the project, which would cure the fact that the lien was served untimely. However, TCC submitted four separate statements under oath that the date of last furnishing labor or materials was March 17, 2020. The HPR and certain unit owners answered the last such statement in the verified Amended Complaint and admitted the allegation as true.

Although TCC now, over four years later, seeks to amend its Statement of Account to assert a later date as the date it last furnished labor or materials, this court relies heavily on TCC's two separate sworn Statements of Account, which were filed in the Register of Deeds office for Charleston County and appended to two Complaints as exhibits. Further, the HPR and certain unit owners admitted in their Answer TCC's allegations that the last date of furnishing labor and

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materials was March 17, 2016. As such, separate and apart from the sworn Statements of Account, TCC is bound by the admitted allegations. *See Kitchen Planners, No. 2017*-001522, 2020 WL 3551777, at *5 *(*finding that "Kitchen Planners is bound by the dates asserted in its pleadings and on the face of the lien*."); see also Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) ("The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the *facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action*.") (emphasis added); *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) ("[A] party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible."); *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015) ("Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions.")

Accordingly, TCC is bound by the March 17, 2020, date in its pleadings and on the face of its lien. TCC's Motion to Amend Statement of Account is therefore DENIED.

ii. Motions for Dismissal and Summary Judgment

a. Foreclosure of Mechanic's Lien

Prior to this hearing, TCC filed affidavits with the Court attaching all affidavits of service related to this case. Reviewing the record, it is apparent that June 22, 2016, was the first date of service on any Defendant and that the papers were provided to the process server no earlier than June 16, 2016, as indicated by the inclusion of the Amended Lis Pendens in the documents served on various unit owners beginning on June 22, 2016. Because the last date of furnishing was March

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17, 2016, service on or after June 22, 2016, was at least seven days too late. Further, it appears from the record and the filing of the Amended Lis Pendens that the documents were not provided to the process server until, at the earliest, June 16, 2016, one day too late. Although TCC's lien arose inchoate as of March 17, 2016, TCC failed to perfect the lien timely by June 15, 2016, and it therefore DISSOLVED as a matter of statutory law. S.C. Code Ann. § 29-5-90. This Court GRANTS summary judgment on the foreclosure of mechanic's lien cause of action in favor of all Defendants and orders the Charleston County Register of Deeds to cancel the liens of record.

Further, as an additional, independent, and sustaining ground for dismissal of the foreclosure action against the HPR, this Court finds that the HPR cannot be the subject of a mechanic's lien by law. *See* S.C. Code Ann. § 27-31-230 (stating that a mechanic's lien must be filed against the property owners and that "no lien … shall be effective against the property.") The HPR is not a property owner. In addition, this is the same finding made by the Arbitration Panel, which finding TCC did not move to vacate or correct.

b. Breach of Contract

The parties consented to arbitration between TCC and the HPR, and Judge Young issued an Order on December 30, 2016, that provided: "[T]he parties have consented to an arbitration of the dispute between Plaintiffs [sic] and Defendant CONCORD & CUMBERLAND HPR ("Regime") and stay of Plaintiffs [sic] foreclosure request as to the remaining Defendants . . . ." The arbitration resulted in an award to TCC of over two million dollars. As such, this Court finds that TCC's breach of contract claim against the HPR has already been decided and is now moot with confirmation of the award as referenced herein. Therefore, this Court GRANTS the HPR's Motion to Dismiss TCC's Second Amended Complaint as it relates to the breach of contract claim.

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Regarding the individual unit owner Defendants, Judge Young's Order explicitly reserved only the foreclosure action against the individual unit owners with the understanding that the breach of contract action was to be decided in arbitration against the HPR. As indicated above, the foreclosure action has been dismissed. However, to the extent that the breach of contract action survives the arbitration referral against the unit owner Defendants, this Court finds that TCC's Second Amended Complaint fails to state a breach of contract claim against the unit owner Defendants. Specifically, TCC's Second Amended Complaint fails to allege any elements of a breach of contract claim. Most notably, TCC does not allege that a contract existed between the individual unit owners and TCC. As such, this Court dismisses the breach of contract action in TCC's Second Amended Complaint against all Defendants.

c. Equity/*Quantum Meruit*

Judge Young ordered all claims against the HPR to arbitration, which included foreclosure of mechanic's lien, breach of contract, and *quantum meruit*. The Panel explicitly stated that the award of $2,016,066.73 was for "all claims asserted in this proceeding." Although not specified by the Panel whether the award was based on contract or *quantum meruit*, this Court finds that the *quantum meruit* claim against the HPR was referred to arbitration and disposed of therein with the award. *JASDIP Props. SC, LLC v. Estate of Richardson*, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct.App.2011) (citing Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988)) ("A breach of contract claim and *quantum meruit* claim can be alternative rather than inconsistent remedies."). As such, similar to the breach of contract claim, this cause of action is moot.

TCC filed a Second Amended Complaint on August 24, 2020, and asserted a new claim for "equity". TCC argues that the equity claim was included simply to ensure the HPR remained

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active in the foreclosure litigation in order to require payment under the HPR's bylaws. The HPR argues that TCC filed the equity claim in an effort to obtain attorney's fees, which TCC admitted during the reconvened hearing. To the extent TCC intends to seek attorney's fees based on equity, this court forecloses that possibility, as attorney's fees can only be awarded based on a contract or statute. The Panel was clear that there was no contractual basis to award attorney's fees, and this Court's ruling dismissing the mechanic's lien foreclosure action bars any statutory right that TCC might have to attorneys' fees. Therefore, this Court dismisses the equity cause of action as it relates to the HPR in TCC's Second Amended Complaint.

Additionally, the plain language of the Second Amended Complaint fails even to mention, much less assert, a claim against the unit owner Defendants for equity. For the same reasons indicated above, and because the plain language of the Second Amended Complaint cannot be reconciled to assert a claim against the individual unit owners, this Court dismisses the equity cause of action as to all remaining Defendants.

Having ruled that TCC served its mechanic's lien untimely, there are no remaining causes of action in TCC's Second Amended Complaint, and it is therefore dismissed in its entirety.

iii. Motion to Confirm the Award

Prior to the hearings, TCC argued that the award should not be confirmed until it knows the extent of its attorneys' fees associated with the Circuit Court foreclosure action. This Court has dismissed all foreclosure actions based on TCC's failure to perfect the lien, and based on the legal impossibility of TCC asserting a lien against the HPR. As such, TCC's argument is moot. Regardless, TCC agreed in the hearing that the award should be confirmed. Therefore, this Court CONFIRMS the Corrected Arbitration Award, effective February 12, 2021.

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iv. Motion to Deposit Funds

The HPR moved to deposit the arbitration award into the Court to stop the accrual of interest pending an appeal once the award is confirmed. Regarding the amount of the deposit, the Corrected Arbitration Award provides as follows:

> TCC is entitled to recover against HPR the sum of $2,016,066.73 for all claims asserted in this proceeding including, but not limited to, approved and unapproved PCOs and retainage.
>
> . . .
>
> TCC is entitled to recover its arbitrator deposit in the amount of $44,250.00 against HPR. . . .
>
> TCC is entitled to recover its expenses, not including counsel fees, incurred in the conduct of the arbitration in the amount of $21,691.02 against HPR pursuant to S.C. Code Ann. §15-48-110.
>
> TCC is entitled to interest on the sum of . . . $958,573.00, since September 29, 2017, at the rate of 4% compounded annually through August 1, 2019 in the amount of $71,667.31. Interest shall accrue at the rate of $112.90 per day thereafter until (1) this Corrected Arbitration Award is satisfied and paid in full; or (2) until judgment is entered on this Corrected Arbitration Award, whichever first occurs.

Accordingly, the amount owed on the Corrected Arbitration Award as of February 12, 2021, is $2,216,899.06 which includes the additional 560 days of interest at $112.90, or $63,224.00, from August 2, 2019 to February 12, 2021. Upon the HPR's deposit of the $2,216,899.06, this Court finds that the further accrual of interest stops. "Payment of a judgment into court is deemed to be a payment of money for the use of the person entitled thereto and stops the running of judgment interest." *S.C. DOT v. Faulkenberry*, 337 S.C. 140 (Ct. of Appeals 1999) (quoting *Horry Cty. v. Woodward*, 291 S.C. 1, 3, 351 S.E.2d 877, 878; *see also*, *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995) (holding that a judgment debtor's deposit of funds into court prevents accrual of interest upon compliance with Rule 67, SCRCP).

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Therefore, pursuant to Rule 67, SCRCP, this Court GRANTS the HPR leave to deposit all of the arbitration award into Court, which on the date of deposit will stop the accrual of further interest.

v. Prevailing Party Status and Attorneys' Fees

The parties have filed competing motions for attorneys' fees. Attorneys' fees and costs are only appropriate and can only be awarded if authorized by contract or statute. *See Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (1989) (providing the rule that attorney's fees are not recoverable unless authorized by contract or statute); *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). The contract does not provide for attorneys' fees, and, as indicated above, the mechanic's lien is dissolved and there is no statutory basis for attorneys' fees. Because there is no statutory or contractual basis for attorneys' fees, TCC's Motion for Attorneys' fees is DENIED.

Further, all Defendants have successfully defended against the foreclosure of the mechanic's lien, which has resulted in this Court's dismissal of TCC's foreclosure cause of action. Thus, Defendants are the prevailing parties in the lien foreclosure action and are entitled to attorneys' fees per statute. S.C. Code Ann. § 29–5–10(a) requires the court to award reasonable attorney's fees and costs to the party defending against the mechanic's lien if the defending party "prevails" in the action. *See Utilities Constr. Co. v. Wilson*, 321 S.C. 244, 248, 468 S.E.2d 1, 3 (Ct.App.1996) ("[T]he Legislature ... intended to afford a property owner [the] remedy [of recovering attorney's fees and costs] where a mechanic attempts to enforce a defective or wrongful mechanic's lien.") (citation omitted); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 483 S.E.2d 775 (Ct.App.1997) (stating the defendant is entitled to an award of attorney's fees as the "prevailing party" if the trial court determines a mechanic's lien cannot be enforced against the defendant). It

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matters not that Plaintiff "prevailed" on the breach of contract claim and was issued an award by the Panel. *See Wilson supra*, 321 S.C. at 249–50, 468 S.E.2d at 3–4 (upholding an award of attorney's fees to a property owner who successfully defended a contractor's claim for a mechanic's lien, even though the contractor prevailed on its claims for unjust enrichment and breach of contract).

As the prevailing party on the foreclosure of mechanic's lien cause of action, Defendants are entitled to attorneys' fees and costs and the HPR's Motion is GRANTED. Defendants' fees will be awarded under separate order after this Court closely scrutinizes the parties updated Affidavits of Attorneys' Fees and supporting documentation, which shall be provided to this Court within seven days of this Order for review.

CONCLUSION

Accordingly, it is

ORDERED ADJUDGED AND DECREED that

(1) TCC of Charleston Inc.'s Motion to Amend Statement of Account is DENIED;

(2) TCC's Motion for Attorneys' Fees is DENIED;

(3) TCC of Charleston, Inc.'s Motion to Confirm Arbitration Award is GRANTED, effective February 12, 2021, and TCC's requested stay of the confirmation is DENIED;

(4) Defendants Concord & Cumberland HPR and the Remaining Unit Owner Defendants' Motions to Dismiss and for Summary Judgment as to Plaintiff's Second Amended Complaint are GRANTED.

(5) Concord and Cumberland HPR's Motion to Deposit Funds is GRANTED and the HPR is granted leave to deposit all of the amount of the award plus interest,

which equals $2,216,899.06 as of February 12, 2021, at which time interest will stop accruing on the amount deposited.

(6) Defendants are determined to be the prevailing party under S.C. Code Ann. § 29–5–10(a), and shall be entitled to attorneys' fees to be GRANTED and awarded under separate order, with the amount to be determined pending submission of Affidavits of Attorneys' Fees by the HPR for review and scrutiny by this Court.

IT IS SO ORDERED.

February __, 2021

The Honorable Mikell R. Scarborough
Master-In-Equity

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Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al

Case Number: 2016CP1002955

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-02-11 14:05:45 page 15 of 15

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 **CP-10** 02955

TCC OF CHARLESTON INC	CONCORD AND CUMBERLAND LLC , DEFENDANT, ET AL
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
BETTY L. BEATTY	TCC of Charleston, Inc	$76,000.00
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

ELECTRONICALLY FILED - 2021 Feb 22 2:52 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al

Case Number: 2016CP1002955

Type: Order/Form 4

So Ordered

s/Mikell R. Scarborough 3062

ELECTRONICALLY FILED - 2021 Mar 03 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-02955

TCC OF CHARLESTON, INC.
PLAINTIFF(S)

CONCORD AND CUMBERLAND HPR, et al
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T.	TCC OF CHARLESTON, INC.	$250,553.70

STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JOHN FREEMAN, JO-ANN COOPER, BETTY Y. SEGAL, by and through her Assignee, DONALD D. LEONARD, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,		
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

ELECTRONICALLY FILED - 2021 Mar 03 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

This judgment was entered on the ____ day of _____, 2021 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2021to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2021 Mar 03 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

ELECTRONICALLY FILED - 2021 Mar 03 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

ELECTRONICALLY FILED - 2021 Mar 03 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al

Case Number: 2016CP1002955

Type: Order/Form 4

So Ordered

s/Mikell R. Scarborough 3062

ELECTRONICALLY FILED - 2021 Mar 11 4:28 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-02955

TCC OF CHARLESTON, INC.	CONCORD AND CUMBERLAND HPR, et al
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : Arbitration award confirmed and reduced to a judgment, including interest through February 12, 2021.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
TCC OF CHARLESTON, INC.	CONCORD & CUMBERLAND HPR	$ 2,216,899.06

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge **Judge Code** **Date**

ELECTRONICALLY FILED - 2021 Mar 11 4:28 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2021 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2021to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

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ELECTRONICALLY FILED - 2021 Mar 11 4:28 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

ELECTRONICALLY FILED - 2021 Mar 11 4:28 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

Charleston Common Pleas

Case Caption:	Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al
Case Number:	2016CP1002955
Type:	Order/Form 4

So Ordered

s/Mikell R. Scarborough 3062

ELECTRONICALLY FILED - 2021 Mar 26 10:32 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-10-2955
TCC OF CHARLESTON, INC. Plaintiff, vs. CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JOHN FREEMAN, JO-ANN COOPER, BETTY Y. SEGAL, by and through her Assignee, DONALD D. LEONARD, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam, Defendants.	)	**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**

Plaintiff TCC of Charleston, LLC (TCC) filed its Motion for Reconsideration or Clarification, pursuant to Rules 59(e), 60(a), and 60(b), SCRCP on March 12, 2021, of this court's

ELECTRONICALLY FILED - 2021 Mar 26 10:32 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

orders awarding attorney's fees in this matter. The Court awarded $76,000 in attorney fees and costs to Defendant Betty Beatty by order entered February 19 and a Form 4 Order filed February 22, 2021. The Court awarded $250,553.70 in attorney fees and costs to the remaining defendants by order of Judgment and Form 4 both entered on March 3, 2021.

TCC's motion seeks a ruling as to how the court exercised its discretion in its award of attorney fees, principally contending, that no attorney fees should be awarded prior to the lifting of the stay in this action on May 1, 2020. Furthermore since the court viewed the unredacted attorney's fees affidavits *in camera*, Plaintiffs were unable to review the basis for all charges assessed, and claim this requires specific findings to satisfy due process. Plaintiffs also contend defendants are estopped from pursuing attorney fees prior to May 1, 2020.

Defendants' memorandum in opposition to the motion states numerous grounds including the motion is too late to contest the February 16 order as beyond the 10 day time limit of Rule 59(e), that Rule 60 does not apply here, and also waiver and estoppel. I conclude as a matter of law that the 59(e) motion is too late as to Beatty's order but timely as to the remaining defendants.

Notwithstanding the Arbitration Award to Plaintiffs in excess of $2 Million dollars (this court entered judgment on behalf of Plaintiff in a Form 4 Order on March 11, 2021 in the amount of $2,216,899.06), in my February 16, 2021 Order, I stated how this court determined that Defendants were the prevailing parties in the foreclosure of mechanic's lien action filed against all Defendants by Plaintiff. As such, based upon court precedent, Defendants were entitled to an award of attorneys' fees. As stated therein, while the amount of fees and expenses to be awarded is discretionary, the question of Defendants' entitlement to fees is not. Utilities Construction Co., Inc. v. Wilson, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996).

ELECTRONICALLY FILED - 2021 Mar 26 10:32 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

Defendants submitted their time entries and fee affidavits, and I found that Defendants had met the 6 factor test for an award of a reasonable attorney's fee pursuant to authority. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). The court considered and made findings as to the following six factors: 1) the nature, extent, and difficulty of the case; 2) the time necessarily devoted to the case; 3) the professional standing of counsel; 4) the contingency of compensation; 5) the beneficial results obtained; and 6) the customary legal fees for similar services. The court is unsure of what level of review Plaintiff seeks; however, this court, having reviewed the request and found the amount of fees and costs to be reasonable, declines to make specific findings applying the 6 factor test to **each entry** for attorney's fees requested.

Instead the court reviewed the time sheets and affidavits of the very competent Defense counsel: F. Cordes Ford, Henry Grimball, and Andrew Walden and the court record in this case. Significant to this court's findings of attorney fees was the fact that counsel specifically did not seek attorney fees for all activity in the case but only as it related to the issue of attorney fees applicable to the mechanics lien cause of action. Both parties acknowledged that there was no contractual basis for attorney fees. Accordingly, the only basis for awarding attorney fees was necessarily by statute; i.e., the mechanics lien foreclosure action. Jackson, *supra*.

In particular, Mr. Ford's affidavit of November 2020, states he specifically divided his time into 3 stages with the third stage applying to the period following TCC's request for attorney fees from April 27, 2019 to November 15, 2020. (see Aff. Para 5). In addition, in Aff. Para. 6, Ford states that all fees sought by Mr. Walden and Mr. Grimball were incurred after TCC filed its Motion for Attorney Fees. I would note that almost all the attorney fees awarded to Betty Beatty were incurred after the claim for attorney fees was filed by Plaintiff. I have given her credit for

filing the answer to the initial complaint and awarded no fees while the matter was stayed during the arbitration proceeding.

As to Plaintiff's Rule 60 motion, I find no basis to overturn the judgment and award of attorney's fees and none has been submitted in this motion.

This has been a hard fought and highly contested case and this court expects that will continue; however, while there is a significant battle over who is the prevailing party (since Plaintiff received a substantial arbitration award and this court, based upon precedent, found defendants prevailed on the statutory claim which entitled them to attorney fees), this court believes this is a matter now ripe for determination by the appellate courts of this state.

Accordingly, the Plaintiff's motion is DENIED.

IT IS SO ORDERED!

_____
The Honorable Mikell R. Scarborough
Master-In-Equity for Charleston County

March __, 2021

SIGNATURE PAGE TO FOLLOW

ELECTRONICALLY FILED - 2021 Mar 26 10:32 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

ELECTRONICALLY FILED - 2021 Mar 26 10:32 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant, et al

Case Number: 2016CP1002955

Type: Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-03-25 18:03:59 page 5 of 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TCC OF CHARLESTON, INC.)
Plaintiff(s))

vs.)

CONCORD AND CUMBERLAND, LLC AND CONCORD & CUMBERLAND HPR,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 10- 2955

FILED
2016 JUN -6 PM 3:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Submitted By: Michelle N. Endemann, Esquiire
Address: 46 A State Street
Charleston, SC 29401

SC Bar #:
Telephone #: 8433771871
Fax #: 8433771310
Other:
E-mail: mne@epting-law.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☒ Foreclosure (420)
- ☒ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

_____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

_____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

_____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

_____
Date: _____

Submitting Party Signature:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
TCC OF CHARLESTON, INC., Plaintiff, vs. CONCORD AND CUMBERLAND, LLC AND CONCORD & CUMBERLAND HPR, PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10- 2955

SUMMONS

FILED
2016 JUN -6 PM 3:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com
ATTORNEYS FOR PLAINTIFFS

DATED: May 19, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2016-CP-10- 2955

TCC OF CHARLESTON, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(FORECLOSURE)
CONCORD AND CUMBERLAND, LLC, AND CONCORD & CUMBERLAND HPR.	)	
	)	
Defendants.	)	
	)	

FILED
2016 JUN -6 PM 3:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, complaining of the Defendants above named, would allege and show this Honorable Court:

1. That the Plaintiff is a corporation organized and existing pursuant to the laws of the State of South Carolina and does business in the County of Charleston, State of South Carolina.

2. That the Defendant Concord and Cumberland, LLC is a limited liability corporation organized and existing in pursuant to the laws of the State of South Carolina and does business in the County of Charleston, State of South Carolina.

3. That the Defendant, Concord & Cumberland, HPR, is upon information and belief, a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located in Charleston, Charleston County, South Carolina.

4. That the property which is the subject of this action is real property situated in Charleston County, South Carolina, and is described in **EXHIBIT A** (The

Mechanic's Lien together with the Statement of Account and Property Descriptions), attached hereto. The Defendants own some or all of this property and it is upon such property that this lien is filed.

5. This matter is subject to arbitration.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mechanics Lien)

6. That the Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

7. That the Defendant, with the approval and consent of the Defendant property owners, contracted with the Plaintiff for labor and materials furnished and actually used in services rendered by the Plaintiff on the structures situated on the subject property.

8. That this contract was amended as to provide that certain work would be performed on a cost plus basis.

9. That in accordance with their agreements the Plaintiff furnished the agreed-upon material and services to the Defendants which were used in the work, and on related structures on the subject property, that materials and services improved the property, and the last date of such furnishing materials and services was March 17, 2016.

10. That the Plaintiff performed all conditions of the contract.

11. That at all times during the performance of the contract by the Plaintiff, the subject property was owned by the Defendants, and the work of the Plaintiff was approved as the improvements were made.

12. That Plaintiff has completed its work and has demanded payment for the balance due on its contract from the Defendants.

13. That the Plaintiff gave the Defendants notice of the statement of account for Mechanic's Lien within ninety (90) days of the furnishing of materials and services which are the subject of this lawsuit as is provided for and required by law. This notice was the last application for payment.

14. That the Plaintiff has filed in the Office of the RMC for Charleston County its statement of account and Notice and Certificate of Mechanic's Lien. This filing occurred within ninety (90) days of the last date upon which the Plaintiff supplied the materials and services which are the subject of this action. (**EXHIBIT A**).

15. That the Plaintiff has received partial payments from Defendants but leaves a balance due as set forth in **EXHIBIT A.**

16. That the Plaintiff is entitled to an Order of Foreclosure of its Mechanic's Lien on the subject property, such Order requiring that the property be sold and that the proceeds of the sale, after deducting all lawful charges and expenses be applied to the debt of the Plaintiff, including a reasonable attorney's fee and costs incurred.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

17. That the Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

18. That the Defendants breached their agreements and is contractually obligated to Plaintiff in the sum set forth in **EXHIBIT A.**

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit)

19. That the Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

20. That the Defendants have had the use of the materials provided and services rendered by Plaintiff as alleged herein. The Defendants have been enriched by the provision of these materials and services and are unjustly retaining the benefit of these services and materials without paying the Plaintiff.

21. That the Defendants are liable to the Plaintiff for the reasonable value of the services and materials provided, and for the fees and costs and disbursements of this action.

WHEREFORE, the Plaintiff demands judgment as follows:

A. On its First Cause of Action, the Plaintiff demands that its Mechanic's Lien be foreclosed upon, that the subject property be sold and that the proceeds from the sale, after deducting all lawful charges and expenses, be used to satisfy the amounts due to the Plaintiff, and for the costs of this action, including a reasonable attorney's fee.

B. On its Second Cause of Action, the Plaintiff demands judgment against the Defendants, plus pre-judgment interest from the date the said materials and services were supplied until judgment rendered herein, and for fees and costs and disbursements of this action.

C. On its Third Cause of Action, the Plaintiff demands judgment against the Defendants.

D. For such other relief as this court deems just and proper.

[signatures on following page]

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.,
Michelle N. Endemann, Esq.
46A State Street
Charleston, South Carolina 29401
Phone: 843-377-1871
Fax: 843-377-1310
E-Mail: ake@epting-law.com
mne@epting-law.com

Charleston, South Carolina
May 19, 2016

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

VERIFICATION

I, John David Griffith, being first duly sworn, declare that I am an officer of the Plaintiff TCC OF CHARLESTON, INC., and have been duly authorized by said Corporation to make this Verification. I have read the foregoing Complaint and know the contents thereof and that based upon my own personal knowledge, the facts as alleged therein are true and correct.

TCC OF CHARLESTON, INC.

Sworn to before me this 19th
Day of May, 2016

Notary Public for South Carolina
My Commission Expires: _____

MY COMMISSION EXPIRES
MAY 30, 2016

NATALIE A BOONE NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. May 30, 2016

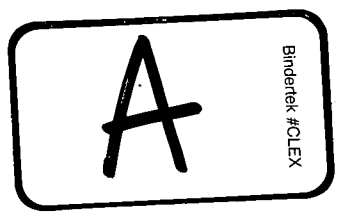
Return after recording to:

Andrew K. Epting, Jr., Esquire
46A State Street
Charleston, SC 29401

STATE OF SOUTH CAROLINA	)	REGISTER OF DEEDS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
TCC OF CHARLESTON, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE AND CERTIFICATE OF
	)	MECHANIC'S LIEN
CONCORD & CUMBERLAND, LLC, AND CONCORD & CUMBERLAND, HPR	)	
	)	
Defendants.	)	
	)	

The Plaintiff above named claims a lien against the property as owned by Defendants, in the amount set forth below and established by the annexed statement (EXHIBIT A), which is a true and just account of the amount due to the Plaintiff with all just credits given for labor and materials furnished and actually used in the erection, alteration, or repair of building or structures situated on the real estate described in EXHIBIT B, by virtue of its agreements with Defendant and with the consent of the Defendant owner of said property.

The value of the labor and materials furnished is the sum of $2,385,503.57, as is evidenced by the sworn statement of account attached hereto as EXHIBIT "A", and labor and materials were furnished to the after-described real estate less than ninety (90) days prior to the date of the filing and service of this Mechanic's Lien.



That by virtue of the aforesaid labor and materials furnished to the after-described property, and by the service and filing of this Mechanic's Lien, Plaintiff, has and claims a Mechanic's Lien for the payment of the indebtedness aforesaid and the cost of enforcing said lien upon the following described real estate, attached hereto as EXHIBIT "B":

WHEREFORE, Plaintiff claims a Mechanic's Lien in the sum of 2,385,503.57, plus interest, a reasonable attorney's fee as prescribed by statute, and for the costs and disbursements of this action.

RESPECTFULLY SUBMITTED:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street
Charleston, SC 29401
T: (843)377-18171
F: (843)377-1310
Email: ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT "A"

STATE OF SOUTH CAROLINA) STATEMENT OF ACCOUNT
COUNTY OF CHARLESTON)

I hereby certify that on this 19 day of May, 2016, personally appeared before me, John David Griffith, who being duly sworn deposes and says:

1. That he is an officer of TCC OF CHARLESTON, INC. a corporation organized and doing business under the laws of the State of South Carolina and has been duly authorized by said Corporation to make this Affidavit.
2. That there is justly due and owing to TCC OF CHARLESTON, INC., Plaintiff, over and above any discount the sum of $2,385,503.57 together with interest and attorney's fees and costs.
3. That the said indebtedness represents material purchased and services performed by the Plaintiff for the Defendant(s) for improvements to the property described in EXHIBIT B.
4. That the last day work was performed or materials provided to the property described in EXHIBIT B was March 17, 2016.
5. That the Plaintiff has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.
6. That the Plaintiff keeps regular books of account and that the keeping of said books of account is in the charge of or under supervision of the Affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that the Defendant is indebted to the Plaintiff in the manner and amount herein set forth.

TCC OF CHARLESTON, INC.

BY: John David Griffith

ITS President

SWORN TO BEFORE ME THIS 19th
DAY OF MAY 2016.

Natalie A Boone

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: ~~MY COMMISSION EXPIRES~~ MAY 30, 2016

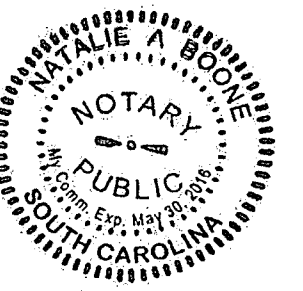


EXHIBIT "B"

ALL that certain piece, parcel or tract of land, containing 0.41 acres with all improvements thereon, if any, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, being shown and designated on that certain plat entitled: 'CITY OF CHARLESTON, CHARLESTON COUNTY, S.C. SUBDIVISION PLAT OF TMS 458-09-02-068 CONTAINING 1.55 AC INTO A 0.41 ACRE LOT AND A 1.14 ACRE RESIDUAL LOT SITUATE AT CONCORD AND DCUMBERLAND STREETS OWNED BY THE CITY OF CHARLESTON" dated June 4, 2004 and last revised October 10, 2005 and recorded in the RMC Office for Charleston County in Plat Book EJ at Page 432 and, said property being more particularly described as follows:

BEGINNING at a point located at the intersection of Cumberland Street and Concord Street, said point being an "X" cut in sidewalk and running along Concord Street in a southeasterly direction S04°10'53"E a distance of 295.24 feet to a 1" iron pin found; thence turning and running along property now or formerly of Vendue Concord Partnership in a southwesterly direction S81°05'42"W a distance of 60.19 fee to a 5/8" iron pin found; thence turning and running along property now or formerly of City of Charleston in a northwesterly direction N04°09'29"W a distance of 297.96 feet to an "X" cut in sidewalk; thence turning and running along Cumberland Street in a northeasterly direction N83°40'41"E a distance of 59.91 feet to the point and place of beginning.

THIS AGREEMENT SUBJECT TO
ARBITRATION UNDER SECTION 15-48-10
OF S.C. CODE OF LAWS.

AIA® Document A102™ – 2007

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

AGREEMENT made as of the 27th day of February in the year Two Thousand and Fourteen
(In words, indicate day, month and year.)

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

Concord & Cumberland HPR
c/o McAlister Preferred Properties
106 Pitt Street
Mount Pleasant, South Carolina 29464
Phone: 843-884-1664

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

TCC of Charleston, Inc.
Post Office Box 61976
N. Charleston, SC 29419
Telephone Number: 843-572-7600
Fax Number: 843-764-1704

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

Concord & Cumberland Exterior Repairs
175 Concord Street
Charleston, South Carolina

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

Glick/Boehm & Associates
493 King Street, Suite 100
Charleston, SC 29401

The Owner and Contractor agree as follows.

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

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

This document is not intended for use in competitive bidding.

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

Bindertek #CLEX

A

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TABLE OF ARTICLES

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ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

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

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ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

Date of commencement shall be based upon a Notice to Proceed and issuance of the Building Permit.

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Three Hundred and Two Days (302) days from the date of commencement,
(Paragraphs deleted)

Portion of Work	Substantial Completion date

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

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

$300/day

ARTICLE 5 CONTRACT SUM

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

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

8%

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

8% of any increase in the Cost of the Work.

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

10% Overhead
5 % Profit

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed Ninety-Five percent (95 %) of the standard rate paid at the place of the Project.

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

Item	Units and Limitations	Price Per Unit ($0.00)

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3,925,000
2,360,000
1,565,000

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Three Million, Nine Hundred and Twenty-three Thousand, Nine Hundred and Thirty-nine Dollars and No Cents ($3,923,939.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

Any cost savings shall be shared with 50% to the Owner and 50% to the Contractor. Any savings of contingency shall accrue 100% to the Owner.

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

N/A

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

Item	Price	
Metal Stud Replacement	$20,000	75,000
Sheathing Replacement	$50,000	
Batt Insulation Replacement	$5,000	
Balcony Tile Material & Labor	$16/SF	
Construction Contingency	$236,354	

The contingency is to cover unknown factors that may adversely affect costs which are the responsibility of the Contractor. The Contractor has the discretion to decide which Costs of the Work will be covered by this contingency. The Contractor shall notify the Owner of any charges in excess of $5,000 prior to applying said costs to the Contractor's contingency. The Contractor shall give due notification to the Owner of any application of Contractor contingency funds. The Contractor shall maintain in an up to date contingency log and present an updated log at each progress meeting. The contingency shall not be used to cover the cost of substandard or non-conforming work. Upon completion of the work, any remaining balance in the contingency account will not be included in the calculation of the "cost savings" participation. 100% of any contingency balance will accrue to the Owner.

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

See attached Exhibit B, Contractor's Proposal Summary Letter, Clarifications and Exclusions dated 1/23/14.

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

ARTICLE 6 CHANGES IN THE WORK

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

#3

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

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"costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

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

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

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

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

§ 7.2 LABOR COSTS

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

Superintendent	$65/hr
QA/QC Inspector	$72/hr
Carpenter Foreman	$42/hr
Laborer	$ 23/hr

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Superintendent	$65/hr
Assistant Superintendent	$55/hr

§ 7.2.3 Wages and salaries of the Contractor'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.

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

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

§ 7.3 SUBCONTRACT COSTS

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

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

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

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

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

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

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

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

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

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

§ 7.6 MISCELLANEOUS COSTS

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

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

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

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

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

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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Data processing costs related to the work will be reimbursed at a rate of .25% of the Cost of the Work.

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

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 OTHER COSTS AND EMERGENCIES

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

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

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

§ 7.8 RELATED PARTY TRANSACTIONS

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;

.2 Expenses of the Contractor's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Article 7;

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

.5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Article 7; and

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

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall reduce the cost of the work.

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 11 ACCOUNTING RECORDS

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

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Fifteen (15) days after the Architect receives the Application for Payment.

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

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

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

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

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

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

.3 Add the Contractor's Fee, less retainage of Ten percent (10 %).The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of Ten percent (10 %) from that portion of the Work that the Contractor self-performs; Retainage shall be 10% through successful completion of 50% of the project. The retainage is frozen at that amount and held until the Architect issues a Substantial Completion Certificate. The Architect, Owner and Contractor shall agree on an equitable amount of money that shall be retained by the Owner until final completion that should cover the cost of any remaining punch list items or deficiencies.

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

.6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, which is agreed to be 10% and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-

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site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

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

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

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

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

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

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§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

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

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

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

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

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

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

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

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

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

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

Prime as published in the Wall Street Journal %

§ 15.3 The Owner's representative:

(Name, address and other information)

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Tom Mather
106 Pitt Street
Mount Pleasant, SC 29464
Phone: 843-884-1664

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

Chris Burrell
P.O. Box 61976
N. Charleston, SC 29419
Phone: 843-572-7600
Fax: 843-764-1704
Email: Chris@tridentcon.com

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

§ 15.6 Other provisions:

Contractor's Project Manager stationed at the home office shall be reimbursed at a rate of $72/hr.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 16.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See Exhibit A

Section	Title	Date	Pages

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
See Exhibit A

Number	Title	Date

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§ 16.1.6 The Addenda, if any:

Number	Date	Pages

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

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

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

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A, Drawing and Specification Log
Exhibit B, Contractor's Proposal Summary Letter, Clarifications and Exclusions.
Exhibit C, Insurance
Exhibit D, Adverse Weather

ARTICLE 17 INSURANCE AND BONDS

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

See Exhibit C

Type of insurance or bond	Limit of liability or bond amount ($0.00)

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

OWNER *(Signature)*	CONTRACTOR *(Signature)*
CANDACE R. PEBNAM, PRESIDENT	John David Griffith, Vice President
(Printed name and title)	*(Printed name and title)*

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EXHIBIT A - DRAWING AND SPECIFICATION LOG

1. Glick Boehm Architecture drawings dated 12/18/13

DRAWING INDEX			
Sheet Number	**Sheet Name**	**ISSUED**	**REVISED**
GENERAL			
G100	COVER SHEET		
G110	INDEX OF DRAWINGS AND SCOPE OF WORK		
G111	EXISTING SITE PICTURES AND MATERIALS		
ARCHITECTURE			
A010	GARAGE & FIRST FLOOR BUILDING PLANS		
A011	SECOND & THIRD FLOOR BUILDING PLANS		
A012	FOURTH FLOOR & ROOF PLANS		
A020	DEMOLITION ELEVATIONS		
A030	DEMOLITION WALL SECTIONS		
A031	DEMOLITION WALL SECTIONS		
A032	DEMOLITION WALL SECTIONS		
A033	DEMOLITION WALL SECTIONS		
A034	DEMOLITION WALL SECTIONS		
A040	DEMOLITION SECTION DETAILS		
A041	DEMOLITION SECTION DETAILS		
A042	DEMOLITION SECTION DETAILS		
A043	DEMOLITION SECTION DETAILS		
A044	DEMOLITION SECTION DETAILS		
A101	GARAGE & FIRST FLOOR BUILDING PLANS		
A102	SECOND & THIRD FLOOR BUILDING PLANS		
A103	FOURTH FLOOR & ROOF PLANS		
A201	BUILDING ELEVATIONS		
A310	NC WALL SECTIONS		
A311	NC WALL SECTIONS		
A312	NC WALL SECTIONS		
A313	NC WALL SECTIONS		
A314	NC WALL SECTIONS		
A501	SECTION DETAILS		
A502	SECTION DETAILS		
A503	SECTION DETAILS		
A504	SECTION DETAILS		
A505	SECTION DETAILS		
A506	SECTION DETAILS		
A507	SECTION DETAILS		
A508	SECTION DETAILS		
A509	SECTION DETAILS		
A510	SECTION DETAILS		
A511	SECTION DETAILS		
A520	WALL PLAN DETAILS		
A530	TYPICAL STUCCO DETAILS + WEATHER BARRIER		
A820	WINDOW SCHEDULE		
A821	DOOR/WINDOW DETAILS		
A822	DOOR/WINDOW DETAILS		
A825	WINDOW INSTALLATION		
STRUCTURAL			
S100	STRUCTURAL DETAILS		

2. Glick Boehm Architecture specifications dated 12/13/13

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00 73 00	SUPPLEMENTARY CONDITIONS

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DIVISION 09 - FINISHES

09 21 16	GYPSUM BOARD ASSEMBLIES
09 24 00	PORTLAND CEMENT STUCCO SYSTEM
09 30 00	TILING
09 90 00	PAINTING AND COATING

3. Lauren Sanchez Design, Ltd. drawings dated 12/07/13

Sht. I-101 Overall Floor Finish Plans
Sht. I-501 Ground Floor Details
Sht. I-502 Ground Floor Details
Sht. I-503 Enlarged First Floor Details

4. Lauren Sanchez Design, Ltd. Finish Explanatory Notes dated 12/05/13

5. Glick Boehm Addendum dated 1/24/14-
Revised stucco details and drawings (A501, A502, A505, A506, A507 A508 and A509)

Exhibit B - Contractor's Proposal Summary, Clarifications, and Exclusions

TRIDENT

Tom Mather
Owner's Representative
Concord & Cumberland Condominiums
175 Concord Street
Charleston, SC 29401

February 6, 2014

Re: **Concord & Cumberland Exterior Repairs**
Charleston, SC

Dear Tom,

We thank you for the opportunity to quote the above referenced project. We have compiled our proposal taking into account the Bid Documents and all of the other information that was provided by Glick/Boehm & Associates. Included with this proposal we have provided our price, our CSI Master Format pricing breakdown, our proposed schedule, our site logistics plan, phasing plan and our clarifications and exclusions.

PRICE:

Our price to complete the work is $3,723,173. Please reference our CSI Master Format pricing breakdown that's included with our proposal for a detailed breakdown of our price.

SCHEDULE:

We estimate that it will take our Team nine (9) months to complete the work. Please see attached for our proposed CPM Schedule and Project Phasing Plan. We intend to start at the Cumberland Street end of the building and sequence our scaffolding and crews along that elevation and down Concord Street. Please note that our schedule corresponds with our phasing plan.

We have broken the project up in to eight (8) areas. These areas are outlined on our CPM Schedule. This shall serve as a means of determining the amount of time the units will be impacted by our crews. It is strongly recommended that the areas in the units where the work is taking place be vacated while we are completing the window rework and new window installation, so that our crews can efficiently complete their work. The City of Charleston allows work to take place between the hours of 7:00 AM to 5:30 PM. Our crews will be working within the units during these hours and must be free to come and go to do their work. We anticipate needing two weeks per unit to remove and reinstall the windows. We will clean and straighten up behind ourselves each day, but each unit will not be returned to a white glove clean standard until the work is completed fully within the unit. We will work closely with your Team and the residents to ensure that the transitions go smoothly and are well planned.

Trident Construction, LLC
2245 Technical Parkway • North Charleston, SC 29406 | P.O. Box 60939 • North Charleston, SC 29419-0939
843.572.7600 | 843.764.1704 | tcc@tridentconstruction.com

Due to the long material lead times for the windows and brick, we do not anticipate being in a position to start the work until sometime in late April 2014. In preparation for ordering the windows we are going to need to gain access to each unit over the period of two (2) continuous weeks in order to measure each window opening so that the Window Manufacturer fabricates the windows to match the existing conditions.

While we are awaiting the delivery of the long lead time materials, we will produce our mock-up panel for BAR review and approval. This will need to occur sometime in March to allow for enough time to produce the mock-up and gain the necessary BAR Approvals. As we approach the delivery of the long lead materials we will mobilize to the site a couple of weeks in advance of their delivery and install our site barricades and setup the laydown areas and office space within the garage and we will then commence with the initial area's demolition work.

Since the majority of the work will take place during Hurricane Season, this adds uncertainty to the schedule and cost due to the impact of inclement weather on exterior activities. Typical safety guidelines require that scaffolding be dismantled and removed if winds are forecasted to rise above 50 MPH. In the event that Charleston is forecasted to be impacted by a Tropical Storm or Hurricane we will be forced to stop work and remove all scaffolding and equipment from the site. In addition, we will likely need to fortify and stabilize our work and the building in advance of the storm. We have provided an estimated cost below should this occur, so that you are able to consider the potential cost in your overall budget.

CLARIFICATIONS:

Our proposal includes the following:

1. A full-time Superintendent to be present onsite while the work is taking place.
2. Part-Time Quality Control inspector will be onsite periodically throughout the course of construction to monitor the installation of waterproofing, flashing, windows, stucco, and brick.
3. Flagmen and Labor throughout the course of the work to assist with directing traffic and providing continuous clean up.
4. Costs for the City of Charleston Building Permit.
5. Temporary toilets.
6. Distribution of temporary power. Power to be supplied by the Owner's existing power.
7. Dumpsters necessary for the completion of the work.
8. Temporary Jersey barricades and fabric lined temporary fencing at the street level.
9. Fabric lined temporary fencing to delineate the lay down areas in the garage.
10. Sidewalk Closure Permit fees and fees necessary to secure parking and loading spaces along Concord Street during construction.
11. Temporary protection of items that are to remain in place during construction.
12. One 6'-0" x 6'-0" performance mock-up is included in this cost for BAR Review and Approval
13. Due to the varying finishes within each individual unit we are not able to provide a quote to put the walls back into the same finished state as they may currently exist. Further, in past projects of this nature, the individual home owners are reluctant to pay a premium to compensate for the more expensive wall finishes within their neighbor's unit. As such, our price includes removing the existing wall finishes, only as may be required to allow for the completion of our work. This includes the area adjacent to the window only and no other walls

that might intersect with the exterior walls of the building. Once our work is complete, we will reinstall drywall that is finished to a Level 4 finish and we will install a standard window casing, as selected by the Architect, and we will then prime paint the drywall and casing that we install. It will be the responsibility of each individual home owner to take the wall beyond the level of finish which we have carried.

14. Removal and reinstall of existing wood entry doors at the two (2) courtyards for purposes of waterproofing.
15. Removal and reinstall of existing awnings and railings.
16. Installation of new air and moisture barrier, flashing, and caulking.
17. Removal of existing brick and the installation of new brick and cast stone where shown.
18. Standard color mortar is included at the masonry veneer and cast stone.
19. New window lintels for all openings in the brick veneer. If the existing lintels are satisfactory for reuse the cost savings will be incurred by the owner
20. Removal of existing stucco and the installation of new stucco in accordance with the Contract Documents.
21. Removal of existing windows and patio doors and installation of new windows and doors where shown.
22. 3"x3" new tube steel spanning between window types: E, F, H, J, K, L, M, N, P, S per details 5/A621 & S100.
23. Allowances as specified: $20,000 metal stud framing replacement, $50,000 sheathing replacement, and $5,000 batt insulation replacement.
24. A Construction Contingency of 5% in the amount of $180,194. This will be utilized by Trident Construction for unforeseen issues. Any use of these funds shall be tracked in detail and a Contingency Log will be maintained by Trident and shared with the Owner on a monthly basis.
25. The balcony tile is to match existing, due to not knowing the finish style specification we have included an allowance $16/SF for material and installation.
26. Project Specific General Liability Wrap-Up Policy with a limit of $5 Million in coverage that is intended to cover all parties associated with the Project. This policy will remain in place through the duration of the time period of the statutes of limitations (8 years). The cost included in the estimate is based on an estimate that has been provided by our carrier. A final value or cost of this policy will become available once the carrier can evaluate all Team Members' (General Contractor, Subcontractors, Architect, Engineer, and Owners) loss history and prior experience. Additional details about this insurance can be provided upon request.

EXCLUSIONS:

1. Builders Risk Insurance. This is a special type of property insurance that the Owner is required to provide that covers materials, fixtures, and/or equipment used in a construction or renovation project should those items sustain a physical loss or damage from a covered cause. Trident Construction can provide a cost estimate for this insurance should the Owner request Trident to do so on its behalf.
2. Any costs necessary to secure the site in the event that Charleston is forecasted to be impacted by a Tropical Storm or Hurricane. In the event of a Tropical Storm or Hurricane the cost to dismantle and remove all scaffolding and materials and to increase the protection of the building and remobilize and reinstall scaffolding and remove all protection could be $40,000 per occurrence. In the event that these measures are necessary we will take action

immediately and track these efforts on a time and material basis and process as a change order to the Contract.

3. Removal of existing window treatments in the units.
4. Removal of any specialty millwork or wall panels or casework in proximity of our work at the unit interiors adjacent to the windows. This work shall be done by the individual condominium owners.
5. Reinstallation of any specialty millwork, specialty wall finishes, wall panels or casework in proximity of our work at the unit interiors adjacent to the windows. This work shall be done by the individual condominium owners.
6. Providing new wood doors at the entrances off the two (2) courtyards.
7. Any work associated with the existing roof.
8. Specification Section 07 21 19 Foamed-In-Place Insulation
9. Interior finishes other than stated above. A separate proposal has been provided for the renovation of the floor finishes in the corridors, stairwell, lobbies, and garage.
10. Payment and Performance Bond

HOURLY LABOR RATES:

The following labor rates will be applied to change order work where the work is self-performed by Trident Construction.

1. Project Manager: $72
2. Superintendent: $65
3. QA/QC Inspector: $72
4. Carpenter Foreman: $42
5. Carpenter: $33
6. Laborer: $23

BID DOCUMENTS:

1. Glick/Boehm & Associates drawings dated December 13, 2013
2. Glick/Boehm & Associates specifications dated December 13, 2013

Thank you once again for the opportunity to quote this project. Please don't hesitate to write or call with questions.

Respectfully,
TRIDENT CONSTRUCTION

John David Griffith
Vice President

AIA A102-2007
SUPPLEMENTAL GENERAL CONDITIONS to the *CONTRACT FOR CONSTRUCTION*
INSURANCE & BONDS

In accordance with *ARTICLE 11* of the *General Conditions of the Contract for Construction*, (AIA 201-2007) the CONTRACTOR (and any Subcontractor, or anyone directly or indirectly employed by any of them) will provide and maintain the following types and amounts of insurance:

Commercial General Liability Insurance

CONTRACTOR must provide Commercial General Liability insurance using the 1993 ISO **Occurrence Form** (CG 00 01 10/93), or an equivalent form. The Commercial General Liability insurance must include coverage for premises-operations, independent contractors, products-completed operations, personal injury and contractual liability. The contractual liability must include the tort liability of another assumed in a business contract. The CONTRACTOR or his agent shall verify that there is no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. This insurance shall be maintained throughout the duration of the Project and for a minimum of one year after *FINAL PAYMENT*, as provided for in *ARTICLE 9.10*. Limits shall be as follows:

Each Occurrence Limit	
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

The General Aggregate Limit is to be written on a "per project" basis using contractor's per project endorsement **Amendment-Aggregate Limits of Insurance** (CG2503). The **Products/Completed Operations Aggregate Limit** must be at least $2,000,000, or written confirmation provided that the Commercial Umbrella coverage includes liability coverage for damage to the insured's completed work equivalent to that provided under the CG 00 01 10/93 coverage form.

The OWNER is to be named as an additional insured in the CONTRACTOR's policy with respect to this project using the ISO **Additional Insured-Owners, ...Contractors** endorsement (CG 20 10), or a substitute providing equivalent coverage. Verification of additional insured status shall be furnished to OWNER by mailing a copy of the endorsement or Certificate of Insurance in accordance with the instructions on Page Two of this document.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance the OWNER may have or elect to carry with respect to this Project.

Comprehensive Automobile Liability Insurance

CONTRACTOR must provide and maintain business auto liability insurance for all owned, non-owned and hired vehicles on ISO form CA 00 01 12\90 or equivalent coverage form with the following limits:

Combined Single Limit	$1,000,000 per accident

(or equivalent "split limits" satisfying Umbrella Excess Liability requirements)

If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of the ISO CA 00 01 form.

Workers Compensation

CONTRACTOR shall provide and maintain workers compensation and employers liability insurance providing coverage in the state (or states) in which the project is performed. Limits and coverage shall be as follows:

Workers Compensation Insurance	Statutory Benefits *South Carolina*
Employers Liability Insurance	$1,000,000 each accident $1,000,000 policy limit $1,000,000 each employee

If the Project involves work which may be subject to the U.S. Longshore and Harborworkers Act (USL&HW), or which may involve watercraft, CONTRACTOR will attach the respective endorsements to provide this coverage. USL&HW (WC 00 01 06 A) and Maritime Coverage (WC 00 02 01 A).

Umbrella Excess Liability

CONTRACTOR shall provide umbrella excess liability insurance on an "occurrence" basis providing "following form" coverage for the underlying coverages outlined above with the following minimum limits:

Each Occurrence Limit	$10,000,000
Aggregate Limit	$10,000,000

Waiver of Subrogation

CONTRACTOR waives all right of recovery of damages against OWNER (and OWNER's agents, officers, directors, and employees) to the extent these damages are covered by the Commercial General Liability, Comprehensive Auto Liability, or Umbrella Excess Liability insurance as required above.

Insurance & Bonds
Supplemental Conditions

Evidence of Insurance

CONTRACTOR shall furnish Certificates of Insurance to OWNER prior to commencement of the work. The certificate holder (and additional insured) should read as follows:

Concord & Cumberland HPR
c/o McAlister Preferred Properties
106 Pitt Street
Mount Pleasant, SC 29464

Certificate(s) shall be signed by a duly authorized representative of each insurance company, showing compliance with the insurance requirements set forth in these Supplemental Conditions. The certificate should expressly state that if there is any material change in coverage (cancellation, expiration, or exclusion of a specifically required coverage such as completed operations) that the CONTRACTOR or his agent will make every reasonable effort to notify OWNER at least 30 days prior to such change by written notice.

When requested by OWNER, CONTRACTOR shall furnish copies of Certificates of Insurance for each subcontractor as well.

Additionally, the insurance companies providing coverage must be rated "A-" or better by A. M. Best's most current edition and be licensed in the state in which the work is to be performed. Any exceptions to the requirement of (1) being licensed by the state, or (2) having a Best's "A-" rating or better, must be referred to OWNER for prior approval.

If CONTRACTOR fails to maintain the required insurance as outlined above, the OWNER shall have the right, but not the obligation, to purchase said insurance at the CONTRACTOR's expense. CONTRACTOR's failure to maintain insurance as required may result in termination of this contract at the OWNER's option. However, the failure of the OWNER to demand certificates of insurance or evidence of full compliance with these insurance requirements shall not constitute a waiver of the CONTRACTOR's obligation to maintain such insurance.

Exhibit D

TIME FOR ADVERSE WEATHER

1. **Adverse weather conditions shall be defined as precipitation and its residual effects, wind, cold and hot weather, and approaching bad weather which can be shown to adversely impact the construction schedule. All claims will be based upon the actual weather conditions at the field office. Adverse weather should be documented in the contractor's daily reports.**

2. **Five (5) calendar days per calendar month shall be anticipated in the construction schedule as adverse weather at the jobsite. Days in excess of the five days will extend the contract end date on a day for day basis. The contractor must be able to prove that the adverse weather condition claim affects the construction schedule. The five (5) calendar days shall be non-cumulative.**

3. **All claims for adverse weather conditions must be submitted in accordance with the claim notification requirements of the contract documents.**

4. **Adverse weather conditions incurred following the current schedule date of substantial completion shall not be allowed.**

Adapted from SC ALs-AGC Joint Resolution

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

Arch will Provide CA + Will Be Owners Rep. During Const. Only to the Extent ?

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

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the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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

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

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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

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

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

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

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

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required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

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§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

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

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

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

Minor Changes Not involving cost or Time.
Unknown Conditions
If Arch Determines will recommend an equitable Adjustment.

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

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be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

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.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect,

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stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

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of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

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otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE
The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

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Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

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§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

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.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

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§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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

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

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

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

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an

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additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

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General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

ADDITIONS AND DELETIONS:
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

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the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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

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

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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

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

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

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

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

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required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

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§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

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be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

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.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect,

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stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

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of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

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otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE
The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

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Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

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§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

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.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

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§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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

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

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

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

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an

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additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

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THIS AGREEMENT SUBJECT TO ARBITRATION UNDER SECTION 15-48-10 OF S.C. CODE OF LAWS.

AIA® Document A102™ – 2007

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

AGREEMENT made as of the 27th day of February in the year Two Thousand and Fourteen
(In words, indicate day, month and year.)

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

Concord & Cumberland HPR
c/o McAlister Preferred Properties
106 Pitt Street
Mount Pleasant, South Carolina 29464
Phone: 843-884-1664

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

TCC of Charleston, Inc.
Post Office Box 61976
N. Charleston, SC 29419
Telephone Number: 843-572-7600
Fax Number: 843-764-1704

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

Concord & Cumberland Exterior Repairs
175 Concord Street
Charleston, South Carolina

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

Glick/Boehm & Associates
493 King Street, Suite 100
Charleston, SC 29401

The Owner and Contractor agree as follows.

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

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

This document is not intended for use in competitive bidding.

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

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ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

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

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ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

Date of commencement shall be based upon a Notice to Proceed and issuance of the Building Permit.

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Three Hundred and Two Days (302) days from the date of commencement,
(Paragraphs deleted)

Portion of Work	Substantial Completion date

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

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

$300/day

ARTICLE 5 CONTRACT SUM

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

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

8%

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

8% of any increase in the Cost of the Work.

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

10% Overhead
5 % Profit

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed Ninety-Five percent (95 %) of the standard rate paid at the place of the Project.

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

Item	Units and Limitations	Price Per Unit ($0.00)

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§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Three Million, Nine Hundred and Twenty-three Thousand, Nine Hundred and Thirty-nine Dollars and No Cents ($ 3,923,939.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

Any cost savings shall be shared with 50% to the Owner and 50% to the Contractor. Any savings of contingency shall accrue 100% to the Owner.

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

N/A

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

Item	Price
Metal Stud Replacement	$20,000
Sheathing Replacement	$50,000
Batt Insulation Replacement	$5,000
Balcony Tile Material & Labor	$16/SF
Construction Contingency	$236,854

The contingency is to cover unknown factors that may adversely affect costs which are the responsibility of the Contractor. The Contractor has the discretion to decide which Costs of the Work will be covered by this contingency. The Contractor shall notify the Owner of any charges in excess of $5,000 prior to applying said costs to the Contractor's contingency. The Contractor shall give due notification to the Owner of any application of Contractor contingency funds. The Contractor shall maintain in an up to date contingency log and present an updated log at each progress meeting. The contingency shall not be used to cover the cost of substandard or non-conforming work. Upon completion of the work, any remaining balance in the contingency account will not be included in the calculation of the "cost savings" participation. 100% of any contingency balance will accrue to the Owner.

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

See attached Exhibit B, Contractor's Proposal Summary Letter, Clarifications and Exclusions dated 1/23/14.

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

ARTICLE 6 CHANGES IN THE WORK

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

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

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"costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

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

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

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

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

§ 7.2 LABOR COSTS

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

Superintendent	$65/hr
QA/QC Inspector	$72/hr
Carpenter Foreman	$42/hr
Laborer	$ 23/hr

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Superintendent	$65/hr
Assistant Superintendent	$55/hr

§ 7.2.3 Wages and salaries of the Contractor'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.

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

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

§ 7.3 SUBCONTRACT COSTS

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

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

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

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

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

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

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

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

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

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

§ 7.6 MISCELLANEOUS COSTS

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

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

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

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

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

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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Data processing costs related to the work will be reimbursed at a rate of .25% of the Cost of the Work.

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

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 OTHER COSTS AND EMERGENCIES

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

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

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

§ 7.8 RELATED PARTY TRANSACTIONS

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;

.2 Expenses of the Contractor's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Article 7;

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

.5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Article 7; and

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

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall reduce the cost of the work.

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 11 ACCOUNTING RECORDS

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

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Fifteen (15) days after the Architect receives the Application for Payment.

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

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

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

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

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

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

.3 Add the Contractor's Fee, less retainage of Ten percent (10 %).The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of Ten percent (10 %) from that portion of the Work that the Contractor self-performs; Retainage shall be 10% through successful completion of 50% of the project. The retainage is frozen at that amount and held until the Architect issues a Substantial Completion Certificate. The Architect, Owner and Contractor shall agree on an equitable amount of money that shall be retained by the Owner until final completion that should cover the cost of any remaining punch list items or deficiencies.

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

.6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, which is agreed to be 10% and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-

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site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

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

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

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

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

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

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§ 13.2 BINDING DISPUTE RESOLUTION

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

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

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

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

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

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

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

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

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

Prime as published in the Wall Street Journal %

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

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User Notes:

Tom Mather
106 Pitt Street
Mount Pleasant, SC 29464
Phone: 843-884-1664

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

Chris Burrell
P.O. Box 61976
N. Charleston, SC 29419
Phone: 843-572-7600
Fax: 843-764-1704
Email: Chris@tridentcon.com

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

§ 15.6 Other provisions:

Contractor's Project Manager stationed at the home office shall be reimbursed at a rate of $72/hr.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 16.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See Exhibit A

Section	Title	Date	Pages

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
See Exhibit A

Number	Title	Date

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§ 16.1.6 The Addenda, if any:

Number	Date	Pages

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

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

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

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A, Drawing and Specification Log
Exhibit B, Contractor's Proposal Summary Letter, Clarifications and Exclusions.
Exhibit C, Insurance
Exhibit D, Adverse Weather

ARTICLE 17 INSURANCE AND BONDS

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

See Exhibit C

Type of insurance or bond	Limit of liability or bond amount ($0.00)

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

Candace R. Lebnam	John David Griffith
OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
CANDACE R. LEBNAM, PRESIDENT	John David Griffith, Vice President
(Printed name and title)	*(Printed name and title)*

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EXHIBIT A - DRAWING AND SPECIFICATION LOG

1. Glick Boehm Architecture drawings dated 12/18/13

DRAWING INDEX			
Sheet Number	**Sheet Name**	**ISSUED**	**REVISED**
GENERAL			
G100	COVER SHEET		
G110	INDEX OF DRAWINGS AND SCOPE OF WORK		
G111	EXISTING SITE PICTURES AND MATERIALS		
ARCHITECTURE			
A010	GARAGE & FIRST FLOOR BUILDING PLANS		
A011	SECOND & THIRD FLOOR BUILDING PLANS		
A012	FOURTH FLOOR & ROOF PLANS		
A020	DEMOLITION ELEVATIONS		
A030	DEMOLITION WALL SECTIONS		
A031	DEMOLITION WALL SECTIONS		
A032	DEMOLITION WALL SECTIONS		
A033	DEMOLITION WALL SECTIONS		
A034	DEMOLITION WALL SECTIONS		
A040	DEMOLITION SECTION DETAILS		
A041	DEMOLITION SECTION DETAILS		
A042	DEMOLITION SECTION DETAILS		
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A201	BUILDING ELEVATIONS		
A310	NC WALL SECTIONS		
A311	NC WALL SECTIONS		
A312	NC WALL SECTIONS		
A313	NC WALL SECTIONS		
A314	NC WALL SECTIONS		
A501	SECTION DETAILS		
A502	SECTION DETAILS		
A503	SECTION DETAILS		
A504	SECTION DETAILS		
A505	SECTION DETAILS		
A506	SECTION DETAILS		
A507	SECTION DETAILS		
A508	SECTION DETAILS		
A509	SECTION DETAILS		
A510	SECTION DETAILS		
A511	SECTION DETAILS		
A520	WALL PLAN DETAILS		
A530	TYPICAL STUCCO DETAILS + WEATHER BARRIER		
A620	WINDOW SCHEDULE		
A621	DOOR/WINDOW DETAILS		
A622	DOOR/WINDOW DETAILS		
A625	WINDOW INSTALLATION		
STRUCTURAL			
S100	STRUCTURAL DETAILS		

2. Glick Boehm Architecture specifications dated 12/13/13

DIVISION 00 - PROCUREMENT AND CONTRACTING REQUIREMENTS

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00 73 00	SUPPLEMENTARY CONDITIONS

DIVISION 01 - GENERAL REQUIREMENTS

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01 21 00	ALLOWANCES
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DIVISION 07 - THERMAL AND MOISTURE PROTECTION

07 21 19	FOAMED-IN-PLACE INSULATION
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07 46 46	FIBER CEMENT SIDING
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07 90 05	JOINT SEALERS

DIVISION 08 - OPENINGS

08 14 23	ALUMINUM CLAD WOOD HINGED DOORS W/ IMPACT-RESISTANT GLAZING
08 52 00	WOOD CLAD WINDOWS

DIVISION 09 - FINISHES

09 21 16	GYPSUM BOARD ASSEMBLIES
09 24 00	PORTLAND CEMENT STUCCO SYSTEM
09 30 00	TILING
09 90 00	PAINTING AND COATING

3. Lauren Sanchez Design, Ltd. drawings dated 12/07/13

Sht. I-101 Overall Floor Finish Plans
Sht. I-501 Ground Floor Details
Sht. I-502 Ground Floor Details
Sht. I-503 Enlarged First Floor Details

4. Lauren Sanchez Design, Ltd. Finish Explanatory Notes dated 12/05/13

5. Glick Boehm Addendum dated 1/24/14-
Revised stucco details and drawings (A501, A502, A505, A506, A507 A508 and A509)

Exhibit B - Contractor's Proposal Summary, Clarifications, and Exclusions



Tom Mather
Owner's Representative
Concord & Cumberland Condominiums
175 Concord Street
Charleston, SC 29401

February 6, 2014

Re: **Concord & Cumberland Exterior Repairs**
Charleston, SC

Dear Tom,

We thank you for the opportunity to quote the above referenced project. We have compiled our proposal taking into account the Bid Documents and all of the other information that was provided by Glick/Boehm & Associates. Included with this proposal we have provided our price, our CSI Master Format pricing breakdown, our proposed schedule, our site logistics plan, phasing plan and our clarifications and exclusions.

PRICE:

Our price to complete the work is **$3,723,173.** Please reference our CSI Master Format pricing breakdown that's included with our proposal for a detailed breakdown of our price.

SCHEDULE:

We estimate that it will take our Team nine (9) months to complete the work. Please see attached for our proposed CPM Schedule and Project Phasing Plan. We intend to start at the Cumberland Street end of the building and sequence our scaffolding and crews along that elevation and down Concord Street. Please note that our schedule corresponds with our phasing plan.

We have broken the project up in to eight (8) areas. These areas are outlined on our CPM Schedule. This shall serve as a means of determining the amount of time the units will be impacted by our crews. It is strongly recommended that the areas in the units where the work is taking place be vacated while we are completing the window rework and new window installation, so that our crews can efficiently complete their work. The City of Charleston allows work to take place between the hours of 7:00 AM to 5:30 PM. Our crews will be working within the units during these hours and must be free to come and go to do their work. We anticipate needing two weeks per unit to remove and reinstall the windows. We will clean and straighten up behind ourselves each day, but each unit will not be returned to a white glove clean standard until the work is completed fully within the unit. We will work closely with your Team and the residents to ensure that the transitions go smoothly and are well planned.

Trident Construction, LLC
2245 Technical Parkway • North Charleston, SC 29406 | P.O. Box 60939 • North Charleston, SC 29419-0939
PHONE 843.572.7600 FAX 843.764.1704 EMAIL tcc@tridentconstruction.com

Due to the long material lead times for the windows and brick, we do not anticipate being in a position to start the work until sometime in late April 2014. In preparation for ordering the windows we are going to need to gain access to each unit over the period of two (2) continuous weeks in order to measure each window opening so that the Window Manufacturer fabricates the windows to match the existing conditions.

While we are awaiting the delivery of the long lead time materials, we will produce our mock-up panel for BAR review and approval. This will need to occur sometime in March to allow for enough time to produce the mock-up and gain the necessary BAR Approvals. As we approach the delivery of the long lead materials we will mobilize to the site a couple of weeks in advance of their delivery and install our site barricades and setup the laydown areas and office space within the garage and we will then commence with the initial area's demolition work.

Since the majority of the work will take place during Hurricane Season, this adds uncertainty to the schedule and cost due to the impact of inclement weather on exterior activities. Typical safety guidelines require that scaffolding be dismantled and removed if winds are forecasted to rise above 50 MPH. In the event that Charleston is forecasted to be impacted by a Tropical Storm or Hurricane we will be forced to stop work and remove all scaffolding and equipment from the site. In addition, we will likely need to fortify and stabilize our work and the building in advance of the storm. We have provided an estimated cost below should this occur, so that you are able to consider the potential cost in your overall budget.

CLARIFICATIONS:

Our proposal includes the following:

1. A full-time Superintendent to be present onsite while the work is taking place.
2. Part-Time Quality Control Inspector will be onsite periodically throughout the course of construction to monitor the installation of waterproofing, flashing, windows, stucco, and brick.
3. Flagmen and Labor throughout the course of the work to assist with directing traffic and providing continuous clean up.
4. Costs for the City of Charleston Building Permit.
5. Temporary toilets.
6. Distribution of temporary power. Power to be supplied by the Owner's existing power.
7. Dumpsters necessary for the completion of the work.
8. Temporary Jersey barricades and fabric lined temporary fencing at the street level.
9. Fabric lined temporary fencing to delineate the lay down areas in the garage.
10. Sidewalk Closure Permit fees and fees necessary to secure parking and loading spaces along Concord Street during construction.
11. Temporary protection of items that are to remain in place during construction.
12. One 6'-0" x 6'-0" performance mock-up is included in this cost for BAR Review and Approval
13. Due to the varying finishes within each individual unit we are not able to provide a quote to put the walls back into the same finished state as they may currently exist. Further, in past projects of this nature, the individual home owners are reluctant to pay a premium to compensate for the more expensive wall finishes within their neighbor's unit. As such, our price includes removing the existing wall finishes, only as may be required to allow for the completion of our work. This includes the area adjacent to the window only and no other walls

that might intersect with the exterior walls of the building. Once our work is complete, we will reinstall drywall that is finished to a Level 4 finish and we will install a standard window casing, as selected by the Architect, and we will then prime paint the drywall and casing that we install. It will be the responsibility of each individual home owner to take the wall beyond the level of finish which we have carried.

14. Removal and reinstall of existing wood entry doors at the two (2) courtyards for purposes of waterproofing.
15. Removal and reinstall of existing awnings and railings.
16. Installation of new air and moisture barrier, flashing, and caulking.
17. Removal of existing brick and the installation of new brick and cast stone where shown.
18. Standard color mortar is included at the masonry veneer and cast stone.
19. New window lintels for all openings in the brick veneer. If the existing lintels are satisfactory for reuse the cost savings will be incurred by the owner
20. Removal of existing stucco and the installation of new stucco in accordance with the Contract Documents.
21. Removal of existing windows and patio doors and installation of new windows and doors where shown.
22. 3"x3" new tube steel spanning between window types: E, F, H, J, K, L, M, N, P, S per details 5/A621 & S100.
23. Allowances as specified: $20,000 metal stud framing replacement, $50,000 sheathing replacement, and $5,000 batt insulation replacement.
24. A Construction Contingency of 5% in the amount of $180,194. This will be utilized by Trident Construction for unforeseen issues. Any use of these funds shall be tracked in detail and a Contingency Log will be maintained by Trident and shared with the Owner on a monthly basis.
25. The balcony tile is to match existing, due to not knowing the finish style specification we have included an allowance $16/SF for material and installation.
26. Project Specific General Liability Wrap-Up Policy with a limit of $5 Million in coverage that is intended to cover all parties associated with the Project. This policy will remain in place through the duration of the time period of the statutes of limitations (8 years). The cost included in the estimate is based on an estimate that has been provided by our carrier. A final value or cost of this policy will become available once the carrier can evaluate all Team Members' (General Contractor, Subcontractors, Architect, Engineer, and Owners) loss history and prior experience. Additional details about this insurance can be provided upon request.

EXCLUSIONS:

1. Builders Risk Insurance. This is a special type of property insurance that the Owner is required to provide that covers materials, fixtures, and/or equipment used in a construction or renovation project should those items sustain a physical loss or damage from a covered cause. Trident Construction can provide a cost estimate for this insurance should the Owner request Trident to do so on its behalf.
2. Any costs necessary to secure the site in the event that Charleston is forecasted to be impacted by a Tropical Storm or Hurricane. In the event of a Tropical Storm or Hurricane the cost to dismantle and remove all scaffolding and materials and to increase the protection of the building and remobilize and reinstall scaffolding and remove all protection could be $40,000 per occurrence. In the event that these measures are necessary we will take action

Immediately and track these efforts on a time and material basis and process as a change order to the Contract.

3. Removal of existing window treatments in the units.
4. Removal of any specialty millwork or wall panels or casework in proximity of our work at the unit interiors adjacent to the windows. This work shall be done by the individual condominium owners.
5. Reinstallation of any specialty millwork, specialty wall finishes, wall panels or casework in proximity of our work at the unit interiors adjacent to the windows. This work shall be done by the individual condominium owners.
6. Providing new wood doors at the entrances off the two (2) courtyards.
7. Any work associated with the existing roof.
8. Specification Section 07 21 19 Foamed-In-Place Insulation
9. Interior finishes other than stated above. A separate proposal has been provided for the renovation of the floor finishes in the corridors, stairwell, lobbies, and garage.
10. Payment and Performance Bond

HOURLY LABOR RATES:

The following labor rates will be applied to change order work where the work is self-performed by Trident Construction.

1. Project Manager: $72
2. Superintendent: $65
3. QA/QC Inspector: $72
4. Carpenter Foreman: $42
5. Carpenter: $33
6. Laborer: $23

BID DOCUMENTS:

1. Glick/Boehm & Associates drawings dated December 18, 2013
2. Glick/Boehm & Associates specifications dated December 13, 2013

Thank you once again for the opportunity to quote this project. Please don't hesitate to write or call with questions.

Respectfully,
TRIDENT CONSTRUCTION

John David Griffith
Vice President

AIA A102-2007
SUPPLEMENTAL GENERAL CONDITIONS to the *CONTRACT FOR CONSTRUCTION*
INSURANCE & BONDS

In accordance with ***ARTICLE 11*** of the ***General Conditions of the Contract for Construction*, (AIA 201-2007)** the CONTRACTOR (and any Subcontractor, or anyone directly or indirectly employed by any of them) will provide and maintain the following types and amounts of insurance:

Commercial General Liability Insurance

CONTRACTOR must provide Commercial General Liability insurance using the 1993 ISO **Occurrence Form** (CG 00 01 10/93), or an equivalent form. The Commercial General Liability insurance must include coverage for premises-operations, independent contractors, products-completed operations, personal injury and contractual liability. The contractual liability must include the tort liability of another assumed in a business contract. The CONTRACTOR or his agent shall verify that there is no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. This insurance shall be maintained throughout the duration of the Project and for a minimum of one year after ***FINAL PAYMENT,*** as provided for in ***ARTICLE 9.10***. Limits shall be as follows:

Each Occurrence Limit	
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

The General Aggregate Limit is to be written on a "per project" basis using contractor's per project endorsement **Amendment-Aggregate Limits of Insurance** (CG2503). The **Products/Completed Operations Aggregate Limit** must be at least $2,000,000, or written confirmation provided that the Commercial Umbrella coverage includes liability coverage for damage to the insured's completed work equivalent to that provided under the CG 00 01 10/93 coverage form.

The OWNER is to be named as an additional insured in the CONTRACTOR's policy with respect to this project using the ISO **Additional Insured-Owners, ...Contractors** endorsement (CG 20 10), or a substitute providing equivalent coverage. Verification of additional insured status shall be furnished to OWNER by mailing a copy of the endorsement or Certificate of Insurance in accordance with the instructions on Page Two of this document.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance the OWNER may have or elect to carry with respect to this Project.

Comprehensive Automobile Liability Insurance

CONTRACTOR must provide and maintain business auto liability insurance for all owned, non-owned and hired vehicles on ISO form CA 00 01 12\90 or equivalent coverage form with the following limits:

Combined Single Limit	$1,000,000 per accident

(or equivalent "split limits" satisfying Umbrella Excess Liability requirements)

If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of the ISO CA 00 01 form.

Workers Compensation

CONTRACTOR shall provide and maintain workers compensation and employers liability insurance providing coverage in the state (or states) in which the project is performed. Limits and coverage shall be as follows:

Workers Compensation Insurance	Statutory Benefits *South Carolina*
Employers Liability Insurance	$1,000,000 each accident $1,000,000 policy limit $1,000,000 each employee

If the Project involves work which may be subject to the U.S. Longshore and Harborworkers Act (USL&HW), or which may involve watercraft, CONTRACTOR will attach the respective endorsements to provide this coverage. USL&HW (WC 00 01 06 A) and Maritime Coverage (WC 00 02 01 A).

Umbrella Excess Liability

CONTRACTOR shall provide umbrella excess liability insurance on an "occurrence" basis providing "following form" coverage for the underlying coverages outlined above with the following minimum limits:

Each Occurrence Limit	$10,000,000
Aggregate Limit	$10,000,000

Waiver of Subrogation

CONTRACTOR waives all right of recovery of damages against OWNER (and OWNER's agents, officers, directors, and employees) to the extent these damages are covered by the Commercial General Liability, Comprehensive Auto Liability, or Umbrella Excess Liability insurance as required above.

Evidence of Insurance

CONTRACTOR shall furnish Certificates of Insurance to OWNER prior to commencement of the work. The certificate holder (and additional insured) should read as follows:

Concord & Cumberland HPR
c/o McAlister Preferred Properties
106 Pitt Street
Mount Pleasant, SC 29464

Certificate(s) shall be signed by a duly authorized representative of each insurance company, showing compliance with the insurance requirements set forth in these Supplemental Conditions. The certificate should expressly state that if there is any material change in coverage (cancellation, expiration, or exclusion of a specifically required coverage such as completed operations) that the CONTRACTOR or his agent will make every reasonable effort to notify OWNER at least 30 days prior to such change by written notice.

When requested by OWNER, CONTRACTOR shall furnish copies of Certificates of Insurance for each subcontractor as well.

Additionally, the insurance companies providing coverage must be rated "A-" or better by A. M. Best's most current edition and be licensed in the state in which the work is to be performed. Any exceptions to the requirement of (1) being licensed by the state, or (2) having a Best's "A-" rating or better, must be referred to OWNER for prior approval.

If CONTRACTOR fails to maintain the required insurance as outlined above, the OWNER shall have the right, but not the obligation, to purchase said insurance at the CONTRACTOR's expense. CONTRACTOR's failure to maintain insurance as required may result in termination of this contract at the OWNER's option. However, the failure of the OWNER to demand certificates of insurance or evidence of full compliance with these insurance requirements shall not constitute a waiver of the CONTRACTOR's obligation to maintain such insurance.

Exhibit D

TIME FOR ADVERSE WEATHER

1. **Adverse weather conditions shall be defined as precipitation and its residual effects, wind, cold and hot weather, and approaching bad weather which can be shown to adversely impact the construction schedule. All claims will be based upon the actual weather conditions at the field office. Adverse weather should be documented in the contractor's daily reports.**

2. **Five (5) calendar days per calendar month shall be anticipated in the construction schedule as adverse weather at the jobsite. Days in excess of the five days will extend the contract end date on a day for day basis. The contractor must be able to prove that the adverse weather condition claim affects the construction schedule. The five (5) calendar days shall be non-cumulative.**

3. **All claims for adverse weather conditions must be submitted in accordance with the claim notification requirements of the contract documents.**

4. **Adverse weather conditions incurred following the current schedule date of substantial completion shall not be allowed.**

Adapted from SC AIA-AGC Joint Resolution

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2016- LP-10-0595

FILED
2016 JUN 10 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TTC OF CHARLESTON, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CONCORD AND CUMERLAND, LLC.,	)	LIS PENDENS
CONCORD & CUMBERLAND HPR, LEO HALL,	)	TMS#(S):
DIANE HALL, BEA H. SMITH, MARGARET C.	)	TMS# 458-09-02-068
POPE, WILLIAM D. FOSTER, JR., GENE G.	)	TMS# 458-09-02-219
FOSTER, MATTISON J. MACGILLIVRAY,	)	TMS# 458-09-02-219
TERESA MACGILLIVRAY, PAMELA L.	)	TMS# 458-09-02-220
VAUGHN, NELIA A. PATRICIO, Trustee of the	)	TMS# 458-09-02-221
Nelia A. Patricio Revocable Trust Agreement,	)	TMS# 458-09-02-222
STUART D. REEVES, EDWARD T. STROM,	)	TMS# 458-09-02-223
BARBARA K. HENDERSON, JAMES R.	)	TMS# 458-09-02-224
CLARKE, PAUL A. BRIM, ROBERT K. SEIDL,	)	TMS# 458-09-02-225
JENNIFER M. SEIDL, ROBERT KENNETH	)	TMS# 458-09-02-226
SEIDL, II, M. BERT STOREY, THOMAS R.	)	TMS# 458-09-02-227
MATHER, EDWARD T. STROM, 304 CONCORD	)	TMS# 458-09-02-228
& CUMBERLAND, LLC, MARION M. SIMPSON	)	TMS# 458-09-02-229
F/K/A MARION MOORE MCDONALD	)	TMS# 458-09-02-230
SIMPSON, KATHY GARDNER, GREGORY J.	)	TMS# 458-09-02-231
GARDNER, FREEMAN WATERFRONT	)	TMS# 458-09-02-232
PROPERTIES, LLC, JO-ANN COOPER, BETTY	)	TMS# 458-09-02-233
Y. SEGAL, ROBERT M. LEVIN AND BONITA K.	)	TMS# 458-09-02-233
LEVIN, DONALD D. LEONARD, BETTY L.	)	TMS# 458-09-02-235
BEATTY, MATTELLEN, LLC, AND THOMAS R.	)	TMS# 458-09-02-236
DEBNAM, Trustee of the Trust Agreement of	)	TMS# 458-09-02-237
Thomas R. Debnam,	)	TMS# 458-09-02-238
	)	TMS# 458-09-02-239
	)	TMS# 458-09-02-240
	)	TMS# 458-09-02-241
	)	TMS# 458-09-02-242
	)	TMS# 458-09-02-243
	)	TMS# 458-09-02-218
	)	TMS# 458-09-02-217
		TMS# 458-09-02-234
	)	
Defendants.	)	

NOTICE IS HEREBY GIVEN that an action has been or will be commenced in this Court upon complaint of the above-named Plaintiffs against the above-named Defendants, and that the object of such action is the Construction Contracted and Mechanic's Lien of even date.

That the real estate covered and affected by the aforesaid Contract and by such action is now and was at the time of filing of this notice, situate in the County of Charleston, State of South Carolina, and the following is a description thereof:

ALL that certain piece, parcel or tract of land, containing 0.41 acres with all improvements thereon, if any, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, being shown and designated on that certain plat entitled: 'CITY OF CHARLESTON, CHARLESTON COUNTY, S.C. SUBDIVISION PLAT OF TMS 458-09-02-068 CONTAINING 1.55 AC INTO A 0.41 ACRE LOT AND A 1.14 ACRE RESIDUAL LOT SITUATE AT CONCORD AND DCUMBERLAND STREETS OWNED BY THE CITY OF CHARLESTON" dated June 4, 2004 and last revised October 10, 2005 and recorded in the RMC Office for Charleston County in Plat Book EJ at Page 432 and, said property being more particularly described as follows:

BEGINNING at a point located at the intersection of Cumberland Street and Concord Street, said point being an "X" cut in sidewalk and running along Concord Street in a southeasterly direction S04°10'53"E a distance of 295.24 feet to a 1" iron pin found; thence turning and running along property now or formerly of Vendue Concord Partnership in a southwesterly direction S81°05'42"W a distance of 60.19 fee to a 5/8" iron pin found; thence turning and running along property now or formerly of City of Charleston in a northwesterly direction N04°09'29"W a distance of 297.96 feet to an "X" cut in sidewalk; thence turning and running along Cumberland Street in a northeasterly direction N83°40'41"E a distance of 59.91 feet to the point and place of beginning.

TMS:458-09-02-068

AND

All that certain Condominium Unit, situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #103 CONCORD, and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as a:nended, and submitted by Master Deed dated October 17, 2007 and recorded in the RMC Office for Charleston County, South Carolina in Book U641 at page 739.

Together with an undivided interest in common elements and the appurtenances thereto according to said Master Deed.

This being the same property conveyed to Leo Hall by Deed of Concord and Cumberland, LLC dated 11/1/07 and recorded 11/6/07 in Deed Book G643 at page 877.
TMS#: 458-09-02-219

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #103 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to grantor herein by deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-219

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #104 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C573 at Page 288.

TMS #458-09-02-220

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #105 CONCORD & CUMBERLAND HORIZONTAL, PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 1 7, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being all of the interest in the same property which was conveyed to Grantor under the name East Broad Trust Company by Indenture Deed from Concord & Cumberland, LLC, a South Carolina limited liability company, dated November 6, 2007, and recorded on December 5, 2007, in the RMC Office for Charleston County, South Carolina, in Book O645 at Page 471.

TMS #458-09-02-221

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #106 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-222

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #107 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded, February 16, 2006, in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TAX ID #458-09-02-223

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #108 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-224

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #20 I CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U-641, Page 739.
TOGETHER WITH an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above referenced Master Deed and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County, South Carolina.

TMS# 458-09-02-225

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #202 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02226

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #203 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code

of Laws of South Carolina (1976), as amended, and submitted by Master, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from Concord & Cumberland, LLC, dated December 27, 2007, and recorded in the RMC Office Charleston County, South Carolina, in Book K647 at Page 715.
TMS #458-09-02-227

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #204 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed in lieu of Ronald Davis and Debra B. Davis, dated November 8, 2011 and recorded February 10, 2012 in Deed Book D233 at Page 022 in the Office of the Charleston County Register of Deeds.

TMS:458-09-02-228

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #205 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

BEING a portion of the property conveyed to Grantor herein by Deed from the City of Charleston, Dated February 14, 2006, and recorded February 16, 2006, in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS:458-09-02-229

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #206 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739, as amended.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of Concord & Cumberland, LLC, a South Carolina limited liability company dated August 14, 2007 and recorded in Book G642 at page 076 in the RMC Office for Charleston County.

TMS: 0458-09-02-230

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #207 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS: 0458-09-02-231

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #208 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS: 0458-09-02-232

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #301 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SAID Property is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above-referenced Master Deed and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County.

Being the same property conveyed to the grantor herein by deed of Cumberland Corner, LLC, as South Carolina limited liability company, dated January 9, 2008 and recorded in the RMC Office for Charleston County in Deed Book O648 at Page 475.

TMS: 0458-09-02-233

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #301 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1973), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements of the appurtenances thereto according to the Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above referenced Master Deed and to all other applicable covenants, restrictions and easements of recorded in the RMC Office for Charleston County, South Carolina.

BEING the same property conveyed to the Grantor herein by deed of Cumberland Corner, LLC, a South Carolina limited liability company, dated January 9, 2008 and recorded in the RMC Office for Charleston County in Deed Book 0648 at Page 475.
TMS: 458-09-02-233

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #303CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime

established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master, dated October 17, 2007, and recorded in the *RMC* Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from Concord & Cumberland, LLC, dated December 27, 2007, and recorded in the RMC Office Charleston County, South Carolina, in Book K647 at Page 715.

TMS #458-09-02-234

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #304 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
Tax ID #458-09-02-235

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #305 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all restrictions, easement and rights of way of record affecting said properties.

BEING the same premises conveyed to the Grantor herein by deed of Avant & Associates, LLC and Oakland Holding, LLC dated July 25, 2012 and recorded in the RMC Office for Charleston County in Book 0268 at page 959.

TMS#: 458-09-02-236

AND

ALL that certain condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, known as UNIT 306, CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME, a condominium established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended and submitted by Master Deed, dated October 17, 2007, and recorded October 18, 2007, in the RMC Office for Charleston County, South Carolina, in Book U641, at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

BEING the same property conveyed unto Fred Rappaport and Joyce S. Rappaport by deed of Concord & Cumberland, LLC, a South Carolina limited liability company dated December 21, 2006, and recorded in the RMC Office for Charleston County on October 25, 2007, in Deed Book G-642, at page 66.
TMS#458-09-02-237

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #307 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U-641, at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to the Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above-referenced Master Deed, and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County, South Carolina.

BEING the same property conveyed to John Jackson Freeman by deed of Pamela Renee Queen dated July 2, 2013 and recorded July 16, 2013 in the RMC Office for Charleston County in Book0346, at Page 83.
TMS Number: 458-09-02-238

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #308 Concord and Cumberland Horizontal Property Regime, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, South Carolina Code of Laws (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all easements, restrictions, and rights of way of record.

BEING the same property conveyed to Signature Charleston, LLC by deed of Concord & Cumberland, LLC, dated October 26, 2007 and recorded on November 1, 2007 in the Office of the RMC for Charleston County in Book X642 at Page 526.
TMS No. 458-09-02-239

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #401 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-240

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston,

Charleston County, South Carolina, designated as Unit #402 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all restrictions, easements and rights-or-way of record affecting the subject property.

BEING the same property conveyed to the Grantor herein by deed of Concord & Cumberland, LLC dated December 18, 2007 and recorded in Book Z645 at page 636 in the RMC Office for Charleston County.
TMS#: 458-09-02-241

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #403 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to Ecovest Development, LLC by Richard Schneider by deed of conveyance dated the 9th day of September, 2011, and recorded in the RMC Office for Charleston County, S.C., in Book 0206, page 483.
TMS: 458-09-02-242

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #404 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by

Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-243

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #102 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page
739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
Tax ID #458-09-02-218

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #101 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.

TMS #458-09-02-217

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street
Charleston, SC 29401
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ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR THE PLAINTIFFS

June 10, 2016
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2016-CP-10-2955

TCC OF CHARLESTON, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	AMENDED SUMMONS
	)	
Defendants.	)	

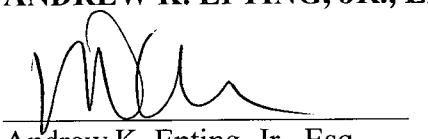
FILED
2016 JUN 10 PM 4:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____ DS

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com
ATTORNEYS FOR PLAINTIFFS

DATED: June 10, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2016-CP-10-2955

TCC OF CHARLESTON, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	AMENDED COMPLAINT (FORECLOSURE)
	)	
Defendants.	)	

FILED
2016 JUN 10 PM 4:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, complaining of the Defendants above named, would allege and show this Honorable Court:

1. That the Plaintiff is a corporation organized and existing pursuant to the laws of the State of South Carolina and does business in the County of Charleston, State of South Carolina.

2. That the Defendant Concord and Cumberland, LLC is a limited liability corporation organized and existing in pursuant to the laws of the State of South Carolina and does business in the County of Charleston, State of South Carolina.

3. That the Defendant, Concord & Cumberland, HPR, is upon information and belief, a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located in Charleston, Charleston County, South Carolina.

4. LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD,

BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam are unit owners of the property which is the subject of this action.

5. That the property which is the subject of this action is real property situated in Charleston County, South Carolina, and is described in **EXHIBIT A** (The Amended Mechanic's Lien together with the Statement of Account and Property Descriptions), attached hereto. The Defendants own some or all of this property and it is upon such property that this lien is filed.

6. This matter is subject to arbitration.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mechanics Lien)

7. That the Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

8. That the Defendant, with the approval and consent of the Defendant property owners, contracted with the Plaintiff for labor and materials furnished and actually used in services rendered by the Plaintiff on the structures situated on the subject property.

9. That this contract was amended as to provide that certain work would be performed on a cost plus basis.

10. That in accordance with their agreements the Plaintiff furnished the agreed-upon material and services to the Defendants which were used in the work, and on related structures on the subject property, that materials and services improved the property, and the last date of such furnishing materials and services was March 17, 2016.

11. That the Plaintiff performed all conditions of the contract.

12. That at all times during the performance of the contract by the Plaintiff, the subject property was owned by the Defendants, and the work of the Plaintiff was approved as the improvements were made.

13. That Plaintiff has completed its work and has demanded payment for the balance due on its contract from the Defendants.

14. That the Plaintiff gave the Defendants notice of the statement of account for Mechanic's Lien within ninety (90) days of the furnishing of materials and services which are the subject of this lawsuit as is provided for and required by law. This notice was the last application for payment.

15. That the Plaintiff has filed in the Office of the RMC for Charleston County its statement of account and Notice and Certificate of Mechanic's Lien. This filing occurred within ninety (90) days of the last date upon which the Plaintiff supplied the materials and services which are the subject of this action. **(EXHIBIT A).**

16. That the Plaintiff has received partial payments from Defendants but leaves a balance due as set forth in **EXHIBIT A.**

17. That the Plaintiff is entitled to an Order of Foreclosure of its Mechanic's Lien on the subject property, such Order requiring that the property be sold and that the proceeds of the sale, after deducting all lawful charges and expenses be applied to the debt of the Plaintiff, including a reasonable attorney's fee and costs incurred.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

18. That the Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

19. That the Defendants breached their agreements and is contractually obligated to Plaintiff in the sum set forth in **EXHIBIT A.**

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit)

20. That the Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

21. That the Defendants have had the use of the materials provided and services rendered by Plaintiff as alleged herein. The Defendants have been enriched by the provision of these materials and services and are unjustly retaining the benefit of these services and materials without paying the Plaintiff.

22. That the Defendants are liable to the Plaintiff for the reasonable value of the services and materials provided, and for the fees and costs and disbursements of this action.

WHEREFORE, the Plaintiff demands judgment as follows:

A. On its First Cause of Action, the Plaintiff demands that its Mechanic's Lien be foreclosed upon, that the subject property be sold and that the proceeds from the sale, after deducting all lawful charges and expenses, be used to satisfy the amounts due to the Plaintiff, and for the costs of this action, including a reasonable attorney's fee.

B. On its Second Cause of Action, the Plaintiff demands judgment against the Defendants, plus pre-judgment interest from the date the said materials and services were supplied until judgment rendered herein, and for fees and costs and disbursements of this action.

C. On its Third Cause of Action, the Plaintiff demands judgment against the Defendants.

D. For such other relief as this court deems just and proper.

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street
Charleston, South Carolina 29401
Phone: 843-377-1871
Fax: 843-377-1310
E-Mail: ake@epting-law.com
mne@epting-law.com

Charleston, South Carolina
June 10, 2016

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

VERIFICATION

I, John David Griffith, being first duly sworn, declare that I am an officer of the Plaintiff TCC OF CHARLESTON, INC., and have been duly authorized by said Corporation to make this Verification. I have read the foregoing Complaint and know the contents thereof and that based upon my own personal knowledge, the facts as alleged therein are true and correct.

TCC OF CHARLESTON, INC.

Sworn to before me this 10th
Day of June, 2016

Notary Public for South Carolina
My Commission Expires: 6-30-2025

MELISSA SWARTZLANDER NOTARY PUBLIC MY COMMISSION EXPIRES 6/30/2025 SOUTH CAROLINA

Return after recording to:

Andrew K. Epting, Jr., Esquire
46A State Street
Charleston, SC 29401

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2016-CP-10-2955

TTC OF CHARLESTON, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	AMENDED NOTICE AND CERTIFICATE OF MECHANIC'S LIEN
	)	TMS# 458-09-02-068
	)	
	)	TMS# 458-09-02-219
	)	TMS# 458-09-02-219
	)	TMS# 458-09-02-220
	)	TMS# 458-09-02-221
	)	TMS# 458-09-02-222
	)	TMS# 458-09-02-223
	)	TMS# 458-09-02-224
	)	TMS# 458-09-02-225
	)	TMS# 458-09-02-226
	)	TMS# 458-09-02-227
	)	TMS# 458-09-02-228
	)	TMS# 458-09-02-229
	)	TMS# 458-09-02-230
	)	TMS# 458-09-02-231
	)	TMS# 458-09-02-232
	)	TMS# 458-09-02-233
	)	TMS# 458-09-02-233
	)	TMS# 458-09-02-235
	)	TMS# 458-09-02-236
	)	TMS# 458-09-02-237
	)	TMS# 458-09-02-238
	)	TMS# 458-09-02-239
	)	TMS# 458-09-02-240
		TMS# 458-09-02-241

A
Bindertek #CLEX

) TMS# 458-09-02-242
) TMS# 458-09-02-243
) TMS# 458-09-02-218
TMS# 458-09-02-217
TMS# 458-09-02-234

The Plaintiff, TCC of Charleston, Inc. (license no.: 112242), claims a lien against the property as owned by Defendants, in the amount set forth below and established by the annexed statement (EXHIBIT A), which is a true and just account of the amount due to the Plaintiff with all just credits given for labor and materials furnished and actually used in the erection, alteration, or repair of building or structures situated on the real estate described in EXHIBIT B, by virtue of its agreements with Defendant and with the consent of the owners of said property.

The value of the labor and materials furnished is the sum of $2,385,503.57, as is evidenced by the sworn statement of account attached hereto as EXHIBIT "A", and labor and materials were furnished to the after-described real estate less than ninety (90) days prior to the date of the filing and service of this Mechanic's Lien.

That by virtue of the aforesaid labor and materials furnished to the after-described property, and by the service and filing of this Mechanic's Lien, Plaintiff, has and claims a Mechanic's Lien for the payment of the indebtedness aforesaid and the cost of enforcing said lien upon the following described real estate, attached hereto as EXHIBIT "B":

WHEREFORE, Plaintiff claims a Mechanic's Lien in the sum of 2,385,503.57, plus interest, a reasonable attorney's fee as prescribed by statute, and for the costs and disbursements of this action.

RESPECTFULLY SUBMITTED:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street
Charleston, SC 29401
T: (843)377-18171
F: (843)377-1310
Email: ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 10 day of June 2016
Charleston, SC

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

STATEMENT OF ACCOUNT

I hereby certify that on this 10 day of June, 2016, personally appeared before me, John David Griffith, who being duly sworn deposes and says:

1. That he is an officer of TCC OF CHARLESTON, INC. a corporation organized and doing business under the laws of the State of South Carolina and has been duly authorized by said Corporation to make this Affidavit.
2. That there is justly due and owing to TCC OF CHARLESTON, INC., Plaintiff, over and above any discount the sum of $2,385,503.57 together with interest and attorney's fees and costs.
3. That the said indebtedness represents material purchased and services performed by the Plaintiff for the Defendant(s) for improvements to the property described in EXHIBIT B.
4. That the last day work was performed or materials provided to the property described in EXHIBIT B was March 17, 2016.
5. That the Plaintiff has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.
6. That the Plaintiff keeps regular books of account and that the keeping of said books of account is in the charge of or under supervision of the Affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that the Defendant is indebted to the Plaintiff in the manner and amount herein set forth.

TCC OF CHARLESTON, INC.

BY: John Earl Griffith

ITS Pres.

SWORN TO BEFORE ME THIS 10th
DAY OF JUNE 2016.

Melissa Swartzlander

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 6-30-2025

MELISSA SWARTZLANDER NOTARY PUBLIC MY COMMISSION EXPIRES 6/30/2025 SOUTH CAROLINA

EXHIBIT "B"

ALL that certain piece, parcel or tract of land, containing 0.41 acres with all improvements thereon, if any, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, being shown and designated on that certain plat entitled: 'CITY OF CHARLESTON, CHARLESTON COUNTY, S.C. SUBDIVISION PLAT OF TMS 458-09-02-068 CONTAINING 1.55 AC INTO A 0.41 ACRE LOT AND A 1.14 ACRE RESIDUAL LOT SITUATE AT CONCORD AND DCUMBERLAND STREETS OWNED BY THE CITY OF CHARLESTON" dated June 4, 2004 and last revised October 10, 2005 and recorded in the RMC Office for Charleston County in Plat Book EJ at Page 432 and, said property being more particularly described as follows:

BEGINNING at a point located at the intersection of Cumberland Street and Concord Street, said point being an "X" cut in sidewalk and running along Concord Street in a southeasterly direction S04°10'53"E a distance of 295.24 feet to a 1" iron pin found; thence turning and running along property now or formerly of Vendue Concord Partnership in a southwesterly direction S81°05'42"W a distance of 60.19 fee to a 5/8" iron pin found; thence turning and running along property now or formerly of City of Charleston in a northwesterly direction N04°09'29"W a distance of 297.96 feet to an "X" cut in sidewalk; thence turning and running along Cumberland Street in a northeasterly direction N83°40'41"E a distance of 59.91 feet to the point and place of beginning.

TMS: 458-09-02-068

AND

All that certain Condominium Unit, situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #103 CONCORD, and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as a:nended, and submitted by Master Deed dated October 17, 2007 and recorded in the RMC Office for Charleston County, South Carolina in Book U641 at page 739.

Together with an undivided interest in common elements and the appurtenances thereto according to said Master Deed.

This being the same property conveyed to Leo Hall by Deed of Concord and Cumberland, LLC dated 11/1/07 and recorded 11/6/07 in Deed Book G643 at page 877.
TMS#: 458-09-02-219

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #103 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to grantor herein by deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-219

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #104 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C573 at Page 288.

TMS #458-09-02-220

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #105 CONCORD & CUMBERLAND HORIZONTAL, PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 1 7, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page

739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being all of the interest in the same property which was conveyed to Grantor under the name East Broad Trust Company by Indenture Deed from Concord & Cumberland, LLC, a South Carolina limited liability company, dated November 6, 2007, and recorded on December 5, 2007, in the RMC Office for Charleston County, South Carolina, in Book O645 at Page 471.

TMS #458-09-02-221

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #106 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-222

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #107 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded, February 16, 2006, in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TAX ID #458-09-02-223

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #108 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-224

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #20 I CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U-641, Page 739.
TOGETHER WITH an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above referenced Master Deed and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County, South Carolina.

TMS# 458-09-02-225

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #202 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02226

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #203 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from Concord & Cumberland, LLC, dated December 27, 2007, and recorded in the RMC Office Charleston County, South Carolina, in Book K647 at Page **715.**
TMS #458-09-02-227

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #204 of Concord and Cumberland Horizontal Property

Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed in lieu of Ronald Davis and Debra B. Davis, dated November 8, 2011 and recorded February 10, 2012 in Deed Book D233 at Page 022 in the Office of the Charleston County Register of Deeds.

TMS:458-09-02-228

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #205 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

BEING a portion of the property conveyed to Grantor herein by Deed from the City of Charleston, Dated February 14, 2006, and recorded February 16, 2006, in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS:458-09-02-229

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #206 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739, as amended.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of Concord & Cumberland, LLC, a South Carolina limited liability company dated August 14, 2007 and recorded in Book G642 at page 076 in the RMC Office for Charleston County.

TMS: 0458-09-02-230

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #207 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS: 0458-09-02-231

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #208 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS: 0458-09-02-232

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #301 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SAID Property is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above-referenced Master Deed and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County.

Being the same property conveyed to the grantor herein by deed of Cumberland Corner, LLC, as South Carolina limited liability company, dated January 9, 2008 and recorded in the RMC Office for Charleston County in Deed Book O648 at Page 475.

TMS: 0458-09-02-233

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #301 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1973), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements of the appurtenances thereto according to the Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above referenced Master Deed and to all other applicable covenants, restrictions and easements of recorded in the RMC Office for Charleston County, South Carolina.

BEING the same property conveyed to the Grantor herein by deed of Cumberland Corner, LLC, a South Carolina limited liability company, dated January 9, 2008 and recorded in the RMC Office for Charleston County in Deed Book 0648 at Page 475.
TMS: 458-09-02-233

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #303CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master, dated October 17, 2007, and recorded in the *RMC* Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from Concord & Cumberland, LLC, dated December 27, 2007, and recorded in the RMC Office Charleston County, South Carolina, in Book K647 at Page 715.

TMS #458-09-02-234

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #304 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.

Tax ID #458-09-02-235

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #305 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all restrictions, easement and rights of way of record affecting said properties.

BEING the same premises conveyed to the Grantor herein by deed of Avant & Associates, LLC and Oakland Holding, LLC dated July 25, 2012 and recorded in the RMC Office for Charleston County in Book 0268 at page 959.

TMS#: 458-09-02-236

AND

ALL that certain condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, known as UNIT 306, CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME, a condominium established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended and submitted by Master Deed, dated October 17, 2007, and recorded October 18, 2007, in the RMC Office for Charleston County, South Carolina, in Book U641, at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

BEING the same property conveyed unto Fred Rappaport and Joyce S. Rappaport by deed of Concord & Cumberland, LLC, a South Carolina limited liability company dated December 21, 2006, and recorded in the RMC Office for Charleston County on October 25, 2007, in Deed Book G-642, at page 66.
TMS#458-09-02-237

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #307 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U-641, at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to the Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above-referenced Master Deed, and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County, South Carolina.

BEING the same property conveyed to John Jackson Freeman by deed of Pamela Renee Queen dated July 2, 2013 and recorded July 16, 2013 in the RMC Office for Charleston County in Book0346, at Page 83.
TMS Number: 458-09-02-238

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #308 Concord and Cumberland Horizontal Property Regime, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, South Carolina Code of Laws (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all easements, restrictions, and rights of way of record.

BEING the same property conveyed to Signature Charleston, LLC by deed of Concord & Cumberland, LLC, dated October 26, 2007 and recorded on November 1, 2007 in the Office of the RMC for Charleston County in Book X642 at Page 526.
TMS No. 458-09-02-239

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #401 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a

horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-240

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #402 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all restrictions, easements and rights-or-way of record affecting the subject property.

BEING the same property conveyed to the Grantor herein by deed of Concord & Cumberland, LLC dated December 18, 2007 and recorded in Book Z645 at page 636 in the RMC Office for Charleston County.
TMS#: 458-09-02-241

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #403 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to Ecovest Development, LLC by Richard Schneider by deed of conveyance dated the 9th day of September, 2011, and recorded in the RMC Office for Charleston County, S.C., in Book 0206, page 483.
TMS: 458-09-02-242

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #404 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-243

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #102 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page
739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
Tax ID #458-09-02-218

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #101 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-217

THIS AGREEMENT SUBJECT TO
ARBITRATION UNDER SECTION 15-48-10
OF S.C. CODE OF LAWS.

AIA® Document A102™ – 2007

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

AGREEMENT made as of the 27th day of February in the year Two Thousand and Fourteen
(In words, indicate day, month and year.)

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

Concord & Cumberland HPR
c/o McAlister Preferred Properties
106 Pitt Street
Mount Pleasant, South Carolina 29464
Phone: 843-884-1664

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

TCC of Charleston, Inc.
Post Office Box 61976
N. Charleston, SC 29419
Telephone Number: 843-572-7600
Fax Number: 843-764-1704

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

Concord & Cumberland Exterior Repairs
175 Concord Street
Charleston, South Carolina

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

Glick/Boehm & Associates
493 King Street, Suite 100
Charleston, SC 29401

The Owner and Contractor agree as follows.

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

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

This document is not intended for use in competitive bidding.

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

B

Bindertek #CLEX

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ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

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

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ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

Date of commencement shall be based upon a Notice to Proceed and issuance of the Building Permit.

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Three Hundred and Two Days (302) days from the date of commencement,
(Paragraphs deleted)

Portion of Work	Substantial Completion date

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

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

$300/day)

ARTICLE 5 CONTRACT SUM

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

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

8%)

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

8% of any increase in the Cost of the Work.

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

10% Overhead
5 % Profit

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed Ninety-Five percent (95 %) of the standard rate paid at the place of the Project.

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

Item	Units and Limitations	Price Per Unit ($0.00)

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3,925,000
2,360,000
1,565,000

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Three Million, Nine Hundred and Twenty-three Thousand, Nine Hundred and Thirty-nine Dollars and No Cents ($3,923,939.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

Any cost savings shall be shared with 50% to the Owner and 50% to the Contractor. Any savings of contingency shall accrue 100% to the Owner.

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

N/A

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

Item	Price	
Metal Stud Replacement	$20,000	75,000
Sheathing Replacement	$50,000	
Batt Insulation Replacement	$5,000	
Balcony Tile Material & Labor	$15/SF	
Construction Contingency	$236,354	

The contingency is to cover unknown factors that may adversely affect costs which are the responsibility of the Contractor. The Contractor has the discretion to decide which Costs of the Work will be covered by this contingency. The Contractor shall notify the Owner of any charges in excess of $5,000 prior to applying said costs to the Contractor's contingency. The Contractor shall give due notification to the Owner of any application of Contractor contingency funds. The Contractor shall maintain in an up to date contingency log and present an updated log at each progress meeting. The contingency shall not be used to cover the cost of substandard or non-conforming work. Upon completion of the work, any remaining balance in the contingency account will not be included in the calculation of the "cost savings" participation. 100% of any contingency balance will accrue to the Owner.

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

See attached Exhibit B, Contractor's Proposal Summary Letter, Clarifications and Exclusions dated 1/23/14.

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

ARTICLE 6 CHANGES IN THE WORK

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

#3

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

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"costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

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

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

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

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

§ 7.2 LABOR COSTS

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

Superintendent	$65/hr
QA/QC Inspector	$72/hr
Carpenter Foreman	$42/hr
Laborer	$ 23/hr

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

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

Superintendent	$65/hr
Assistant Superintendent	$53/hr

§ 7.2.3 Wages and salaries of the Contractor'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.

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

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

§ 7.3 SUBCONTRACT COSTS

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

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

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

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

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

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

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

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

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

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

§ 7.6 MISCELLANEOUS COSTS

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

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

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

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

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

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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Data processing costs related to the work will be reimbursed at a rate of .25% of the Cost of the Work.

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

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 OTHER COSTS AND EMERGENCIES

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

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

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

§ 7.8 RELATED PARTY TRANSACTIONS

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;

.2 Expenses of the Contractor's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Article 7;

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

.5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Article 7; and

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

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall reduce the cost of the work.

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 11 ACCOUNTING RECORDS

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

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Fifteen (15) days after the Architect receives the Application for Payment.

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

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

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

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

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

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

.3 Add the Contractor's Fee, less retainage of Ten percent (10 %).The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of Ten percent (10 %) from that portion of the Work that the Contractor self-performs; Retainage shall be 10% through successful completion of 50% of the project. The retainage is frozen at that amount and held until the Architect issues a Substantial Completion Certificate. The Architect, Owner and Contractor shall agree on an equitable amount of money that shall be retained by the Owner until final completion that should cover the cost of any remaining punch list items or deficiencies.

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

.6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, which is agreed to be 10% and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-

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site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

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

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

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

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

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

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

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

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

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

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

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

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

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

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 5.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS
§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

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

Prime as published in the Wall Street Journal % .

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

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User Notes:

Tom Mather
105 Pitt Street
Mount Pleasant, SC 29464
Phone: 843-884-1664

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

Chris Burrell
P.O. Box 61975
N. Charleston, SC 29419
Phone: 843-572-7600
Fax: 843-764-1704
Email: Chris@tridentcon.com

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

§ 15.6 Other provisions:

Contractor's Project Manager stationed at the home office shall be reimbursed at a rate of $72/hr.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 16.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See Exhibit A

Section	Title	Date	Pages

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
See Exhibit A

Number	Title	Date

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§ 16.1.6 The Addenda, if any:

Number	Date	Pages

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

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

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

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A, Drawing and Specification Log
Exhibit B, Contractor's Proposal Summary Letter, Clarifications and Exclusions.
Exhibit C, Insurance
Exhibit D, Adverse Weather

ARTICLE 17 INSURANCE AND BONDS
The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

See Exhibit C

Type of insurance or bond	Limit of liability or bond amount ($0.00)

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

OWNER *(Signature)*

CANDACE R. PEBNAM, PRESIDENT
(Printed name and title)

CONTRACTOR *(Signature)*

John David Griffith, Vice President
(Printed name and title)

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EXHIBIT A - DRAWING AND SPECIFICATION LOG

1. Glick Boehm Architecture drawings dated 12/18/13

DRAWING INDEX			
Sheet Number	Sheet Name	ISSUED	REVISED
GENERAL			
G100	COVER SHEET		
G110	INDEX OF DRAWINGS AND SCOPE OF WORK		
G111	EXISTING SITE PICTURES AND MATERIALS		
ARCHITECTURE			
A010	GARAGE & FIRST FLOOR BUILDING PLANS		
A011	SECOND & THIRD FLOOR BUILDING PLANS		
A012	FOURTH FLOOR & ROOF PLANS		
A020	DEMOLITION ELEVATIONS		
A030	DEMOLITION WALL SECTIONS		
A031	DEMOLITION WALL SECTIONS		
A032	DEMOLITION WALL SECTIONS		
A033	DEMOLITION WALL SECTIONS		
A034	DEMOLITION WALL SECTIONS		
A040	DEMOLITION SECTION DETAILS		
A041	DEMOLITION SECTION DETAILS		
A042	DEMOLITION SECTION DETAILS		
A043	DEMOLITION SECTION DETAILS		
A044	DEMOLITION SECTION DETAILS		
A101	GARAGE & FIRST FLOOR BUILDING PLANS		
A102	SECOND & THIRD FLOOR BUILDING PLANS		
A103	FOURTH FLOOR & ROOF PLANS		
A201	BUILDING ELEVATIONS		
A310	NC WALL SECTIONS		
A311	NC WALL SECTIONS		
A312	NC WALL SECTIONS		
A313	NC WALL SECTIONS		
A314	NC WALL SECTIONS		
A501	SECTION DETAILS		
A502	SECTION DETAILS		
A503	SECTION DETAILS		
A504	SECTION DETAILS		
A505	SECTION DETAILS		
A506	SECTION DETAILS		
A507	SECTION DETAILS		
A508	SECTION DETAILS		
A509	SECTION DETAILS		
A510	SECTION DETAILS		
A511	SECTION DETAILS		
A520	WALL PLAN DETAILS		
A530	TYPICAL STUCCO DETAILS + WEATHER BARRIER		
A620	WINDOW SCHEDULE		
A621	DOOR/WINDOW DETAILS		
A622	DOOR/WINDOW DETAILS		
A625	WINDOW INSTALLATION		
STRUCTURAL			
S100	STRUCTURAL DETAILS		

2. Glick Boehm Architecture specifications dated 12/13/13

DIVISION 00 - PROCUREMENT AND CONTRACTING REQUIREMENTS

00 10 10	TABLE OF CONTENTS
00 72 00	GENERAL CONDITIONS
00 73 00	SUPPLEMENTARY CONDITIONS

DIVISION 01 - GENERAL REQUIREMENTS

01 10 00	SUMMARY
01 20 00	PRICE AND PAYMENT PROCEDURES
01 21 00	ALLOWANCES
01 22 00	UNIT PRICES
01 30 00	ADMINISTRATIVE REQUIREMENTS
01 32 16	CONSTRUCTION PROGRESS SCHEDULE
01 40 00	QUALITY REQUIREMENTS
01 50 00	TEMPORARY FACILITIES AND CONTROLS
01 60 00	PRODUCT REQUIREMENTS
01 70 00	EXECUTION AND CLOSEOUT REQUIREMENTS
01 74 19	CONSTRUCTION WASTE MANAGEMENT AND DISPOSAL
01 78 00	CLOSEOUT SUBMITTALS

DIVISION 03 - CONCRETE

03 54 00	EXTERIOR CEMENTITIOUS TOPPING

DIVISION 04 - MASONRY

04 20 01	MASONRY VENEER

DIVISION 06 - WOOD, PLASTICS, AND COMPOSITES

06 10 00	ROUGH CARPENTRY
06 20 00	FINISH CARPENTRY

DIVISION 07 - THERMAL AND MOISTURE PROTECTION

07 21 19	FOAMED-IN-PLACE INSULATION
07 25 00	FLUID APPLIED WEATHER BARRIER
07 46 46	FIBER CEMENT SIDING
07 62 00	SHEET METAL FLASHING AND TRIM
07 90 05	JOINT SEALERS

DIVISION 08 - OPENINGS

08 14 23	ALUMINUM CLAD WOOD HINGED DOORS W/ IMPACT-RESISTANT GLAZING
08 52 00	WOOD CLAD WINDOWS

DIVISION 09 - FINISHES

09 21 16	GYPSUM BOARD ASSEMBLIES
09 24 00	PORTLAND CEMENT STUCCO SYSTEM
09 30 00	TILING
09 90 00	PAINTING AND COATING

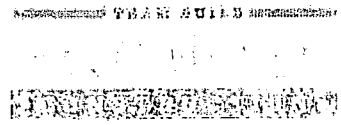
3. Lauren Sanchez Design, Ltd. drawings dated 12/07/13

Sht. I-101 Overall Floor Finish Plans
Sht. I-501 Ground Floor Details
Sht. I-502 Ground Floor Details
Sht. I-503 Enlarged First Floor Details

4. Lauren Sanchez Design, Ltd. Finish Explanatory Notes dated 12/05/13

5. Glick Boehm Addendum dated 1/24/14-
Revised stucco details and drawings (A501, A502, A505, A506, A507 A508 and A509)

Exhibit B - Contractor's Proposal Summary, Clarifications, and Exclusions



Tom Mather
Owner's Representative
Concord & Cumberland Condominiums
175 Concord Street
Charleston, SC 29401

February 6, 2014

Re: **Concord & Cumberland Exterior Repairs**
Charleston, SC

Dear Tom,

We thank you for the opportunity to quote the above referenced project. We have compiled our proposal taking into account the Bid Documents and all of the other information that was provided by Glick/Boehm & Associates. Included with this proposal we have provided our price, our CSI Master Format pricing breakdown, our proposed schedule, our site logistics plan, phasing plan and our clarifications and exclusions.

PRICE:

Our price to complete the work is $[illegible]. Please reference our CSI Master Format pricing breakdown that's included with our proposal for a detailed breakdown of our price.

SCHEDULE:

We estimate that it will take our Team nine (9) months to complete the work. Please see attached for our proposed CPM Schedule and Project Phasing Plan. We intend to start at the Cumberland Street end of the building and sequence our scaffolding and crews along that elevation and down Concord Street. Please note that our schedule corresponds with our phasing plan.

We have broken the project up in to eight (8) areas. These areas are outlined on our CPM Schedule. This shall serve as a means of determining the amount of time the units will be impacted by our crews. It is strongly recommended that the areas in the units where the work is taking place be vacated while we are completing the window rework and new window installation, so that our crews can efficiently complete their work. The City of Charleston allows work to take place between the hours of 7:00 AM to 5:30 PM. Our crews will be working within the units during these hours and must be free to come and go to do their work. We anticipate needing two weeks per unit to remove and reinstall the windows. We will clean and straighten up behind ourselves each day, but each unit will not be returned to a white glove clean standard until the work is completed fully within the unit. We will work closely with your Team and the residents to ensure that the transitions go smoothly and are well planned.

2245 Technical Parkway • North Charleston, SC 29406 P.O. Box 60939 • North Charleston, SC 29419-0939
843.572.7600 843.764.1704 tcc@tridentconstruction.com

Due to the long material lead times for the windows and brick, we do not anticipate being in a position to start the work until sometime in late April 2014. In preparation for ordering the windows we are going to need to gain access to each unit over the period of two (2) continuous weeks in order to measure each window opening so that the Window Manufacturer fabricates the windows to match the existing conditions.

While we are awaiting the delivery of the long lead time materials, we will produce our mock-up panel for BAR review and approval. This will need to occur sometime in March to allow for enough time to produce the mock-up and gain the necessary BAR Approvals. As we approach the delivery of the long lead materials we will mobilize to the site a couple of weeks in advance of their delivery and install our site barricades and setup the laydown areas and office space within the garage and we will then commence with the initial area's demolition work.

Since the majority of the work will take place during Hurricane Season, this adds uncertainty to the schedule and cost due to the impact of inclement weather on exterior activities. Typical safety guidelines require that scaffolding be dismantled and removed if winds are forecasted to rise above 50 MPH. In the event that Charleston is forecasted to be impacted by a Tropical Storm or Hurricane we will be forced to stop work and remove all scaffolding and equipment from the site. In addition, we will likely need to fortify and stabilize our work and the building in advance of the storm. We have provided an estimated cost below should this occur, so that you are able to consider the potential cost in your overall budget.

CLARIFICATIONS:

Our proposal includes the following:

1. A full-time Superintendent to be present onsite while the work is taking place.
2. Part-Time Quality Control Inspector will be onsite periodically throughout the course of construction to monitor the installation of waterproofing, flashing, windows, stucco, and brick.
3. Flagmen and Labor throughout the course of the work to assist with directing traffic and providing continuous clean up.
4. Costs for the City of Charleston Building Permit.
5. Temporary toilets.
6. Distribution of temporary power. Power to be supplied by the Owner's existing power.
7. Dumpsters necessary for the completion of the work.
8. Temporary Jersey barricades and fabric lined temporary fencing at the street level.
9. Fabric lined temporary fencing to delineate the lay down areas in the garage.
10. Sidewalk Closure Permit fees and fees necessary to secure parking and loading spaces along Concord Street during construction.
11. Temporary protection of items that are to remain in place during construction.
12. One 6'-0" x 6'-0" performance mock-up is included in this cost for BAR Review and Approval
13. Due to the varying finishes within each individual unit we are not able to provide a quote to put the walls back into the same finished state as they may currently exist. Further, in past projects of this nature, the individual home owners are reluctant to pay a premium to compensate for the more expensive wall finishes within their neighbor's unit. As such, our price includes removing the existing wall finishes, only as may be required to allow for the completion of our work. This includes the area adjacent to the window only and no other walls

that might intersect with the exterior walls of the building. Once our work is complete, we will reinstall drywall that is finished to a Level 4 finish and we will install a standard window casing, as selected by the Architect, and we will then prime paint the drywall and casing that we install. It will be the responsibility of each individual home owner to take the wall beyond the level of finish which we have carried.

14. Removal and reinstall of existing wood entry doors at the two (2) courtyards for purposes of waterproofing.
15. Removal and reinstall of existing awnings and railings.
16. Installation of new air and moisture barrier, flashing, and caulking.
17. Removal of existing brick and the installation of new brick and cast stone where shown.
18. Standard color mortar is included at the masonry veneer and cast stone.
19. New window lintels for all openings in the brick veneer. If the existing lintels are satisfactory for reuse the cost savings will be incurred by the owner
20. Removal of existing stucco and the installation of new stucco in accordance with the Contract Documents.
21. Removal of existing windows and patio doors and installation of new windows and doors where shown.
22. 3"x3" new tube steel spanning between window types: E, F, H, J, K, L, M, N, P, S per details 5/A621 & S100.
23. Allowances as specified: $20,000 metal stud framing replacement, $50,000 sheathing replacement, and $5,000 batt insulation replacement.
24. A Construction Contingency of 5% in the amount of $180,194. This will be utilized by Trident Construction for unforeseen issues. Any use of these funds shall be tracked in detail and a Contingency Log will be maintained by Trident and shared with the Owner on a monthly basis.
25. The balcony tile is to match existing, due to not knowing the finish style specification we have included an allowance $16/SF for material and installation.
26. Project Specific General Liability Wrap-Up Policy with a limit of $5 Million in coverage that is intended to cover all parties associated with the Project. This policy will remain in place through the duration of the time period of the statutes of limitations (8 years). The cost included in the estimate is based on an estimate that has been provided by our carrier. A final value or cost of this policy will become available once the carrier can evaluate all Team Members' (General Contractor, Subcontractors, Architect, Engineer, and Owners) loss history and prior experience. Additional details about this insurance can be provided upon request.

EXCLUSIONS:

1. Builders Risk Insurance. This is a special type of property insurance that the Owner is required to provide that covers materials, fixtures, and/or equipment used in a construction or renovation project should those items sustain a physical loss or damage from a covered cause. Trident Construction can provide a cost estimate for this insurance should the Owner request Trident to do so on its behalf.
2. Any costs necessary to secure the site in the event that Charleston is forecasted to be impacted by a Tropical Storm or Hurricane. In the event of a Tropical Storm or Hurricane the cost to dismantle and remove all scaffolding and materials and to increase the protection of the building and remobilize and reinstall scaffolding and remove all protection could be $40,000 per occurrence. In the event that these measures are necessary we will take action

immediately and track these efforts on a time and material basis and process as a change order to the Contract.

3. Removal of existing window treatments in the units.
4. Removal of any specialty millwork or wall panels or casework in proximity of our work at the unit interiors adjacent to the windows. This work shall be done by the individual condominium owners.
5. Reinstallation of any specialty millwork, specialty wall finishes, wall panels or casework in proximity of our work at the unit interiors adjacent to the windows. This work shall be done by the individual condominium owners.
6. Providing new wood doors at the entrances off the two (2) courtyards.
7. Any work associated with the existing roof.
8. Specification Section 07 21 19 Foamed-In-Place Insulation
9. Interior finishes other than stated above. A separate proposal has been provided for the renovation of the floor finishes in the corridors, stairwell, lobbies, and garage.
10. Payment and Performance Bond

HOURLY LABOR RATES:

The following labor rates will be applied to change order work where the work is self-performed by Trident Construction.

1. Project Manager: $72
2. Superintendent: $65
3. QA/QC Inspector: $72
4. Carpenter Foreman: $42
5. Carpenter: $33
6. Laborer: $23

BID DOCUMENTS:

1. Glick/Boehm & Associates drawings dated December 13, 2013
2. Glick/Boehm & Associates specifications dated December 13, 2013

Thank you once again for the opportunity to quote this project. Please don't hesitate to write or call with questions.

Respectfully,
TRIDENT CONSTRUCTION

John David Griffith
Vice President

AIA A102-2007
SUPPLEMENTAL GENERAL CONDITIONS to the *CONTRACT FOR CONSTRUCTION*
INSURANCE & BONDS

In accordance with *ARTICLE 11* of the *General Conditions of the Contract for Construction*, (AIA 201-2007) the CONTRACTOR (and any Subcontractor, or anyone directly or indirectly employed by any of them) will provide and maintain the following types and amounts of insurance:

Commercial General Liability Insurance

CONTRACTOR must provide Commercial General Liability insurance using the 1993 ISO **Occurrence Form** (CG 00 01 10/93), or an equivalent form. The Commercial General Liability insurance must include coverage for premises-operations, independent contractors, products-completed operations, personal injury and contractual liability. The contractual liability must include the tort liability of another assumed in a business contract. The CONTRACTOR or his agent shall verify that there is no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. This insurance shall be maintained throughout the duration of the Project and for a minimum of one year after *FINAL PAYMENT*, as provided for in *ARTICLE 9.10*. Limits shall be as follows:

Each Occurrence Limit	
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

The General Aggregate Limit is to be written on a "per project" basis using contractor's per project endorsement **Amendment-Aggregate Limits of Insurance** (CG2503). The **Products/Completed Operations Aggregate Limit** must be at least $2,000,000, or written confirmation provided that the Commercial Umbrella coverage includes liability coverage for damage to the insured's completed work equivalent to that provided under the CG 00 01 10/93 coverage form.

The OWNER is to be named as an additional insured in the CONTRACTOR's policy with respect to this project using the ISO **Additional Insured-Owners, ...Contractors** endorsement (CG 20 10), or a substitute providing equivalent coverage. Verification of additional insured status shall be furnished to OWNER by mailing a copy of the endorsement or Certificate of Insurance in accordance with the instructions on Page Two of this document.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance the OWNER may have or elect to carry with respect to this Project.

Comprehensive Automobile Liability Insurance

CONTRACTOR must provide and maintain business auto liability insurance for all owned, non-owned and hired vehicles on ISO form CA 00 01 12\90 or equivalent coverage form with the following limits:

Combined Single Limit (or equivalent "split limits" satisfying Umbrella Excess Liability requirements)	$1,000,000 per accident

If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of the ISO CA 00 01 form.

Workers Compensation

CONTRACTOR shall provide and maintain workers compensation and employers liability insurance providing coverage in the state (or states) in which the project is performed. Limits and coverage shall be as follows:

Workers Compensation Insurance	Statutory Benefits *South Carolina*
Employers Liability Insurance	$1,000,000 each accident $1,000,000 policy limit $1,000,000 each employee

If the Project involves work which may be subject to the U.S. Longshore and Harborworkers Act (USL&HW), or which may involve watercraft, CONTRACTOR will attach the respective endorsements to provide this coverage. USL&HW (WC 00 01 06 A) and Maritime Coverage (WC 00 02 01 A).

Umbrella Excess Liability

CONTRACTOR shall provide umbrella excess liability insurance on an "occurrence" basis providing "following form" coverage for the underlying coverages outlined above with the following minimum limits:

Each Occurrence Limit	$10,000,000
Aggregate Limit	$10,000,000

Waiver of Subrogation

CONTRACTOR waives all right of recovery of damages against OWNER (and OWNER's agents, officers, directors, and employees) to the extent these damages are covered by the Commercial General Liability, Comprehensive Auto Liability, or Umbrella Excess Liability insurance as required above.

Insurance & Bonds
Supplemental Conditions

Evidence of Insurance

CONTRACTOR shall furnish Certificates of Insurance to OWNER prior to commencement of the work. The certificate holder (and additional insured) should read as follows:

Concord & Cumberland HPR
c/o McAlister Preferred Properties
106 Pitt Street
Mount Pleasant, SC 29464

Certificate(s) shall be signed by a duly authorized representative of each insurance company, showing compliance with the insurance requirements set forth in these Supplemental Conditions. The certificate should expressly state that if there is any material change in coverage (cancellation, expiration, or exclusion of a specifically required coverage such as completed operations) that the CONTRACTOR or his agent will make every reasonable effort to notify OWNER at least 30 days prior to such change by written notice.

When requested by OWNER, CONTRACTOR shall furnish copies of Certificates of Insurance for each subcontractor as well.

Additionally, the insurance companies providing coverage must be rated "A-" or better by A. M. Best's most current edition and be licensed in the state in which the work is to be performed. Any exceptions to the requirement of (1) being licensed by the state, or (2) having a Best's "A-" rating or better, must be referred to OWNER for prior approval.

If CONTRACTOR fails to maintain the required insurance as outlined above, the OWNER shall have the right, but not the obligation, to purchase said insurance at the CONTRACTOR's expense. CONTRACTOR's failure to maintain insurance as required may result in termination of this contract at the OWNER's option. However, the failure of the OWNER to demand certificates of insurance or evidence of full compliance with these insurance requirements shall not constitute a waiver of the CONTRACTOR's obligation to maintain such insurance.

Exhibit D

TIME FOR ADVERSE WEATHER

1. Adverse weather conditions shall be defined as precipitation and its residual effects, wind, cold and hot weather, and approaching bad weather which can be shown to adversely impact the construction schedule. All claims will be based upon the actual weather conditions at the field office. Adverse weather should be documented in the contractor's daily reports.

2. Five (5) calendar days per calendar month shall be anticipated in the construction schedule as adverse weather at the jobsite. Days in excess of the five days will extend the contract end date on a day for day basis. The contractor must be able to prove that the adverse weather condition claim affects the construction schedule. The five (5) calendar days shall be non-cumulative.

3. All claims for adverse weather conditions must be submitted in accordance with the claim notification requirements of the contract documents.

4. Adverse weather conditions incurred following the current schedule date of substantial completion shall not be allowed.

Adapted from SC ALA-AGC Joint Resolution

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

Arch will Provide CA + Will Be Rep. Owners During Const. Only to The Extent ?

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

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the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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

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

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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

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

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

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

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

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required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. Supervision Means & Methods

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

Minor Changes Not involving cost or Time

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Unknown Conditions

If Arch Determines will recommend an equitable Adjustment.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

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be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

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the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

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.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect,

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stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the

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Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents; or
.3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

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of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

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otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE
The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

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Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

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§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

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.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

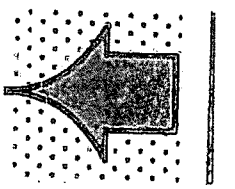
§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.



§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

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§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an

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additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

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the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

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the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

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required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

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be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

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the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

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.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect,

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stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the

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Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

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of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

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otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE
The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

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Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

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§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

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.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

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§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an

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additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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THIS AGREEMENT SUBJECT TO
ARBITRATION UNDER SECTION 15-48-10
OF S.C. CODE OF LAWS.

AIA® Document A102™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 27th day of February in the year Two Thousand and Fourteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Concord & Cumberland HPR
c/o McAlister Preferred Properties
106 Pitt Street
Mount Pleasant, South Carolina 29464
Phone: 843-884-1664

and the Contractor:
(Name, legal status, address and other information)

TCC of Charleston, Inc.
Post Office Box 61976
N. Charleston, SC 29419
Telephone Number: 843-572-7600
Fax Number: 843-764-1704

for the following Project:
(Name, location and detailed description)

Concord & Cumberland Exterior Repairs
175 Concord Street
Charleston, South Carolina

The Architect:
(Name, legal status, address and other information)

Glick/Boehm & Associates
493 King Street, Suite 100
Charleston, SC 29401

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

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ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

Date of commencement shall be based upon a Notice to Proceed and issuance of the Building Permit.

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Three Hundred and Two Days (302) days from the date of commencement,
(Paragraphs deleted)

Portion of Work	Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

$300/day

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

8%

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

8% of any increase in the Cost of the Work.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

10% Overhead
5 % Profit

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed Ninety-Five percent (95 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any: N/A
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)

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§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Three Million, Nine Hundred and Twenty-three Thousand, Nine Hundred and Thirty-nine Dollars and No Cents ($ 3,923,939.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

Any cost savings shall be shared with 50% to the Owner and 50% to the Contractor. Any savings of contingency shall accrue 100% to the Owner.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

N/A

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
Metal Stud Replacement	$20,000
Sheathing Replacement	$50,000
Batt Insulation Replacement	$5,000
Balcony Tile Material & Labor	$16/SF
Construction Contingency	$236,854

The contingency is to cover unknown factors that may adversely affect costs which are the responsibility of the Contractor. The Contractor has the discretion to decide which Costs of the Work will be covered by this contingency. The Contractor shall notify the Owner of any charges in excess of $5,000 prior to applying said costs to the Contractor's contingency. The Contractor shall give due notification to the Owner of any application of Contractor contingency funds. The Contractor shall maintain in an up to date contingency log and present an updated log at each progress meeting. The contingency shall not be used to cover the cost of substandard or non-conforming work. Upon completion of the work, any remaining balance in the contingency account will not be included in the calculation of the "cost savings" participation. 100% of any contingency balance will accrue to the Owner.

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See attached Exhibit B, Contractor's Proposal Summary Letter, Clarifications and Exclusions dated 1/23/14.

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term

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"costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

Superintendent	$65/hr
QA/QC Inspector	$72/hr
Carpenter Foreman	$42/hr
Laborer	$ 23/hr

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Superintendent	$65/hr
Assistant Superintendent	$55/hr

§ 7.2.3 Wages and salaries of the Contractor'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.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

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§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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Data processing costs related to the work will be reimbursed at a rate of .25% of the Cost of the Work.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;

.2 Expenses of the Contractor's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Article 7;

.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;

.5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Article 7; and

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.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall reduce the cost of the work.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Fifteen (15) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

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§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Contractor's Fee, less retainage of Ten percent (10 %).The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of Ten percent (10 %) from that portion of the Work that the Contractor self-performs; Retainage shall be 10% through successful completion of 50% of the project. The retainage is frozen at that amount and held until the Architect issues a Substantial Completion Certificate. The Architect, Owner and Contractor shall agree on an equitable amount of money that shall be retained by the Owner until final completion that should cover the cost of any remaining punch list items or deficiencies.

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, which is agreed to be 10% and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-

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site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

Prime as published in the Wall Street Journal %

§ 15.3 The Owner's representative:
(Name, address and other information)

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User Notes:

Tom Mather
106 Pitt Street
Mount Pleasant, SC 29464
Phone: 843-884-1664

§ 15.4 The Contractor's representative:
(Name, address and other information)

Chris Burrell
P.O. Box 61976
N. Charleston, SC 29419
Phone: 843-572-7600
Fax: 843-764-1704
Email: Chris@tridentcon.com

§ 15.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 15.6 Other provisions:

Contractor's Project Manager stationed at the home office shall be reimbursed at a rate of $72/hr.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 16.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See Exhibit A

Section	Title	Date	Pages

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
See Exhibit A

Number	Title	Date

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§ 16.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A, Drawing and Specification Log
Exhibit B, Contractor's Proposal Summary Letter, Clarifications and Exclusions.
Exhibit C, Insurance
Exhibit D, Adverse Weather

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

See Exhibit C

Type of insurance or bond	Limit of liability or bond amount ($0.00)

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
CANDACE R. PEBNAM, PRESIDENT	John David Griffith, Vice President
(Printed name and title)	*(Printed name and title)*

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EXHIBIT A - DRAWING AND SPECIFICATION LOG

1. Glick Boehm Architecture drawings dated 12/18/13

DRAWING INDEX			
Sheet Number	**Sheet Name**	**ISSUED**	**REVISED**
GENERAL			
G100	COVER SHEET		
G110	INDEX OF DRAWINGS AND SCOPE OF WORK		
G111	EXISTING SITE PICTURES AND MATERIALS		
ARCHITECTURE			
A010	GARAGE & FIRST FLOOR BUILDING PLANS		
A011	SECOND & THIRD FLOOR BUILDING PLANS		
A012	FOURTH FLOOR & ROOF PLANS		
A020	DEMOLITION ELEVATIONS		
A030	DEMOLITION WALL SECTIONS		
A031	DEMOLITION WALL SECTIONS		
A032	DEMOLITION WALL SECTIONS		
A033	DEMOLITION WALL SECTIONS		
A034	DEMOLITION WALL SECTIONS		
A040	DEMOLITION SECTION DETAILS		
A041	DEMOLITION SECTION DETAILS		
A042	DEMOLITION SECTION DETAILS		
A043	DEMOLITION SECTION DETAILS		
A044	DEMOLITION SECTION DETAILS		
A101	GARAGE & FIRST FLOOR BUILDING PLANS		
A102	SECOND & THIRD FLOOR BUILDING PLANS		
A103	FOURTH FLOOR & ROOF PLANS		
A201	BUILDING ELEVATIONS		
A310	NC WALL SECTIONS		
A311	NC WALL SECTIONS		
A312	NC WALL SECTIONS		
A313	NC WALL SECTIONS		
A314	NC WALL SECTIONS		
A501	SECTION DETAILS		
A502	SECTION DETAILS		
A503	SECTION DETAILS		
A504	SECTION DETAILS		
A505	SECTION DETAILS		
A506	SECTION DETAILS		
A507	SECTION DETAILS		
A508	SECTION DETAILS		
A509	SECTION DETAILS		
A510	SECTION DETAILS		
A511	SECTION DETAILS		
A520	WALL PLAN DETAILS		
A530	TYPICAL STUCCO DETAILS + WEATHER BARRIER		
A620	WINDOW SCHEDULE		
A621	DOOR/WINDOW DETAILS		
A622	DOOR/WINDOW DETAILS		
A625	WINDOW INSTALLATION		
STRUCTURAL			
S100	STRUCTURAL DETAILS		

2. Glick Boehm Architecture specifications dated 12/13/13

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00 73 00	SUPPLEMENTARY CONDITIONS

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07 46 46	FIBER CEMENT SIDING
07 62 00	SHEET METAL FLASHING AND TRIM
07 90 05	JOINT SEALERS

DIVISION 08 - OPENINGS

08 14 23	ALUMINUM CLAD WOOD HINGED DOORS W/ IMPACT-RESISTANT GLAZING
08 52 00	WOOD CLAD WINDOWS

DIVISION 09 - FINISHES

09 21 16	GYPSUM BOARD ASSEMBLIES
09 24 00	PORTLAND CEMENT STUCCO SYSTEM
09 30 00	TILING
09 90 00	PAINTING AND COATING

3. Lauren Sanchez Design, Ltd. drawings dated 12/07/13

Sht. I-101 Overall Floor Finish Plans
Sht. I-501 Ground Floor Details
Sht. I-502 Ground Floor Details
Sht. I-503 Enlarged First Floor Details

4. Lauren Sanchez Design, Ltd. Finish Explanatory Notes dated 12/05/13

5. Glick Boehm Addendum dated 1/24/14-
Revised stucco details and drawings (A501, A502, A505, A506, A507 A508 and A509)

Exhibit B - Contractor's Proposal Summary, Clarifications, and Exclusions

TEAM BUILD
TRIDENT
CONSTRUCTION

Tom Mather
Owner's Representative
Concord & Cumberland Condominiums
175 Concord Street
Charleston, SC 29401

February 6, 2014

Re: **Concord & Cumberland Exterior Repairs**
Charleston, SC

Dear Tom,

We thank you for the opportunity to quote the above referenced project. We have compiled our proposal taking into account the Bid Documents and all of the other information that was provided by Glick/Boehm & Associates. Included with this proposal we have provided our price, our CSI Master Format pricing breakdown, our proposed schedule, our site logistics plan, phasing plan and our clarifications and exclusions.

PRICE:

Our price to complete the work is **$3,723,173.** Please reference our CSI Master Format pricing breakdown that's included with our proposal for a detailed breakdown of our price.

SCHEDULE:

We estimate that it will take our Team nine (9) months to complete the work. Please see attached for our proposed CPM Schedule and Project Phasing Plan. We intend to start at the Cumberland Street end of the building and sequence our scaffolding and crews along that elevation and down Concord Street. Please note that our schedule corresponds with our phasing plan.

We have broken the project up in to eight (8) areas. These areas are outlined on our CPM Schedule. This shall serve as a means of determining the amount of time the units will be impacted by our crews. It is strongly recommended that the areas in the units where the work is taking place be vacated while we are completing the window rework and new window installation, so that our crews can efficiently complete their work. The City of Charleston allows work to take place between the hours of 7:00 AM to 5:30 PM. Our crews will be working within the units during these hours and must be free to come and go to do their work. We anticipate needing two weeks per unit to remove and reinstall the windows. We will clean and straighten up behind ourselves each day, but each unit will not be returned to a white glove clean standard until the work is completed fully within the unit. We will work closely with your Team and the residents to ensure that the transitions go smoothly and are well planned.

Due to the long material lead times for the windows and brick, we do not anticipate being in a position to start the work until sometime in late April 2014. In preparation for ordering the windows we are going to need to gain access to each unit over the period of two (2) continuous weeks in order to measure each window opening so that the Window Manufacturer fabricates the windows to match the existing conditions.

While we are awaiting the delivery of the long lead time materials, we will produce our mock-up panel for BAR review and approval. This will need to occur sometime in March to allow for enough time to produce the mock-up and gain the necessary BAR Approvals. As we approach the delivery of the long lead materials we will mobilize to the site a couple of weeks in advance of their delivery and install our site barricades and setup the laydown areas and office space within the garage and we will then commence with the initial area's demolition work.

Since the majority of the work will take place during Hurricane Season, this adds uncertainty to the schedule and cost due to the impact of inclement weather on exterior activities. Typical safety guidelines require that scaffolding be dismantled and removed if winds are forecasted to rise above 50 MPH. In the event that Charleston is forecasted to be impacted by a Tropical Storm or Hurricane we will be forced to stop work and remove all scaffolding and equipment from the site. In addition, we will likely need to fortify and stabilize our work and the building in advance of the storm. We have provided an estimated cost below should this occur, so that you are able to consider the potential cost in your overall budget.

CLARIFICATIONS:

Our proposal includes the following:

1. A full-time Superintendent to be present onsite while the work is taking place.
2. Part-Time Quality Control Inspector will be onsite periodically throughout the course of construction to monitor the installation of waterproofing, flashing, windows, stucco, and brick.
3. Flagmen and Labor throughout the course of the work to assist with directing traffic and providing continuous clean up.
4. Costs for the City of Charleston Building Permit.
5. Temporary toilets.
6. Distribution of temporary power. Power to be supplied by the Owner's existing power.
7. Dumpsters necessary for the completion of the work.
8. Temporary Jersey barricades and fabric lined temporary fencing at the street level.
9. Fabric lined temporary fencing to delineate the lay down areas in the garage.
10. Sidewalk Closure Permit fees and fees necessary to secure parking and loading spaces along Concord Street during construction.
11. Temporary protection of items that are to remain in place during construction.
12. One 6'-0" x 6'-0" performance mock-up is included in this cost for BAR Review and Approval
13. Due to the varying finishes within each individual unit we are not able to provide a quote to put the walls back into the same finished state as they may currently exist. Further, in past projects of this nature, the individual home owners are reluctant to pay a premium to compensate for the more expensive wall finishes within their neighbor's unit. As such, our price includes removing the existing wall finishes, only as may be required to allow for the completion of our work. This includes the area adjacent to the window only and no other walls

that might intersect with the exterior walls of the building. Once our work is complete, we will reinstall drywall that is finished to a Level 4 finish and we will install a standard window casing, as selected by the Architect, and we will then prime paint the drywall and casing that we install. It will be the responsibility of each individual home owner to take the wall beyond the level of finish which we have carried.

14. Removal and reinstall of existing wood entry doors at the two (2) courtyards for purposes of waterproofing.
15. Removal and reinstall of existing awnings and railings.
16. Installation of new air and moisture barrier, flashing, and caulking.
17. Removal of existing brick and the installation of new brick and cast stone where shown.
18. Standard color mortar is included at the masonry veneer and cast stone.
19. New window lintels for all openings in the brick veneer. If the existing lintels are satisfactory for reuse the cost savings will be incurred by the owner
20. Removal of existing stucco and the installation of new stucco in accordance with the Contract Documents.
21. Removal of existing windows and patio doors and installation of new windows and doors where shown.
22. 3"x3" new tube steel spanning between window types: E, F, H, J, K, L, M, N, P, S per details 5/A621 & S100.
23. Allowances as specified: $20,000 metal stud framing replacement, $50,000 sheathing replacement, and $5,000 batt insulation replacement.
24. A Construction Contingency of 5% in the amount of $180,194. This will be utilized by Trident Construction for unforeseen issues. Any use of these funds shall be tracked in detail and a Contingency Log will be maintained by Trident and shared with the Owner on a monthly basis.
25. The balcony tile is to match existing, due to not knowing the finish style specification we have included an allowance $16/SF for material and installation.
26. Project Specific General Liability Wrap-Up Policy with a limit of $5 Million in coverage that is intended to cover all parties associated with the Project. This policy will remain in place through the duration of the time period of the statutes of limitations (8 years). The cost included in the estimate is based on an estimate that has been provided by our carrier. A final value or cost of this policy will become available once the carrier can evaluate all Team Members' (General Contractor, Subcontractors, Architect, Engineer, and Owners) loss history and prior experience. Additional details about this insurance can be provided upon request.

EXCLUSIONS:

1. Builders Risk Insurance. This is a special type of property insurance that the Owner is required to provide that covers materials, fixtures, and/or equipment used in a construction or renovation project should those items sustain a physical loss or damage from a covered cause. Trident Construction can provide a cost estimate for this insurance should the Owner request Trident to do so on its behalf.
2. Any costs necessary to secure the site in the event that Charleston is forecasted to be impacted by a Tropical Storm or Hurricane. In the event of a Tropical Storm or Hurricane the cost to dismantle and remove all scaffolding and materials and to increase the protection of the building and remobilize and reinstall scaffolding and remove all protection could be $40,000 per occurrence. In the event that these measures are necessary we will take action

immediately and track these efforts on a time and material basis and process as a change order to the Contract.

3. Removal of existing window treatments in the units.
4. Removal of any specialty millwork or wall panels or casework in proximity of our work at the unit interiors adjacent to the windows. This work shall be done by the individual condominium owners.
5. Reinstallation of any specialty millwork, specialty wall finishes, wall panels or casework in proximity of our work at the unit interiors adjacent to the windows. This work shall be done by the individual condominium owners.
6. Providing new wood doors at the entrances off the two (2) courtyards.
7. Any work associated with the existing roof.
8. Specification Section 07 21 19 Foamed-In-Place Insulation
9. Interior finishes other than stated above. A separate proposal has been provided for the renovation of the floor finishes in the corridors, stairwell, lobbies, and garage.
10. Payment and Performance Bond

HOURLY LABOR RATES:

The following labor rates will be applied to change order work where the work is self-performed by Trident Construction.

1. Project Manager: $72
2. Superintendent: $65
3. QA/QC Inspector: $72
4. Carpenter Foreman: $42
5. Carpenter: $33
6. Laborer: $23

BID DOCUMENTS:

1. Glick/Boehm & Associates drawings dated December 18, 2013
2. Glick/Boehm & Associates specifications dated December 13, 2013

Thank you once again for the opportunity to quote this project. Please don't hesitate to write or call with questions.

Respectfully,
TRIDENT CONSTRUCTION

John David Griffith
Vice President

AIA A102-2007
SUPPLEMENTAL GENERAL CONDITIONS to the *CONTRACT FOR CONSTRUCTION*
INSURANCE & BONDS

In accordance with ***ARTICLE 11*** of the ***General Conditions of the Contract for Construction,*** **(AIA 201-2007)** the CONTRACTOR (and any Subcontractor, or anyone directly or indirectly employed by any of them) will provide and maintain the following types and amounts of insurance:

Commercial General Liability Insurance

CONTRACTOR must provide Commercial General Liability insurance using the 1993 ISO **Occurrence Form** (CG 00 01 10/93), or an equivalent form. The Commercial General Liability insurance must include coverage for premises-operations, independent contractors, products-completed operations, personal injury and contractual liability. The contractual liability must include the tort liability of another assumed in a business contract. The CONTRACTOR or his agent shall verify that there is no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. This insurance shall be maintained throughout the duration of the Project and for a minimum of one year after ***FINAL PAYMENT,*** as provided for in ***ARTICLE 9.10.*** Limits shall be as follows:

Each Occurrence Limit	
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

The General Aggregate Limit is to be written on a "per project" basis using contractor's per project endorsement **Amendment-Aggregate Limits of Insurance** (CG2503). The **Products/Completed Operations Aggregate Limit** must be at least $2,000,000, or written confirmation provided that the Commercial Umbrella coverage includes liability coverage for damage to the insured's completed work equivalent to that provided under the CG 00 01 10/93 coverage form.

The OWNER is to be named as an additional insured in the CONTRACTOR's policy with respect to this project using the ISO **Additional Insured-Owners, ...Contractors** endorsement (CG 20 10), or a substitute providing equivalent coverage. Verification of additional insured status shall be furnished to OWNER by mailing a copy of the endorsement or Certificate of Insurance in accordance with the instructions on Page Two of this document.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance the OWNER may have or elect to carry with respect to this Project.

Comprehensive Automobile Liability Insurance

CONTRACTOR must provide and maintain business auto liability insurance for all owned, non-owned and hired vehicles on ISO form CA 00 01 12\90 or equivalent coverage form with the following limits:

Combined Single Limit	$1,000,000 per accident

(or equivalent "split limits" satisfying Umbrella Excess Liability requirements)

If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of the ISO CA 00 01 form.

Workers Compensation

CONTRACTOR shall provide and maintain workers compensation and employers liability insurance providing coverage in the state (or states) in which the project is performed. Limits and coverage shall be as follows:

Workers Compensation Insurance	Statutory Benefits *South Carolina*
Employers Liability Insurance	$1,000,000 each accident $1,000,000 policy limit $1,000,000 each employee

If the Project involves work which may be subject to the U.S. Longshore and Harborworkers Act (USL&HW), or which may involve watercraft, CONTRACTOR will attach the respective endorsements to provide this coverage. USL&HW (WC 00 01 06 A) and Maritime Coverage (WC 00 02 01 A).

Umbrella Excess Liability

CONTRACTOR shall provide umbrella excess liability insurance on an "occurrence" basis providing "following form" coverage for the underlying coverages outlined above with the following minimum limits:

Each Occurrence Limit	$10,000,000
Aggregate Limit	$10,000,000

Waiver of Subrogation

CONTRACTOR waives all right of recovery of damages against OWNER (and OWNER's agents, officers, directors, and employees) to the extent these damages are covered by the Commercial General Liability, Comprehensive Auto Liability, or Umbrella Excess Liability insurance as required above.

Insurance & Bonds
Supplemental Conditions

Evidence of Insurance

CONTRACTOR shall furnish Certificates of Insurance to OWNER prior to commencement of the work. The certificate holder (and additional insured) should read as follows:

Concord & Cumberland HPR
c/o McAlister Preferred Properties
106 Pitt Street
Mount Pleasant, SC 29464

Certificate(s) shall be signed by a duly authorized representative of each insurance company, showing compliance with the insurance requirements set forth in these Supplemental Conditions. The certificate should expressly state that if there is any material change in coverage (cancellation, expiration, or exclusion of a specifically required coverage such as completed operations) that the CONTRACTOR or his agent will make every reasonable effort to notify OWNER at least 30 days prior to such change by written notice.

When requested by OWNER, CONTRACTOR shall furnish copies of Certificates of Insurance for each subcontractor as well.

Additionally, the insurance companies providing coverage must be rated "A-" or better by A. M. Best's most current edition and be licensed in the state in which the work is to be performed. Any exceptions to the requirement of (1) being licensed by the state, or (2) having a Best's "A-" rating or better, must be referred to OWNER for prior approval.

If CONTRACTOR fails to maintain the required insurance as outlined above, the OWNER shall have the right, but not the obligation, to purchase said insurance at the CONTRACTOR's expense. CONTRACTOR's failure to maintain insurance as required may result in termination of this contract at the OWNER's option. However, the failure of the OWNER to demand certificates of insurance or evidence of full compliance with these insurance requirements shall not constitute a waiver of the CONTRACTOR's obligation to maintain such insurance.

Exhibit D

TIME FOR ADVERSE WEATHER

1. **Adverse weather conditions shall be defined as precipitation and its residual effects, wind, cold and hot weather, and approaching bad weather which can be shown to adversely impact the construction schedule. All claims will be based upon the actual weather conditions at the field office. Adverse weather should be documented in the contractor's daily reports.**

2. **Five (5) calendar days per calendar month shall be anticipated in the construction schedule as adverse weather at the jobsite. Days in excess of the five days will extend the contract end date on a day for day basis. The contractor must be able to prove that the adverse weather condition claim affects the construction schedule. The five (5) calendar days shall be non-cumulative.**

3. **All claims for adverse weather conditions must be submitted in accordance with the claim notification requirements of the contract documents.**

4. **Adverse weather conditions incurred following the current schedule date of substantial completion shall not be allowed.**

Adapted from SC AIA-AGC Joint Resolution

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2016-CP-10-2955

FILED
2016 JUN 16 PM 12:47
CLERK OF COURT
CHARLESTON
BY

TCC OF CHARLESTON, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	AMNEDED LIS PENDENS TMS#(S):
	)	TMS# 458-09-02-068
	)	TMS# 458-09-02-219
	)	TMS# 458-09-02-219
	)	TMS# 458-09-02-220
	)	TMS# 458-09-02-221
	)	TMS# 458-09-02-222
	)	TMS# 458-09-02-223
	)	TMS# 458-09-02-224
	)	TMS# 458-09-02-225
	)	TMS# 458-09-02-226
	)	TMS# 458-09-02-227
	)	TMS# 458-09-02-228
	)	TMS# 458-09-02-229
	)	TMS# 458-09-02-230
	)	TMS# 458-09-02-231
	)	TMS# 458-09-02-232
	)	TMS# 458-09-02-233
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	)	TMS# 458-09-02-242
	)	TMS# 458-09-02-243
	)	TMS# 458-09-02-218
		TMS# 458-09-02-217
		TMS# 458-09-02-234
	)	
Defendants.	)	

NOTICE IS HEREBY GIVEN that an action has been or will be commenced in this Court upon complaint of the above-named Plaintiffs against the above-named Defendants, and that the object of such action is the Construction Contracted and Mechanic's Lien of even date.

That the real estate covered and affected by the aforesaid Contract and by such action is now and was at the time of filing of this notice, situate in the County of Charleston, State of South Carolina, and the following is a description thereof:

ALL that certain piece, parcel or tract of land, containing 0.41 acres with all improvements thereon, if any, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, being shown and designated on that certain plat entitled: 'CITY OF CHARLESTON, CHARLESTON COUNTY, S.C. SUBDIVISION PLAT OF TMS 458-09-02-068 CONTAINING 1.55 AC INTO A 0.41 ACRE LOT AND A 1.14 ACRE RESIDUAL LOT SITUATE AT CONCORD AND DCUMBERLAND STREETS OWNED BY THE CITY OF CHARLESTON" dated June 4, 2004 and last revised October 10, 2005 and recorded in the RMC Office for Charleston County in Plat Book EJ at Page 432 and, said property being more particularly described as follows:

BEGINNING at a point located at the intersection of Cumberland Street and Concord Street, said point being an "X" cut in sidewalk and running along Concord Street in a southeasterly direction S04°10'53"E a distance of 295.24 feet to a 1" iron pin found; thence turning and running along property now or formerly of Vendue Concord Partnership in a southwesterly direction S81°05'42"W a distance of 60.19 fee to a 5/8" iron pin found; thence turning and running along property now or formerly of City of Charleston in a northwesterly direction N04°09'29"W a distance of 297.96 feet to an "X" cut in sidewalk; thence turning and running along Cumberland Street in a northeasterly direction N83°40'41"E a distance of 59.91 feet to the point and place of beginning.

TMS:458-09-02-068

AND

All that certain Condominium Unit, situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #103 CONCORD, and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as a:nended, and submitted by Master Deed dated October 17, 2007 and recorded in the RMC Office for Charleston County, South Carolina in Book U641 at page 739.

Together with an undivided interest in common elements and the appurtenances thereto according to said Master Deed.

This being the same property conveyed to Leo Hall by Deed of Concord and Cumberland, LLC dated 11/1/07 and recorded 11/6/07 in Deed Book G643 at page 877.
TMS#: 458-09-02-219

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #103 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to grantor herein by deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-219

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #104 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C573 at Page 288.

TMS #458-09-02-220

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #105 CONCORD & CUMBERLAND HORIZONTAL, PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 1 7, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being all of the interest in the same property which was conveyed to Grantor under the name East Broad Trust Company by Indenture Deed from Concord & Cumberland, LLC, a South Carolina limited liability company, dated November 6, 2007, and recorded on December 5, 2007, in the RMC Office for Charleston County, South Carolina, in Book O645 at Page 471.

TMS #458-09-02-221

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #106 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-222

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #107 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded, February 16, 2006, in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TAX ID #458-09-02-223

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #108 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-224

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #20 I CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U-641, Page 739.
TOGETHER WITH an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above referenced Master Deed and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County, South Carolina.

TMS# 458-09-02-225

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #202 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02226

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #203 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code

of Laws of South Carolina (1976), as amended, and submitted by Master, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from Concord & Cumberland, LLC, dated December 27, 2007, and recorded in the RMC Office Charleston County, South Carolina, in Book K647 at Page 715.
TMS #458-09-02-227

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #204 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed in lieu of Ronald Davis and Debra B. Davis, dated November 8, 2011 and recorded February 10, 2012 in Deed Book D233 at Page 022 in the Office of the Charleston County Register of Deeds.

TMS:458-09-02-228

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #205 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

BEING a portion of the property conveyed to Grantor herein by Deed from the City of Charleston, Dated February 14, 2006, and recorded February 16, 2006, in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS:458-09-02-229

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #206 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739, as amended.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of Concord & Cumberland, LLC, a South Carolina limited liability company dated August 14, 2007 and recorded in Book G642 at page 076 in the RMC Office for Charleston County.

TMS: 0458-09-02-230

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #207 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS: 0458-09-02-231

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #208 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS: 0458-09-02-232

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #301 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SAID Property is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above-referenced Master Deed and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County.

Being the same property conveyed to the grantor herein by deed of Cumberland Corner, LLC, as South Carolina limited liability company, dated January 9, 2008 and recorded in the RMC Office for Charleston County in Deed Book O648 at Page 475.

TMS: 0458-09-02-233

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #301 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1973), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements of the appurtenances thereto according to the Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above referenced Master Deed and to all other applicable covenants, restrictions and easements of recorded in the RMC Office for Charleston County, South Carolina.

BEING the same property conveyed to the Grantor herein by deed of Cumberland Corner, LLC, a South Carolina limited liability company, dated January 9, 2008 and recorded in the RMC Office for Charleston County in Deed Book 0648 at Page 475.
TMS: 458-09-02-233

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #303CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime

established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master, dated October 17, 2007, and recorded in the *RMC* Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from Concord & Cumberland, LLC, dated December 27, 2007, and recorded in the RMC Office Charleston County, South Carolina, in Book K647 at Page 715.

TMS #458-09-02-234

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #304 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
Tax ID #458-09-02-235

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #305 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all restrictions, easement and rights of way of record affecting said properties.

BEING the same premises conveyed to the Grantor herein by deed of Avant & Associates, LLC and Oakland Holding, LLC dated July 25, 2012 and recorded in the RMC Office for Charleston County in Book 0268 at page 959.

TMS#: 458-09-02-236

AND

ALL that certain condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, known as UNIT 306, CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME, a condominium established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended and submitted by Master Deed, dated October 17, 2007, and recorded October 18, 2007, in the RMC Office for Charleston County, South Carolina, in Book U641, at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

BEING the same property conveyed unto Fred Rappaport and Joyce S. Rappaport by deed of Concord & Cumberland, LLC, a South Carolina limited liability company dated December 21, 2006, and recorded in the RMC Office for Charleston County on October 25, 2007, in Deed Book G-642, at page 66.

TMS#458-09-02-237

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #307 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U-641, at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to the Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above-referenced Master Deed, and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County, South Carolina.

BEING the same property conveyed to John Jackson Freeman by deed of Pamela Renee Queen dated July 2, 2013 and recorded July 16, 2013 in the RMC Office for Charleston County in Book0346, at Page 83.
TMS Number: 458-09-02-238

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #308 Concord and Cumberland Horizontal Property Regime, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, South Carolina Code of Laws (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all easements, restrictions, and rights of way of record.

BEING the same property conveyed to Signature Charleston, LLC by deed of Concord & Cumberland, LLC, dated October 26, 2007 and recorded on November 1, 2007 in the Office of the RMC for Charleston County in Book X642 at Page 526.
TMS No. 458-09-02-239

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #401 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-240

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston,

Charleston County, South Carolina, designated as Unit #402 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all restrictions, easements and rights-or-way of record affecting the subject property.

BEING the same property conveyed to the Grantor herein by deed of Concord & Cumberland, LLC dated December 18, 2007 and recorded in Book Z645 at page 636 in the RMC Office for Charleston County.
TMS#: 458-09-02-241

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #403 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to Ecovest Development, LLC by Richard Schneider by deed of conveyance dated the 9th day of September, 2011, and recorded in the RMC Office for Charleston County, S.C., in Book 0206, page 483.
TMS: 458-09-02-242

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #404 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by

Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-243

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #102 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page
739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
Tax ID #458-09-02-218

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #101 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.

TMS #458-09-02-217

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street
Charleston, SC 29401
Telephone: 843.377.1871
Facsimile: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR THE PLAINTIFFS

June 11, 2016
Charleston, SC

0560-116

Return after recording to:

Andrew K. Epting, Jr., Esquire
46A State Street
Charleston, SC 29401

REC'D. PAYMENT 6/10/16
PER CLERK JBA
RMC OFFICE
CHARLESTON COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2016-CP-10-2955

TTC OF CHARLESTON, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	AMENDED NOTICE AND CERTIFICATE OF MECHANIC'S LIEN
	)	
	)	TMS# 458-09-02-068
	)	
	)	TMS# 458-09-02-219
	)	TMS# 458-09-02-219
	)	TMS# 458-09-02-220
	)	TMS# 458-09-02-221
	)	TMS# 458-09-02-222
	)	TMS# 458-09-02-223
	)	TMS# 458-09-02-224
	)	TMS# 458-09-02-225
	)	TMS# 458-09-02-226
	)	TMS# 458-09-02-227
	)	TMS# 458-09-02-228
	)	TMS# 458-09-02-229
	)	TMS# 458-09-02-230
	)	TMS# 458-09-02-231
	)	TMS# 458-09-02-232
	)	TMS# 458-09-02-233
	)	TMS# 458-09-02-233
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	)	TMS# 458-09-02-236
	)	TMS# 458-09-02-237
	)	TMS# 458-09-02-238
	)	TMS# 458-09-02-239
	)	TMS# 458-09-02-240
		TMS# 458-09-02-241

) TMS# 458-09-02-242
) TMS# 458-09-02-243
) TMS# 458-09-02-218
TMS# 458-09-02-217
TMS# 458-09-02-234

The Plaintiff, TCC of Charleston, Inc. (license no.: 112242), claims a lien against the property as owned by Defendants, in the amount set forth below and established by the annexed statement (EXHIBIT A), which is a true and just account of the amount due to the Plaintiff with all just credits given for labor and materials furnished and actually used in the erection, alteration, or repair of building or structures situated on the real estate described in EXHIBIT B, by virtue of its agreements with Defendant and with the consent of the owners of said property.

The value of the labor and materials furnished is the sum of $2,385,503.57, as is evidenced by the sworn statement of account attached hereto as EXHIBIT "A", and labor and materials were furnished to the after-described real estate less than ninety (90) days prior to the date of the filing and service of this Mechanic's Lien.

That by virtue of the aforesaid labor and materials furnished to the after-described property, and by the service and filing of this Mechanic's Lien, Plaintiff, has and claims a Mechanic's Lien for the payment of the indebtedness aforesaid and the cost of enforcing said lien upon the following described real estate, attached hereto as EXHIBIT "B":

WHEREFORE, Plaintiff claims a Mechanic's Lien in the sum of 2,385,503.57, plus interest, a reasonable attorney's fee as prescribed by statute, and for the costs and disbursements of this action.

RESPECTFULLY SUBMITTED:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street
Charleston, SC 29401
T: (843)377-18171
F: (843)377-1310
Email: ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 10 day of June 2016
Charleston, SC

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

STATEMENT OF ACCOUNT

I hereby certify that on this 10 day of June, 2016, personally appeared before me, John David Griffith, who being duly sworn deposes and says:

1. That he is an officer of TCC OF CHARLESTON, INC. a corporation organized and doing business under the laws of the State of South Carolina and has been duly authorized by said Corporation to make this Affidavit.
2. That there is justly due and owing to TCC OF CHARLESTON, INC., Plaintiff, over and above any discount the sum of $2,385,503.57 together with interest and attorney's fees and costs.
3. That the said indebtedness represents material purchased and services performed by the Plaintiff for the Defendant(s) for improvements to the property described in EXHIBIT B.
4. That the last day work was performed or materials provided to the property described in EXHIBIT B was March 17, 2016.
5. That the Plaintiff has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.
6. That the Plaintiff keeps regular books of account and that the keeping of said books of account is in the charge of or under supervision of the Affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that the Defendant is indebted to the Plaintiff in the manner and amount herein set forth.

TCC OF CHARLESTON, INC.

BY: John Earl Griffith

ITS Pres.

SWORN TO BEFORE ME THIS 10th
DAY OF JUNE 2016.

Melissa Kander

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 6-30-2025

MELISSA SWARTZLANDER NOTARY PUBLIC MY COMMISSION EXPIRES 6/30/2025 SOUTH CAROLINA

EXHIBIT "B"

ALL that certain piece, parcel or tract of land, containing 0.41 acres with all improvements thereon, if any, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, being shown and designated on that certain plat entitled: 'CITY OF CHARLESTON, CHARLESTON COUNTY, S.C. SUBDIVISION PLAT OF TMS 458-09-02-068 CONTAINING 1.55 AC INTO A 0.41 ACRE LOT AND A 1.14 ACRE RESIDUAL LOT SITUATE AT CONCORD AND DCUMBERLAND STREETS OWNED BY THE CITY OF CHARLESTON" dated June 4, 2004 and last revised October 10, 2005 and recorded in the RMC Office for Charleston County in Plat Book EJ at Page 432 and, said property being more particularly described as follows:

BEGINNING at a point located at the intersection of Cumberland Street and Concord Street, said point being an "X" cut in sidewalk and running along Concord Street in a southeasterly direction S04°10'53"E a distance of 295.24 feet to a 1" iron pin found; thence turning and running along property now or formerly of Vendue Concord Partnership in a southwesterly direction S81°05'42"W a distance of 60.19 fee to a 5/8" iron pin found; thence turning and running along property now or formerly of City of Charleston in a northwesterly direction N04°09'29"W a distance of 297.96 feet to an "X" cut in sidewalk; thence turning and running along Cumberland Street in a northeasterly direction N83°40'41"E a distance of 59.91 feet to the point and place of beginning.

TMS: 458-09-02-068

AND

All that certain Condominium Unit, situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #103 CONCORD, and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as a:nended, and submitted by Master Deed dated October 17, 2007 and recorded in the RMC Office for Charleston County, South Carolina in Book U641 at page 739.

Together with an undivided interest in common elements and the appurtenances thereto according to said Master Deed.

This being the same property conveyed to Leo Hall by Deed of Concord and Cumberland, LLC dated 11/1/07 and recorded 11/6/07 in Deed Book G643 at page 877.
TMS#: 458-09-02-219

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #103 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to grantor herein by deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-219

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #104 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C573 at Page 288.

TMS #458-09-02-220

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #105 CONCORD & CUMBERLAND HORIZONTAL, PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 1 7, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page

739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being all of the interest in the same property which was conveyed to Grantor under the name East Broad Trust Company by Indenture Deed from Concord & Cumberland, LLC, a South Carolina limited liability company, dated November 6, 2007, and recorded on December 5, 2007, in the RMC Office for Charleston County, South Carolina, in Book O645 at Page 471.

TMS #458-09-02-221

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #106 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-222

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #107 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded, February 16, 2006, in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TAX ID #458-09-02-223

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #108 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-224

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #20 I CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U-641, Page 739.
TOGETHER WITH an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above referenced Master Deed and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County, South Carolina.

TMS# 458-09-02-225

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #202 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02226

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #203 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from Concord & Cumberland, LLC, dated December 27, 2007, and recorded in the RMC Office Charleston County, South Carolina, in Book K647 at Page 715.
TMS #458-09-02-227

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #204 of Concord and Cumberland Horizontal Property

Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed in lieu of Ronald Davis and Debra B. Davis, dated November 8, 2011 and recorded February 10, 2012 in Deed Book D233 at Page 022 in the Office of the Charleston County Register of Deeds.

TMS:458-09-02-228

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #205 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

BEING a portion of the property conveyed to Grantor herein by Deed from the City of Charleston, Dated February 14, 2006, and recorded February 16, 2006, in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS:458-09-02-229

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #206 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739, as amended.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of Concord & Cumberland, LLC, a South Carolina limited liability company dated August 14, 2007 and recorded in Book G642 at page 076 in the RMC Office for Charleston County.

TMS: 0458-09-02-230

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #207 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS: 0458-09-02-231

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #208 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to the grantor herein by deed of from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office for Charleston County, South Carolina, in Book C-573 at Page 288.

TMS: 0458-09-02-232

AND

All that certain condominium unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #301 of Concord and Cumberland Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as Amended, and submitted by Master Deed dated October 17, 2007, and recorded at the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SAID Property is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above-referenced Master Deed and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County.

Being the same property conveyed to the grantor herein by deed of Cumberland Corner, LLC, as South Carolina limited liability company, dated January 9, 2008 and recorded in the RMC Office for Charleston County in Deed Book O648 at Page 475.

TMS: 0458-09-02-233

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #301 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1973), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements of the appurtenances thereto according to the Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above referenced Master Deed and to all other applicable covenants, restrictions and easements of recorded in the RMC Office for Charleston County, South Carolina.

BEING the same property conveyed to the Grantor herein by deed of Cumberland Corner, LLC, a South Carolina limited liability company, dated January 9, 2008 and recorded in the RMC Office for Charleston County in Deed Book 0648 at Page 475.
TMS: 458-09-02-233

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #303CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master, dated October 17, 2007, and recorded in the *RMC* Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from Concord & Cumberland, LLC, dated December 27, 2007, and recorded in the RMC Office Charleston County, South Carolina, in Book K647 at Page 715.

TMS #458-09-02-234

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #304 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.

Tax ID #458-09-02-235

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #305 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all restrictions, easement and rights of way of record affecting said properties.

BEING the same premises conveyed to the Grantor herein by deed of Avant & Associates, LLC and Oakland Holding, LLC dated July 25, 2012 and recorded in the RMC Office for Charleston County in Book 0268 at page 959.

TMS#: 458-09-02-236

AND

ALL that certain condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, known as UNIT 306, CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME, a condominium established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended and submitted by Master Deed, dated October 17, 2007, and recorded October 18, 2007, in the RMC Office for Charleston County, South Carolina, in Book U641, at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

BEING the same property conveyed unto Fred Rappaport and Joyce S. Rappaport by deed of Concord & Cumberland, LLC, a South Carolina limited liability company dated December 21, 2006, and recorded in the RMC Office for Charleston County on October 25, 2007, in Deed Book G-642, at page 66.
TMS#458-09-02-237

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #307 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U-641, at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to the Master Deed.

SAID PROPERTY is conveyed subject to all obligations, restrictions, limitations, conditions, covenants, easements, etc. contained in the above-referenced Master Deed, and to all other applicable covenants, restrictions and easements of record in the RMC Office for Charleston County, South Carolina.

BEING the same property conveyed to John Jackson Freeman by deed of Pamela Renee Queen dated July 2, 2013 and recorded July 16, 2013 in the RMC Office for Charleston County in Book0346, at Page 83.
TMS Number: 458-09-02-238

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #308 Concord and Cumberland Horizontal Property Regime, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, South Carolina Code of Laws (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

Together with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all easements, restrictions, and rights of way of record.

BEING the same property conveyed to Signature Charleston, LLC by deed of Concord & Cumberland, LLC, dated October 26, 2007 and recorded on November 1, 2007 in the Office of the RMC for Charleston County in Book X642 at Page 526.
TMS No. 458-09-02-239

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #401 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME**, a

horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-240

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as Unit #402 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all restrictions, easements and rights-or-way of record affecting the subject property.

BEING the same property conveyed to the Grantor herein by deed of Concord & Cumberland, LLC dated December 18, 2007 and recorded in Book Z645 at page 636 in the RMC Office for Charleston County.
TMS#: 458-09-02-241

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #403 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

Being the same property conveyed to Ecovest Development, LLC by Richard Schneider by deed of conveyance dated the 9th day of September, 2011, and recorded in the RMC Office for Charleston County, S.C., in Book 0206, page 483.
TMS: 458-09-02-242

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #404 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-243

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as UNIT #102 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U 641 at Page
739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
Tax ID #458-09-02-218

AND

ALL that certain Condominium Unit situate, lying and being in the City of Charleston, Charleston County, South Carolina, designated as **UNIT #101 CONCORD and CUMBERLAND HORIZONTAL PROPERTY REGIME,** a horizontal property regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed, dated October 17, 2007, and recorded in the RMC Office for Charleston County, South Carolina, in Book U641 at Page 739.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

This being a portion of the same property conveyed to Grantor herein by Deed from the City of Charleston, dated February 14, 2006, and recorded in the RMC Office Charleston County, South Carolina, in Book C-573 at Page 288.
TMS #458-09-02-217

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10-2955
TCC OF CHARLESTON, INC.	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	**ANSWER OF CONCORD & CUMBERLAND HPR TO PLAINTIFF'S AMENDED COMPLAINT (FORECLOSURE)**
	)	
Defendants.	)	
	)	

TO: TCC OF CHARLESTON, INC. AND ITS ATTORNEYS:

Defendant Concord & Cumberland HPR hereby answers the Amended Complaint of Plaintiff as follows:

FIRST DEFENSE

1. Defendant Concord & Cumberland HPR denies each and every allegation of the Amended Complaint not specifically admitted hereinafter.

2. Defendant Concord & Cumberland HPR admits the allegations of Paragraph 1 upon information and belief.

3. Defendant Concord & Cumberland HPR lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 2.

4. Defendant Concord & Cumberland HPR admits the allegations of Paragraph 3.

5. Defendant Concord & Cumberland HPR craves reference to public record filings and denies any allegations of Paragraphs 4 and 5 inconsistent therewith.

6. Defendant Concord & Cumberland HPR admits that this matter, as between it and Plaintiff, is subject to arbitration in accordance with the contract entered into between them for the subject project. The allegations of Paragraph 6, as directed to other Defendants, state conclusions of law to which the Defendant Concord & Cumberland HPR is not required to respond.

As to the First Cause of Action
(Foreclosure of Mechanics Lien)

7. Answering Paragraph 7, Defendant Concord & Cumberland HPR repeats and realleges the above Paragraphs of its Answer as if fully set forth herein verbatim.

8. Defendant Concord & Cumberland HPR admits that it contracted with the Plaintiff, but craves reference to the terms thereof and denies any allegations of Paragraph 8 inconsistent therewith. Defendant Concord & Cumberland HPR lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 8.

9. Defendant Concord & Cumberland HPR denies the allegations of Paragraph 9 and demands strict proof thereof.

10. Answering Paragraph 10, Defendant Concord & Cumberland HPR admits that Plaintiff furnished material and services to the subject project and that the last date of furnishing was March 17, 2016. Defendant Concord & Cumberland HPR denies the remaining allegations of Paragraph 10.

11. Defendant Concord & Cumberland HPR denies the allegations of Paragraphs 11, 12, 13, 14, 15, 16 and 17.

As to the Second Cause of Action
(Breach of Contract)

12. Answering Paragraph 18, Defendant Concord & Cumberland HPR repeats and realleges the above Paragraphs of its Answer as if fully set forth herein verbatim.

13. Defendant Concord & Cumberland HPR denies the allegations of Paragraph 19.

As to the Third Cause of Action
(Breach of Contract)

14. Answering Paragraph 20, Defendant Concord & Cumberland HPR repeats and realleges the above Paragraphs of its Answer as if fully set forth herein verbatim.

15. Defendant Concord & Cumberland HPR denies the allegations of Paragraphs 21 and 22.

ADDITIONAL AFFIRMATIVE DEFENSES

Although Defendant Concord & Cumberland HPR has not yet had the opportunity to fully investigate or conduct discovery regarding these claims, Defendant Concord & Cumberland HPR believes there may be facts establishing the availability of certain affirmative defenses. In order to preserve those defenses, Defendant Concord & Cumberland HPR alleges the following:

SECOND DEFENSE

Plaintiff fails to state facts sufficient to constitute a cause of action and, therefore, the claims should be dismissed pursuant to Rule 12(b)(6), SCRCP.

THIRD DEFENSE

Plaintiff failed to satisfy the requirements of S.C. Code § 29-5-10 et seq., and, therefore, Plaintiff's lien shall be dissolved and the foreclosure action shall be dismissed.

FOURTH DEFENSE

Plaintiff's notice and certificate of mechanic's lien and statement of account were filed or served on or after the ninety-first day after the day on which it ceased to labor on or furnish labor or materials to the subject project, and, therefore, Plaintiff's lien shall be dissolved and the foreclosure action shall be dismissed pursuant to S.C. Code § 29-5-90.

FIFTH DEFENSE

Plaintiff's suit to enforce its lien was not commenced within six months after the day on which it ceased to labor on or furnish labor or materials to the subject project, and, therefore, Plaintiff's lien shall be dissolved and the foreclosure action shall be dismissed pursuant to S.C. Code § 29-5-120.

SIXTH DEFENSE

Plaintiff's claim is barred, as Defendant Concord & Cumberland HPR has paid in full for all labor and materials provided.

SEVENTH DEFENSE

Plaintiff comes to the Court with unclean hands and, therefore, is barred from recovery in equity.

EIGHTH DEFENSE

Plaintiff's claims are barred by the equitable doctrines or waiver, estoppel or laches.

NINTH DEFENSE

Plaintiff's claimed damages must be reduced or eliminated by any amounts Concord & Cumberland HPR has or will incur as a result of Plaintiff's incomplete, incorrect, deficient, damaged or non-conforming work.

TENTH DEFENSE

Plaintiff cannot recover under its quantum meruit cause of action, as an express contract exists between it and Defendant Concord & Cumberland HPR that addresses potential recovery for the same work.

ELEVENTH DEFENSE

Plaintiff's claims must be dismissed for insufficiency of process or insufficiency of service of process.

TWELFTH DEFENSE

Plaintiff's claim must be dismissed in whole or in part for failure to join a party under Rule 19.

RESERVATION AND NON-WAIVER

Defendant Concord & Cumberland HPR reserves and does not waive any additional defenses or claims that it may currently have or which may later be revealed though discovery or otherwise.

WHEREFORE, having fully answered the Amended Complaint of Plaintiff, Defendant Concord & Cumberland HPR requests that the same be dismissed with prejudice and for judgment awarding the costs and attorneys' fees incurred in defense of the action and for such other relief as may be just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

F. Cordes Ford IV (S.C. Bar No. 71644)
5 Exchange Street (29401)
P.O. Box 999
Charleston, SC 29402
(843) 722-3400
cford@wcsr.com

Attorney for Defendant, Concord & Cumberland HPR

October 31, 2016
Charleston, SC

CERTIFICATE OF SERVICE

I do hereby certify that on this 31st day of October, 2016, I served a copy of the within **ANSWER OF CONCORD & CUMBERLAND HPR TO AMENDED COMPLAINT** on all interested parties in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid and addressed to:

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Carol M. Lariviere

ELECTRONICALLY FILED - 2020 Jan 17 9:03 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
TCC OF CHARLESTON, INC.,	)	CASE NO. 2016-CP-10-2955
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CONCORD AND CUMERLAND, LLC., CONCORD & CUMBERLAND HPR, LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISO J.MACGILLNRAY, TERESA MACGILLIVRAY, PAMELA L.VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K.HENDERSON, JAMES R. CLARICE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL,II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMSPON F/KA MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, BETTY Y. SEGAL, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam,	)	**DEFENDANT BETTY L. BEATTY'S ANSWER TO AMENDED COMPLAINT**
	)	
Defendants.	)	
	)	

TO: ANDREW K. EPTING, JR., ESQUIRE AND MICHELLE N. ENDERMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

ELECTRONICALLY FILED - 2020 Jan 17 9:03 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

Defendant, Betty L. Beatty (hereinafter referred to as "Beatty" or "Defendant"), by and through her undersigned attorneys, hereby files this Answer to Plaintiff's Amended Complaint as follows:

1. Each and every allegation not specifically admitted or modified below is hereby denied.

2. Defendant admits Paragraphs 1 through 5, upon information and belief.

3. Paragraph 6 is denied.

4. Responding to Paragraph 7, Defendant repeats and realleges Paragraphs 1 through 3 above.

5. Paragraph 8 is denied.

6. Responding to Paragraphs 9 and 10, Defendant craves reference to the contract mentioned therein and denies all allegations inconsistent therewith.

7. Paragraphs 11 through 17 are denied.

8. Responding to Paragraph 18, Defendant repeats and realleges Paragraphs 1 through 7 above.

9. Paragraph 19 is denied.

10. Responding to Paragraph 20, Defendant repeats and realleges Paragraphs 1 through 9 above.

11. Paragraphs 21 and 22 are denied.

12. To the extent required, Plaintiff's prayer for relief following Paragraph 22 is denied.

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FURTHER ANSWERING BY WAY OF AFFIRMATIVE DEFENSES

For a First Affirmative Defense
(Failure to State a Claim)

13. One or more of Plaintiff's claims fails to state facts sufficient to constitute a cause of action against this Defendant. Therefore, Plaintiff's claims against this Defendant should be dismissed under Rule 12(b)(6), SCRCP with prejudice.

For a Second Affirmative Defense
(Noncompliance with Mechanic's Lien Statute)

14. Plaintiff failed to comply with certain requirements of S.C. Code §§ 29-5-10, et seq. by failing to properly serve its Amended Notice and Certificate of Mechanic's Lien within ninety (90) days of the last day work was performed or materials provided to the property.

For a Third Affirmative Defense
(Duty to Mitigate)

15. Plaintiff had an obligation to mitigate its damage but has failed to do so in whole or in part.

For a Fourth Affirmative Defense
(Lack of Notice)

16. Plaintiff failed to give Defendant proper notice as required.

For a Fifth Affirmative Defense
(Compliance with Industry Customs, Practices, and Standards)

17. Same or all services that Plaintiff may have provided on this project violated construction industry customs, practices, and standards applicable to the claims of Plaintiff.

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For a Sixth Affirmative Defense
(Contract Bars Recovery in Equity)

18. Plaintiff cannot recover under its quantum meruit cause of action, as an express contract exists between it and Defendant Concord & Cumberland HPR that addresses potential recovery for the same work.

For a Seventh Affirmative Defense
(Unclean Hands)

19. Plaintiff's claims are barred by the doctrine of unclean hands.

For an Eighth Affirmative Defense
(Improper Service)

20. Plaintiff's failed to properly serve Defendant with one, some, or all of the relevant documents in this case.

For a Ninth Affirmative Defense
(Additional Defenses)

21. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and incorporates by reference any applicable defenses asserted by co-defendants, and further reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiff's Amended Complaint and asserted these affirmative defenses, Defendant Betty L. Beatty prays that Plaintiff's claims be dismissed, that the Plaintiff's Amended Lis Pendens be removed from the public record, that the court declare the Amended Notice and Certificate of Mechanic's Lien be declared invalid and removed from the public record, that the court award this Defendant her reasonable attorney's fees, costs and expenses and for such other and further relief as this Court deems proper.

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YOUNG CLEMENT RIVERS, LLP

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Charleston, South Carolina

Dated: January 17, 2020

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF CHARLESTON)**	**IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT**
TCC OF CHARLESTON, INC. Plaintiff, v. LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JOHN FREEMAN, JO-ANN COOPER, BETTY Y. SEGAL, by and through her Assignee, DONALD D. LEONARD, ROBERT M. LEVIN AND BONITA K. LEVIN, DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam, Defendants.	Case No.: 2016-CP-10-2955 **SECOND AMENDED COMPLAINT**

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The Plaintiff, TCC of Charleston, Inc. ("TCC"), complaining of the Defendants above named, would allege and show this Honorable Court:

1. That the Plaintiff is a corporation organized and existing pursuant to the laws of the State of South Carolina and does business in the County of Charleston, State of South Carolina.
2. That the Defendant, Concord & Cumberland, HPR ("the HPR"), is a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located in Charleston, Charleston County, South Carolina, existing by virtue of a Master Deed, and governed by Bylaws. **Exh. A** (Master Deed and Bylaws).
3. LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, DONALD D. LEONARD, individually and as a result of the assumption of liabilities of Betty Y. Segal, ROBERT M. LEVIN AND BONITA K. LEVIN,

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DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam are unit owners of the property which is the subject of this action.

4. That the property which is the subject of this action is real, personal, and intangible property ("The Property") situated in Charleston County, South Carolina. The real property is described in Exhibit A. The Defendants own and control some or all of The Property upon which this suit is filed and the HPR through the Master Deed has ownership interest in tangible and intangible property.

5. That this matter was subject to arbitration which arbitration was concluded, and Judge Jefferson lifted the stay on January 30, 2020 and refused to vacate the Panel's August 12, 2019 award on May 1, 2020, allowing this action to proceed.

6. That Plaintiff is entitled to continue to pursue its remedies and conduct discovery as to all Defendants and asks this Court to allow this litigation to proceed following Judge Jefferson's ruling regarding the HPR's motion to vacate the arbitration award.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

7. The Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

8. That the Defendant, Concord & Cumberland HPR, on behalf and with the approval and consent of the Defendant property owners, contracted with the Plaintiff for labor and materials furnished and actually used by the Plaintiff on the structures situated on the subject property.

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9. That this contract was amended to provide that certain work would be performed on a cost-plus basis.

10. That in accordance with their agreements the Plaintiff furnished the agreed-upon material and services to the Defendants which were used in the work, and such materials and services benefited and improved The Property the subject of this action.

11. That at all times during the performance of the contract by the Plaintiff, the property was owned and/or controlled by the Defendants, and the work of the Plaintiff was approved as the improvements were made.

12. That the Plaintiff timely gave the Defendants notice of the statement of account for Mechanic's Lien and timely served and filed its lien relative to the date of last work as determined by the Panel of arbitrators.

13. That the Plaintiff has filed in the Office of the Register of Deeds for Charleston County its Mechanic's Lien.

14. That the remedy of foreclosure and this suit was stayed pending the outcome of the arbitration. The Panel of arbitrators rendered its decision which has been confirmed by the Circuit Court on May 1, 2020.

15. That Plaintiff now seeks its remedies pursuant to the laws of foreclosure and the allegations of this complaint.

16. That Plaintiff asks that this Court assess attorneys' fees pursuant to statute.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

17. The Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

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18. That the Panel of arbitrators held that the HPR breached its agreement with Plaintiff by failing to pay sums due.

19. That the individual Defendants are estopped to deny they are obligated to Plaintiff as a result of the panel's order as at all times the HPR acted on their individual behalf.

20. That Plaintiff requests judgment against each individual Defendant in the amount of their percentage ownership.

21. That the Plaintiff requests that it be allowed to levy and execute on the Panel Award against any property, tangible or intangible of the HPR.

FOR A THIRD CAUSE OF ACTION
(Equity)

22. The Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

23. That the disputes between Plaintiff and the HPR were referred to arbitration by order of this Court.

24. That counsel for Plaintiff and for the HPR agreed that the Panel of arbitrators would determine who is the prevailing party.

25. That the Panel of arbitrators determined that Plaintiff was the prevailing party.

26. That the HPR subsequently argued that the Panel of arbitrators lacked jurisdiction to award attorneys' fees and that argument was for the Court.

27. That Plaintiff seeks to recover its fees as the prevailing party.

28. That the HPR's bylaws obligate the HPR Board of Directors to pay the debts of the association.

29. That Plaintiff seeks to have the existing debt paid to it and the remaining debt determined and then paid.

30. That the HPR holds tangible and intangible assets that should be paid over to Plaintiff.

WHEREFORE, Plaintiff demands judgment as follows:

A. On its First Cause of Action, Plaintiff demands that its Mechanic's Lien be foreclosed upon, fees assessed, that the property(s) be seized and sold, and that the proceeds from the sales, after deducting all lawful charges and expenses, be used to satisfy the amounts due to Plaintiff.

B. On its Second Cause of Action, Plaintiff demands judgment against all Defendants, in the amount of their respective percentage ownership and that the Court marshal all funds in payment of the debt and such further sums as are found to be due.

C. On its Third Cause of Action, Plaintiff requests it be allowed to pursue the remainder of its claim and receive a full measure of damage.

D. For such other relief as this Court deems just and proper.

[signature on following page]

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Respectfully submitted:

EPTING & RANNIK, LLC

This 19th day of August, 2020
Charleston, S.C.

s/Jaan G. Rannik
Jaan G. Rannik, Esq.
46A State Street
Charleston, South Carolina 29401
Phone: 843-377-1871
Fax: 843-377-1310
jgr@epting-law.com

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

VERIFICATION

I, John David Griffith, being first duly sworn, declare that I am an officer of the Plaintiff TCC OF CHARLESTON, INC., and have been duly authorized by said Corporation to make this Verification. I have read the foregoing Complaint and know the contents thereof and that based upon my own personal knowledge, the facts as alleged therein are true and correct.

TCC OF CHARLESTON, INC.

Sworn to before me this 19th
day of August, 2020

Notary Public for South Carolina
My Commission Expires: 6/16/2027

SONIA MEISENBACH NOTARY PUBLIC MY COMMISSION EXPIRES 6/16/2027 SOUTH CAROLINA

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EXHIBIT A

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THIS MASTER DEED IS SUBJECT TO BINDING ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

STATE OF SOUTH CAROLINA	)	MASTER DEED
	)	CONCORD AND CUMBERLAND
COUNTY OF CHARLESTON	)	HORIZONTAL PROPERTY REGIME

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, Concord & Cumberland, LLC (the "Developer") is a South Carolina limited liability company having its principal place of business located at 1401 Main Street, Suite 650, Columbia, South Carolina 29201; and

WHEREAS, the Developer is the owner of that certain real property (the "Land") more fully described in Exhibit "A" attached hereto located within the community known as Concord and Cumberland, which community includes certain improvements constructed by the Developer in the City of Charleston, Charleston County, South Carolina; and

WHEREAS, the Developer now deems it appropriate to organize a horizontal property regime by duly executing and recording this Master Deed in the Office of the Register of Mesne Conveyances ("RMC") for Charleston County, South Carolina; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Developer hereby submits the Land more fully described in Exhibit "A" attached hereto and all improvements located thereon, together with all easements, rights and appurtenances thereunto belonging, to the provisions of Sections 27-31-10 et seq. of the South Carolina Code of Laws (1976) and hereby creates thereon a horizontal property regime (sometimes termed "condominium ownership") to be known as CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME, subject to the following:

ARTICLE I

Definitions

Section 1.1 Definitions. Unless defined herein or unless the context requires otherwise, the words defined in Section 27-31-20, South Carolina Code of Laws (1976), when used in this Master Deed or any amendment hereto, will have the meaning therein provided. The following words, as well as other defined terms set forth herein, when used in this Master Deed or any amendment or supplement hereto, unless the context requires otherwise, will be deemed to include the singular and plural forms as the context requires and have the following meanings:

"Annual Assessment Period" means the fiscal year of the Association established by the Association's Board of Directors.

"Assessment" means the amount assessed against an Owner and his Unit from time to time by the Association in the manner provided herein.

"Assigned Value" means the value assigned to each Unit in accordance with Exhibit "C" attached hereto and utilized for purposes of computing the Percentage Interest appurtenant to such Unit, which Assigned Value will not constitute the sales price of the Unit or be relied upon as a representation of the actual value of the Unit.

"Association" means Concord and Cumberland Horizontal Property Regime, being an association of and limited to Owners of the Units located in the Regime in the form of a nonprofit, non-stock membership association which will be incorporated in accordance with the Articles of Incorporation attached hereto as Exhibit "D". In exercising any right or easement granted or reserved to it or to its Board of Directors hereunder, such right or easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.

"Board of Directors" or "Board" means the Board of Directors of the Association, and "director" or "directors" means a member or members of the Board.

"Building" means a structure containing Units.

"Bylaws" means the Bylaws of the Association attached hereto as Exhibit "E," as amended from time to time in accordance with the terms of the Bylaws and this Master Deed.

"Common Elements" means all of the Regime property after excluding the Units, including the following:

1. Easements through the Units for conduits, ducts, plumbing, chimneys, wiring, and other facilities for the furnishing of utility services to Units and the Common Elements; provided, however, such easements through a Unit will be only according to the Plans for the Building, or as the Building is constructed unless otherwise approved by the Unit Owner.

2. An easement of support in every portion of a Unit which contributes to the support of a Building.

3. Easements through the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements.

4. Installation for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the one containing the installation, which installation will include ducts, plumbing, wiring, and other facilities for the rendering of such services.

5. The tangible personal property required for the maintenance and operation of the Units, even though owned by the Association.

When used herein, "Common Elements" will be deemed to include any service provided by the Association in furtherance of the uses and purposes to which any of the aforesaid facilities are put.

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"Common Expense(s)" means (a) all expenses incident to the administration of the Association and maintenance, repair and replacement of the Common Elements and the Limited Common Elements, after excluding there from such expenses which are the responsibility of an Owner; (b) expenses determined by the Association to be Common Expenses and which are lawfully assessed against Owners; (c) expenses declared to be Common Expenses by the Condominium Act or the Regime Documents; and (d) reasonable reserves established for the payment of any of the foregoing.

"Condominium Act" means the Horizontal Property Act of South Carolina, South Carolina Code of Laws (1976), Section 27-31-10 to Section 27-31-300, as may be amended from time to time.

"Developer" means Concord & Cumberland, LLC, a South Carolina limited liability company, its successors and assigns.

"Eligible Mortgagee" shall mean the holder of an Institutional Mortgage on a Unit that has requested notice as provided in this Master Deed.

"Institutional Mortgage" will mean and refer to a first lien Mortgage (prior to all other Mortgage liens) held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental insurer or purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation. Such term will also mean and refer to the holder of any Mortgage securing a loan made by the Developer, its affiliates, successors, or assigns.

"Land" means the Land which is described in Exhibit "A" attached hereto, as said exhibit may be amended from time to time in accordance with the provisions of this Master Deed.

"Limited Common Element" means that portion of the Common Elements set aside and allocated for the exclusive use of the Owner of the Unit to which attached or assigned, and will include that portion of any Common Elements that is pierced by the Unit's interior stairs, if any; the Unit's chimney structure and flue, if any; exterior stairs exclusively serving the Unit, if any; air conditioner units and condensers and hot water heaters located outside of the Unit, and the spaces occupied by same; and any balcony, deck or patio adjacent to, and exclusively serving, the Unit. The term shall specifically include the items discussed in Section 3.4.

"Master Deed" means this document, as amended from time to time.

"Member" means each Owner who is a member of the Association.

"Mortgage" will mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Unit which is held by a bank, trust company, insurance company or the Developer.

"Mortgagee" will mean and refer to the holder of a Mortgage.

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"Nonprofit Corporation Act" means and refers to the South Carolina Nonprofit Corporation Act of 1994, South Carolina Code Sections 33-31-101, et. seq., as amended.

"Owner" means the record owner, whether one or more persons, of fee simple title in and to any Unit; excluding, however, those persons having such interest merely as security for the performance of an obligation.

"Percentage Interest" means the undivided percentage interest owned by each Owner as a tenant-in-common in the Common Elements. "Total Percentage Interest" means the aggregate of all the Percentage Interests.

"Plans" mean and include the site plan and the floor plans of the Project which are filed as an attachment to this Master Deed showing the boundaries of the Land, the horizontal and vertical location of the improvements and Common Elements of the Project thereon and certified by a licensed engineer or architect in accordance with the provisions of the Condominium Act.

"Project" means, collectively, the Land, the Building and all other improvements and structures located thereon, and all easements, rights and appurtenances belonging thereto, submitted to the Condominium Act by this Master Deed, as amended from time to time in accordance with the provisions hereof.

"Regime" means the horizontal property regime established by this Master Deed, including all appurtenances and incidents of ownership attendant therewith.

"Regime Documents" means and includes this Master Deed, all Exhibits hereto, the Articles of Incorporation of the Association, the Bylaws and the Rules and Regulations, all as amended from time to time in accordance with the provisions thereof or in accordance with the laws of the State of South Carolina.

"Rules and Regulations" means the rules and regulations from time to time promulgated by the Board of Directors governing the use of the Common Elements and Units.

"Transition Period" means the time period commencing on the date of recording of this Master Deed and ending on the earlier of:

1. Four (4) months after the conveyance in the ordinary course of business of seventy-five percent (75%) of the maximum number of Units to be contained in the Project to persons other than the Developer; or

2. Three (3) months following the date the Developer surrenders its authority to appoint and remove the entire Board of Directors and officers of the Association under Section 13.1 below, by an express amendment to this Master Deed executed and filed of record by Developer; or

3. Three (3) years after the first Unit is conveyed.

"Trustee" means the Board of Directors acting as a fiduciary for the benefit of the Association and the Owners in holding certain funds and providing services as provided herein,

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or such bank or trust company authorized to do trust business in the State of South Carolina and appointed therefor by the Board of Directors.

"Unit" means that part of the Project intended principally for residential use and constituting an "apartment" as defined in the Condominium Act, and situate within the Unit boundaries described in Exhibit "B" attached hereto and in the architect's plans incorporated in and made a part of Exhibit "B", as amended from time to time in accordance with the provisions of this Master Deed. Each Unit will be identified in the architect's plans incorporated in and made a part of Exhibit "B" attached hereto by a specific letter, number or combination thereof, which identification will be sufficient to identify the Unit for all purposes. "Unit" will also mean all the components of ownership held by an Owner, including not only the rights and interests of the Owner in and to the Unit, but also the rights of use of and the undivided interest in the Common Elements. **The Units are unfinished shells to be upfitted and finished by the Owners in accordance with this master Deed and the Rules and Regulations.**

ARTICLE II

Administration

Section 2.1 The Association. The administration of the Regime will be the responsibility of the Association, which will be made up of all the Owners of Units in the Regime. The Regime Documents, as the same may be amended from time to time, will govern the Association and the Owners.

Section 2.2 Membership. Each Owner of a Unit, including the Developer, will be a Member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Unit and ownership of a Unit will be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include any Mortgagee or any other person who holds an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

Section 2.3 Agreements. The Association will be and hereby is authorized to enter into such contractual arrangements, including without limitation, management contracts, as it may deem necessary or desirable for the administration and operation of the Regime, subject, however, to the following limitations:

(a) Any Regime management agreement entered into during the Transition Period will provide that such contractual arrangement is subject to termination without cause at any time after the expiration of the Transition Period without a penalty upon not more than ninety (90) days prior written notice from the Association, and failing to contain such a provision, the Association will not be bound directly or indirectly by such contractual arrangement following the expiration of such `90-day period.

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Each Owner by acquiring or holding an interest in any Unit thereby ratifies and agrees to be bound by the terms and conditions of all such contractual arrangements entered into by the Board of Directors on behalf of the Association prior to the conveyance of the Unit to the Owner.

Section 2.4 Books and Records. The Association will keep full and accurate books of account and financial records showing all receipts and disbursements. In particular, the books will be maintained with a detailed account, in chronological order, of the receipts and expenditures affecting the Project and its administration, and specifying the maintenance and repair expenses of the Common Elements as well as other expenditures incurred. Vouchers accrediting the entries made thereupon will also be maintained in chronological order.

Section 2.5 Financial Statements. No later than 120 days after the close of any fiscal year of the Association, the Association will cause financial statements for such fiscal year to be prepared (but not necessarily certified) by a licensed accountant. Copies of the financial statements will be available to any Owner upon written request to the Association. The Association may charge a reasonable fee for copying such statements.

Section 2.6 Access to Information. The Association will make available to Owners of any Unit and to any Mortgagee current copies of the Regime Documents and the books, records, vouchers, contractual arrangements and financial statements of the Association. "Available" means available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association may charge reasonable copying costs for any requested copies or extracts. Any party entitled to the benefits of this Section will be permitted to designate one or more agents who will be permitted to represent said party in connection with any and all reviews of the Regime Documents and books, records, contractual arrangements and financial statements of the Association.

Section 2.7 Rules and Regulations. The Board of Directors will be entitled to promulgate reasonable Rules and Regulations from time to time, which will be binding on the Association and all Owners and lessees of Owners, their families, invitees and guests, regarding the use and enjoyment of Units and Common Elements. Copies of the current Rules and Regulations will be furnished to Owners and lessees of Owners upon request.

Section 2.8 Professional Property Manager. The Board of Directors may retain a professional property management company to manage the day-to-day affairs of the Association.

Section 2.9 Collections and Remission of Optional Cable Television, Telephone and Other Charges; Master Utility Charges. In the event the Association at any time secures any optional cable, telephone or other service, including broadband communications access, the Association will be entitled to collect fees charged to those Unit Owners who elect to receive such optional service made available to the Unit Owners through the Regime and remit the same to the provider thereof on behalf of such Unit Owners. Such elective costs and expenses will not be deemed a Common Expense hereunder, but will be charged to the Units Owners separately from their Assessment. Furthermore, the Board of Directors will pay any master utility meter charge, base cable to all Units, or other blanket utility fee for services to all Units not otherwise separately metered or charged to individual Units, including, but mot limited to water service. Such master cost and expense will be a Common Expense hereunder; provided, however, in the

event actual costs exceed the budgeted costs therefor, such unbudgeted excess may be prorated and charged to the Units Owners separately from their Assessment, and will not require payment thereof from any other budget line item surplus or a Special Assessment or other extraordinary measure of collection.

Section 2.10 Maintenance of City of Charleston Storm Drainage Easement. The Association shall perform, and does hereby assume, all obligations to be performed by way of maintenance, repair and replacement of the "Easement Area" as is necessary to keep it in good and sufficient condition to handle the natural flow of water over, under and across the Easement Area, as the same is further identified and provided in that certain Drainage Easement and Maintenance Agreement by and between the Developer and the City of Charleston, South Carolina dated July 24, 2007 and recorded in the RMC in Book S-634, Page 417, which instrument is hereby incorporated herein by reference. All costs and expenses in discharge of such obligations shall constitute a Common Expense hereunder.

ARTICLE III

Property Rights

Section 3.1 Units. Each Unit will for all purposes constitute a separate parcel of real property which, subject to the provisions of this Master Deed, may be owned in fee simple and which may be conveyed, transferred, leased and encumbered in the same manner as any other real property. Each Owner, subject to the provisions of the Condominium Act and this Master Deed, will be entitled to the exclusive ownership and possession of his Unit.

Section 3.2 Description of Units. The dimensions, area and location of the Units are as set forth on Exhibit "B" attached hereto and are generally intended to include the following:

(a) Each Unit contains all space within the area bounded by the unfinished interior surface of the perimeter walls, windows, window frames, doors and door frames, and the lowest concrete floor and the uppermost ceiling of such Unit.

(b) Each Unit is an unfinished shell and has a conditional Certificate of Occupancy from the applicable governmental authority (conditioned upon the Unit Owner upfitting and finishing the Unit and obtaining a final Certificate of Occupancy). The Developer has provided stub outs for electrical, telephone, plumbing, and other utilities to the floors the Units are located on. Each Unit includes the mechanical and plumbing stubs, electrical panel box, exposed HVAC ducts and exposed fire sprinkler systems of the Unit as herein described.

(c) Notwithstanding the description of the boundaries set forth above, the Units shall be deemed to include the following: all portions of the plumbing, heating, electrical, and air conditioning systems (including compressors, components, pipes, wires, conduits, ducts, and the like) serving only that Unit even if partially outside the boundaries of the Unit; all windows, glass surfaces, and doors (including window and door frames and the hardware thereof) serving the Unit; all window screens and screens on any screened balcony; and any fireplace or stove hearth, facing brick, tile or firebox; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines within the Unit but serving more than one Unit. In interpreting deeds and plans, the existing physical boundaries

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of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plan, regardless of settling or lateral movement of the Building, and regardless of minor variance between the boundaries shown on the plans or in a deed and those of the Unit.

(d) The ownership of each Unit shall include, and there shall pass with each Unit as an appurtenance thereto whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

Section 3.3 Unit Construction, Upfitting and Finishing. All finishes, including interior walls, doors, electrical, cable, appliances, lighting, cabinets, flooring, plumbing fixtures, counters, vanities, outlet covers, door hardware, sound and impact isolation materials, moldings and all other finishes not specifically described herein as being a part of the Unit are the sole obligation of the Owners to construct, upfit and complete.

(a) An Owner shall not perform any Unit construction or upfitting until **all** of the following have occurred (and remain in place throughout the entire construction and upfitting process):

(1) The Owner has taken title to the Unit;

(2) The Owner has submitted the plans to the Association for upfitting and finishing the Unit for review and the Association has given its written approval;

(3) The Owner's plans for upfitting and finishing the Unit are in compliance with all federal, state, county and city of Charleston laws, ordinances, rules, and regulations;

(4) The Owner has secured proper liability and builder's risk insurance covering the Unit's upfitting and finishing work as specified and required by the Association (as evidenced by certificates of insurance showing said insurance coverage and naming the Association as Additional Insured, which must be on file with the Association); and

(5) The Owner is not in violation of any of the Regime Documents and has followed and met all requirements contained in the Rules and Regulations concerning the Unit's upfitting and finishing work.

(b) Unless otherwise stated in the Rules and Regulations or approved in writing by the Association or Developer, Unit upfitting and finishing work shall be performed only during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and said work shall not interrupt the utility services to other Units or the Common Elements. The Rules and Regulations may include, but shall not be limited to, restrictions on the use of elevators and the type of equipment and materials used in the upfitting and finishing work.

(c) Owners shall be jointly and severally liable for any damage to, or adverse affects upon, other Units or the Common Elements caused by their construction or upfitting work.

(d) Unless otherwise stated in the Rules and Regulations or approved in writing by the Association or Developer, upfitting and finishing work must be completed within twelve (12) months after the Unit Owner took title to the Unit, as evidenced by a final Certificate of Occupancy from the appropriate governmental authority. The Owner is solely responsible for obtaining the Unit's final Certificate of Occupancy.

(e) If an Owner fails to comply with any of the Regime Documents regarding the Unit's upfitting and finishing work, the Association may: halt all upfitting and finishing work in the Unit until such time as the Owner comes back into compliance; impose fines or Specific Assessments against the Owner (said assessments would be both the personal obligation of the Owner and a lien on the Unit); deny Owner access to and enjoyment of all Common Element facilities and amenities; and any and all additional remedies for breach of this Master Deed available to the Association. The aforementioned remedies available to the Association are cumulative and not mutually exclusive.

(f) Developer reserves the right to conduct any and all construction, upfitting, and finishing work on Units it still owns without having to obtain approval of the Association and without being subject to the restrictions set out herein, in the Rules and Regulations, and in any other Regime Document.

(b) Each Unit will include the heating, hot water and air conditioning apparatus exclusively serving the Unit whether or not located within the boundaries of the Unit.

Section 3.3 Modification of Units. The Developer, on behalf of itself, its successors and assigns, hereby reserves the right to modify or reconstitute, at any time and from time to time and irrespective of whether the Transition Period has expired, one or more Units owned by Developer or its affiliates without the consent of the Association or any Owner other than those who may be directly affected; provided, however, that the total Assigned Values assigned to the Units so affected will not change even though the same may be reallocated among such changed Units. If Developer makes any changes in Units pursuant to this Section, such changes will be reflected by an amendment of this Master Deed which will be duly recorded in the Charleston County RMC. Such amendment will not require the consent of Owners other than the Developer.

Section 3.4 Common Elements and Limited Common Elements.

(a) Percentage Interest. The Owners will own the Common Elements as tenants-in-common, with each Unit having, appurtenant thereto, the Percentage Interest in the Common Elements set forth in Exhibit "C" attached hereto; provided, however, that the use of the Limited Common Elements will be restricted as set forth in Section 3.4(e). The Percentage Interest appurtenant to each Unit has been determined by dividing the Assigned Value of the respective Unit as shown on Exhibit "C" by the aggregate Assigned Value of all Units as shown on Exhibit "C." The value assigned to any Unit in Exhibit "C" does not represent the sales price

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or market value of the Unit and will only be utilized for purposes of computing the Percentage Interest appurtenant to the respective Unit.

(b) Inseparability of Percentage Interests. The Percentage Interest in the Common Elements cannot be separated from the Unit to which it appertains and will be automatically conveyed or encumbered with the Unit even though such Percentage Interest is not expressly mentioned or described in the deed or other instruments.

(c) No Partition. The Common Elements will remain undivided and no right to partition the same or any part thereof will exist except as provided in the Condominium Act, the Bylaws and this Master Deed.

(d) Use of Common Elements. The Common Elements will be used in accordance with the intended purposes without hindering the exercise of or encroaching upon the rights of other Owners. The Board of Directors will, if any question arises, determine the purpose for which a part of the Common Elements is intended to be used. All Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations from time to time in effect governing the use of the Common Elements.

(e) Use of Limited Common Elements. Anything to the contrary contained herein notwithstanding, ownership of each Unit will entitle the Owner or Owners thereof to the exclusive use of the Limited Common Elements adjacent and appurtenant to such Unit, which exclusive use may be delegated by such Owner to persons who reside in the Unit. All Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations from time to time in effect governing the use of the Limited Common Elements. An Owner will be responsible for general maintenance and repair of the Limited Common Elements appurtenant to his Unit as set forth in Article VIII, Section 8.3 below.

(f) Reservation of Easements. The Common Elements will be subject to all easements and use reserved by the Developer hereunder.

Section 3.5 Status of Title of Project. The Developer represents to the Association and all the Owners that, as of the effective date hereof, the Developer has marketable, fee simple title to the Project. The rights and interests of all Owners in and to the Regime will be subject only to (i) liens for real estate taxes for the current year and subsequent years; (ii) existing and/or recorded easements, conditions, covenants, declarations, reservations and restrictions including, without limitation, those set forth in this Master Deed; (iii) easements and use rights, if any, reserved by the Developer hereunder; and (iv) applicable governmental regulations, including zoning laws, which may be imposed upon the Project from time to time.

Section 3.6 Limited Warranty From Developer. FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF CONSTRUCTION (BEING THE LATER OF SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT, OR THE DATE A CERTIFICATE OF OCCUPANCY IS ISSUED THEREFOR), THE DEVELOPER SHALL AT NO COST TO THE ASSOCIATION REPAIR OR REPLACE (IN THE DEVELOPER'S DISCRETION) ANY PORTIONS OF THE COMMON ELEMENTS (EXCEPT FIXTURES, ACCESSORIES AND APPLIANCES COVERED BY SEPARATE

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WARRANTIES OF THEIR RESPECTIVE MANUFACTURERS) WHICH ARE DEFECTIVE AS TO MATERIALS OR WORKMANSHIP. THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND THE DEVELOPER DISCLAIMS ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DEVELOPER SHALL BE LIMITED TO SUCH REPAIR OR REPLACEMENT AND THE DEVELOPER SHALL NOT BE LIABLE FOR DAMAGES OF ANY NATURE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED TO ARISE OUT OF THE LAW OF CONTRACT, TORT OR OTHERWISE, OR PURSUANT TO STATUTE OR ADMINISTRATIVE REGULATION. Each Owner, in accepting a deed from the Developer or any other party to a Unit, expressly acknowledges and agrees that this Section establishes the sole liability of the Developer to the Association and the Owners related to defects in the Common Elements and the remedies available with regard thereto. At the end of the one (1) year warranty period referred to hereinabove in this Section 3.6, the Developer will assign to the Association in writing all of its rights, claims, causes of action and demands which it has or which may thereafter accrue against all other people who may be responsible for the design and/or construction of the Common Elements.

(a) Association's Obligation. The Association will perform necessary and regular maintenance and take care of the Common Elements so as to prolong the life of the Common Elements' materials and construction.

ARTICLE IV

Assessments

Section 4.1 Creation of Lien and Personal Obligation for Assessments. Each Unit is and will be subject to a lien and permanent charge in favor of the Association for the Assessments set forth herein. Each Assessment, together with interest thereon and cost of collection thereof as hereinafter provided, will be a permanent charge and continuing lien upon the Unit against which it relates, and will also be the joint and several personal obligation of each Owner of such Unit at the time the Assessment comes due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Unit, and each and every Owner by acquiring or holding an interest in any Unit thereby covenants to pay such amounts to the Association when the same will become due; provided, however, that no Owner acquiring title to any Unit at a foreclosure sale of any Institutional Mortgage, his successors and assigns, will have any personal obligation with respect to the portion of any Assessments (together with late charges, interest, fees and costs of collection) related to such Unit, the lien for which is subordinate to the lien of the Institutional Mortgage being foreclosed as provided in Section 4.7. A Unit may be assessed as herein provided for Annual Assessments, Special Assessments and Specific Assessments.

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Section 4.2 Annual Assessments. At least thirty (30) days prior to the Association's next succeeding Annual Assessment Period the Board will adopt a budget for the next succeeding Annual Assessment Period by estimating the Common Expenses to be incurred during such Annual Assessment Period, including a reasonable allowance for contingencies and operating and replacement reserves, such budget to take into account the projected anticipated income which is to be applied in reduction of the amount to be collected as an assessment. The Common Expenses for property and liability insurance premiums may be separately assessed (an "Insurance Assessment"). The Insurance Assessment may, in the exercise of the Board's reasonable business judgment, be based upon a prepaid amount, estimated to cover the anticipated property and liability insurance premium at the next anniversary date of the policy or policies, or the Board may specially assess an Insurance Special Assessment pursuant to Section 4.3(a) below to cover any third-party financed premium as it becomes due. Upon adoption of the budget, a copy thereof will be delivered to each Owner. The Annual Assessment and any separately stated Insurance Assessment fixed against each Unit will be based upon the budget and in proportion to the respective Percentage Interests of each Unit subject to assessment, and the Board will give written notice to each Owner of the Annual Assessment fixed against his Unit for such next succeeding Annual Assessment Period; provided, however, the delivery of a copy of said budget will not be a condition precedent to an Owner's liability for payment of such Annual Assessment. In fixing the annual budget, the Board of Directors shall reflect in the budget the recommendations of a maintenance audit conducted by a professional inspector at such frequency as the Board shall determine, but not less frequently than every three (3) years. The Board shall provide the Developer with a copy of each such inspection report or maintenance audit findings within fifteen (15) days following receipt thereof by the Board. The Board shall not be relieved of its duty to contract for a maintenance audit, as aforesaid, by virtue of the Developer's inspections pursuant to Section 10.5 below.

The Annual Assessment will not be used to pay for the following:

(a) Casualty insurance of individual Owners on their possessions within the Units and liability insurance of such Owners insuring themselves and their families individually, which will be the sole responsibility of such Owners;

(b) Long distance telephone or electrical utility charges for each Unit, which will also be the sole responsibility of the Owners of such Units;

(c) Ad valorem taxes assessed against Units;

(d) Other charges or expenses related solely to individual use or occupancy of any Unit; or

(e) Assessments charged directly to Owners pursuant to any master or umbrella declaration to which the Regime is subject.

It is anticipated that ad valorem taxes and other governmental assessments, if any, upon the Project will be assessed by the taxing authority upon the Unit, and that each assessment will include the assessed value of the Unit and of the undivided interest of the Owner in the Common Elements; provided, however, that for the current calendar year, the ad valorem taxes will be

based upon the condition of the Land as of January 1, and the Developer will be liable for that portion of the taxes applicable to the period prior to the recordation of this Master Deed. When current ad valorem taxes are due and payable, the remainder of the ad valorem taxes for the current calendar year will be prorated between the Developer and each Owner based upon the Owner's Percentage Interest and based upon the number of days each owned the Unit as evidenced by the date of the Unit Deed. Any such taxes and governmental assessments upon the Project which are not so assessed will be included in the Association's budget as a recurring expense and will be paid by the Association as a Common Expense. Except as otherwise provided herein, each Owner is responsible for making his own return of taxes and such return will include such Owner's undivided interest in the Common Elements as such undivided interest is determined by law for purposes of returning taxes.

Annual Assessments charged by the Association will be rounded off to the nearest dollar.

EACH OWNER, IN ACCEPTING A DEED TO A UNIT FROM THE DEVELOPER OR ANY OTHER PERSON, HEREBY ACKNOWLEDGES THAT THE REGIME BUDGET AND ANNUAL ASSESSMENT THEREUNDER INITIALLY ESTABLISHED BY THE DEVELOPER, AND AS MAY BE MODIFIED OR AMENDED BY THE BOARD OF DIRECTORS OF THE ASSOCIATION, MAY BE INADEQUATE TO FUND, AS MAY BE NEEDED, THE COSTS AND EXPENSES OF PREPARING THE PROJECT FOR AN IMPENDING HURRICANE OR STORM, INCLUDING, BUT NOT LIMITED TO, INSTALLING AND REMOVING STORM SHUTTERS. IN THE EVENT THE REGIME IS REQUIRED TO INCUR COSTS AND EXPENSES PREPARING THE PROJECT FOR AN IMPENDING HURRICANE OR STORM IN EXCESS OF THE UNEXPENDED AMOUNT BUDGETED FOR A PARTICULAR YEAR, THE REGIME MAY BE REQUIRED TO VOTE A SPECIAL ASSESSMENT UNDER SECTION 4.3 BELOW AGAINST THE OWNERS TO RAISE THE REQUIRED FUNDS TO PAY SUCH EXCESS COSTS AND EXPENSES. FURTHERMORE, IN THE EVENT THE REGIME DOES NOT, FOR ANY REASON, APPROVE ANY SUCH SPECIAL ASSESSMENT, THE VALUE OF A UNIT MAY BE SUBSTANTIALLY AND MATERIALLY AFFECTED.

NOTHING HEREIN PROVIDED IS INTENDED, NOR SHALL IT BE DEEMED TO PROVIDE, THAT THE ASSOCIATION IS OBLIGATED TO INSTALL AND REMOVE ANY STORM SHUTTERS OR PLYWOOD WINDOW COVERING IN PREPARATION FOR ANY HURRICANE OR STORM. IN THE ABSENCE OF A SPECIFIC BUDGET ITEM THEREFOR OR THE ADOPTION OF A SPECIFIC RESOLUTION BY THE BOARD OF DIRECTORS TO SO PROVIDE SUCH SERVICE, EACH OWNER SHALL BE SOLELY RESPONSIBLE FOR PREPARING THE UNIT FOR AN IMPENDING HURRICANE OR STORM, INCLUDING, BUT NOT LIMITED TO, INSTALLING AND REMOVING STORM SHUTTERS OR PLYWOOD

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WINDOW COVERINGS. OWNERS SHALL NOT INSTALL PLYWOOD WINDOW COVERINGS OR CLOSE ANY INSTALLED STORM SHUTTERS UNLESS AND UNTIL THE NATIONAL WEATHER SERVICE ISSUES A HURRICANE WATCH OR TROPICAL STORM WATCH, WITH ANTICIPATED DAMAGING WINDS, COVERING CHARLESTON COUNTY, SOUTH CAROLINA.

Section 4.3 Special Assessments. In addition to the Annual Assessments, the Board of Directors may levy in any calendar year "Special Assessments" for the purpose (i) of supplementing the Annual Assessments if the same are inadequate to pay the Common Expenses and (ii) of defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of the Common Elements; provided, however, that any such Special Assessment which in the aggregate exceeds twenty percent (20%) of the total budgeted Common Expenses, exclusive of insurance, for such year will be approved by a majority of the votes cast by Members in a written ballot, or in person or by proxy at a meeting at which a quorum is present, duly called for the express purpose of approving such Special Assessment.

(a) Insurance Special Assessment without Vote of Members. Notwithstanding the foregoing, the Board may, without a vote of the members, levy an Insurance Special Assessment to pay any premium charged to the Association in excess of the amount budgeted for insurance, or levy an Insurance Special Assessment to pay, when due, any third-party financed premium. If applicable, an Insurance Special Assessment shall only be assessed against Owners of Units for which the Board separately assesses an Insurance Assessment based upon the type of Building in which a Unit is located, as further described in Section 4.2 above.

Section 4.4 Date of Commencement of Annual Assessments; Due Dates. Although the Annual Assessment is calculated on a yearly basis for the Annual Assessment Period, each Owner of a Unit will be obligated to pay to the Association or its designated agent such Assessment in equal monthly installments on or before the first day of each month during such Annual Assessment Period.

The obligations of Owners regarding the payment of monthly portions of the Annual Assessment provided for in this Article IV will, as to each Unit, commence upon the recording of this Master Deed. The first monthly payment of the Annual Assessment for each such Unit will be an amount equal to the monthly payment for the Annual Assessment Period in progress on such commencement date, divided by the number of days in the month of conveyance, and multiplied by the number of days then remaining in such month.

The Association will, upon demand at any time, furnish any Owner liable for any such Assessment a certificate in writing signed by an Officer of the Association or the property manager of the Association, setting forth whether the same has been paid. A reasonable charge, as determined by the Board, may be made for the issuance of such certificate. Such certificate will be conclusive evidence of payment of any Assessment stated to have been paid as to any person or entity that has relied on the certificate to his or its detriment.

Section 4.5 Individual Specific Assessments. Any expenses incurred by the Association because of the actions of one or more Owners or occupants of an Owner's Unit, or

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because of their failure to act, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Master Deed or rules and regulations adopted hereunder, and any fines as may be imposed against an Owner in accordance with this Master Deed will be specially assessed as a Specific Assessment against each such Owner and the Owner's Unit. In addition, in the event that a specific Assessment is made for a judgment against the Association, such specific Assessment shall only be assessed against those who were Owners at the time the judgment was entered against the Association.

Section 4.6 Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If an Assessment is not paid on the date when due, as hereinabove provided in Section 4.4, then such Assessment together with such late charges and interest thereon and any costs of collection thereof as hereafter provided, will be a charge and continuing lien on the Unit to which it relates, and will bind such property in the hands of the Owner, his heirs, legal representatives, successors, and assigns. The personal obligation of the then Owner to pay such Assessment, however, will remain his personal obligation, and if his successors in title assume his personal obligation, such prior Owner will nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer. Furthermore, such prior Owner and his successor in title who assumes such liabilities will be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Owner and his successor in title creating the relationship of principal and surety as between themselves, other than one by virtue of which such prior Owner and his successor in title would be jointly and severally liable to pay such amounts.

(b) Any Assessment which is not received within ten (10) days of the due date thereof, or within any established grace period, will incur a late charge of twenty-five ($25.00) dollars or such greater amount as may be set by the Board of Directors. If so directed by the Board of Directors with respect to all late payments, Assessments and late charges will commence to accrue simple interest at the rate of eighteen percent (18%) per annum. In addition, in the event any Assessment is not received within thirty (30) days of the due date thereof, the Association will have the right to declare the balance of the Assessment for the Annual Assessment Period then in effect immediately due and payable upon written notice to the defaulting Owner.

(c) The Association may bring legal action against the Owner personally obligated to pay the same or foreclose its lien against the Unit to which it relates or pursue both such courses at the same time or successively. In any event, the Association will be entitled also to recover reasonable attorney's fees actually incurred and all other costs of collection. Each Owner, by his acceptance of a deed or other transfer of a Unit, vests in the Association or its agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. All Owners, to the fullest extent permitted by law, waive the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by the Association against any Owner in the event of such foreclosure and further, waive all benefits that might accrue to any Owner by virtue of any present or future homestead exemption or law

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