**Agreement Date:**   
(In Words)

**Homeowner:**Brandon D. Gallas  
4430 9th St NW, Washington, DC, 20011  
Home: 202-291-4430  
Mobile: 202-905-1661  
Work: 301-796-2531

**Contractor:**(Name, legal status, address, licenses, insurance)

**Project:**Location: 3304 9th St NW Washington DC

Proposed third floor addition over existing two story brick townhouse with cellar, to include a new recreation room, bathroom, and bedroom. Proposed two story addition at back of townhouse with balcony above to include a master bath (2nd floor) and sunroom (1st floor). Open up existing kitchen to new sunroom. New exit from basement. New wood stairway and stoop to grade. Proposed pervious paver terrace on grade.

**Architect:**Ahmann LLC.

4408 Beechwood Rd, University Park, Maryland, 20782  
Work: 301-864-1334

The Owner and Contractor agree as follows.

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# ARTICLE 1 THE WORK OF THIS CONTRACT

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

# ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 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.)

«Commencement will be fixed in a notice to proceed. »

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

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than « » ( « » ) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work 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.)

« »

# ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[ «X» ] Stipulated Sum, in accordance with Section 3.2 below

[ « » ] Cost of the Work plus the Contractor’s Fee, in accordance with Section 3.3 below

[ « » ] Cost of the Work plus the Contractor’s Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be « » ($ « » ), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon 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 the 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 that amount expires.)

« »

§ 3.2.2 Unit prices, if any:

(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item Units and Limitations Price Per Unit ($0.00)

§ 3.2.3 Allowances included in the stipulated sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item Allowance

# ARTICLE 4 PAYMENTS

§ 4.1 PROGRESS PAYMENTS

§ 4.1.1 Based upon Applications for Payment submitted to the Owner’s Representative by the Contractor and Certificates for Payment issued by the Owner’s Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Each Application for Payment shall be certified as correct by Contractor and shall be accompanied by waivers of liens and other documentation from Subcontractors and mechanics and materialmen as reasonably may be required by the Owner and Owner’s lender, if any. Upon request by Owner, copies of all Applications for Payment shall be submitted by Contractor directly to Owner’s lender for the Project.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month,

§ 4.1.3 The Owner’s Representative 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 Owner’s Representative determines is properly due, less retainage, or notify the Contractor and Owner in writing of the Owner’s Representative’s reasons for withholding certification in whole or in part. Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor. Provided that an Application for Payment is received by the Owner’s Representative 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 «30th» day of the «next» month. If an Application for Payment is received by the Owner’s Representative after the date fixed above, payment shall be made by the Owner not later than «sixty» («60») days after the Owner receives the Application for Payment.

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

§ 4.1.4 Retainage, if any, shall be withheld as follows:

«Ten percent (10%) »

§ 4.1.5 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.)

« »

1.5%.

§ 4.2 FINAL PAYMENT

§ 4.2.1 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 18.2, 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, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price;

.3 a final Certificate for Payment has been issued by the Owner’s Representative; and

.4 the Owner will maintain a retainage of 10% of the total earned to date on each application for payment until the requirements of the final payment as described below are met.

§ 4.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after completion of the requirements in Section 15.5 and the issuance of the Owner’s Representative’s final Certificate for Payment.

# ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by, mediation pursuant to Section 21.3, 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 in a court of competent jurisdiction.)

[ « » ] Arbitration pursuant to Section 21.4 of this Agreement

[ «X» ] Litigation in a court of competent jurisdiction

[ « » ] Other (Specify)

« »

# ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A107–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 6.1.2 The Supplementary and other Conditions of the Contract:

Document Title Date Pages

§ 6.1.3 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« »

Section Title Date Pages

§ 6.1.4 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« »

Number Title Date

§ 6.1.5 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 enumerated in this Article 6.

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

.1 Exhibit A Form of Lien Waiver

§ 6.1.7 The intent of the Contract Documents is to include in the Work all labor, materials and supplies, insurance, bonds, tools, equipment, permits (customarily obtained by general contractors), licenses, taxes (exclusive of real estate taxes), approvals, transportation and other services and items required in connection with the satisfactory performance, execution and final completion of the Work, in strict accordance with the Contract Documents.

# ARTICLE 7 GENERAL PROVISIONS

§ 7.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a written order for a minor change in the Work issued by the Owner’s Representative. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 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 between any persons or entities other than the Owner and the Contractor.

§ 7.3 THE WORK

§ 7.3.1 The term "Work" means the pre-construction, construction and services required by the Contract Documents, whether completed and includes all other action, materials, labor, equipment and services, whether on or off the site, provided or to be provided by the Contractor to fulfill the Contractor’s obligations, and by Subcontractors, Sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible pursuant to the Contract Documents. The Work may constitute the whole or a part of the Project.

§ 7.3.2 The terms "knowledge," "recognize," and "discovery," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill and diligence required of an experienced contractor in the area where the Project is located, with experience on projects similar to the Project. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project in exercising the care, skill and diligence required of the Contractor herein.

§ 7.3.3 Unless context clearly requires otherwise, the word "Laws" or "applicable Laws" means all applicable present and future governmental statutes, laws, codes, orders, ordinances, regulations, standards, requirements, codes, practices and rules and the requirements of all federal, state and municipal governments, courts, departments, commissions, boards or any other body exercising functions similar to the foregoing, and other entities having jurisdiction or rights of approval affecting the Project or the site, in effect at the time of construction period.

§ 7.4 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 Owner and the Owner’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.

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

§ 7.5.1 The Owner and the Owner’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications. The drawings and specifications in the form of reproducible copies and/or computer-aided data contained on disks or otherwise provided to the Owner in electronic form, are the property of the Owner. 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 Owner’s or Owner’s consultants’ reserved rights.

§ 7.5.2 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 and the Owner’s consultants.

§ 7.6 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 transmission, unless otherwise provided in the Agreement or in the Contract Documents.

# ARTICLE 8 OWNER

§ 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 8.1.1 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.2 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.

§ 8.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 OWNER’S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the 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 is 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.

§ 8.3 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, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including Owner’s expenses and compensation for the Owner’s Representative’s services made necessary thereby, from the payment then or thereafter due the Contractor.

# ARTICLE 9 CONTRACTOR

§ 9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 9.1.1 The Contractor acknowledges that it has visited the site, examined all exposed conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and, having carefully examined all Drawings, Specifications, and documents, acknowledges that there are no discrepancies or omissions in the Contract Documents that it is aware of, or has not brought to the Owner’s Representative’s and Owner’s attention. Where elements of the design are identified but the quantity or quality is not specified, the Contractor and its subcontractors and materialmen shall make a reasonable assumption as to the quantity and/or quality of the materials and/or labor necessary for any such element and shall communicate such assumption to the Owner and the Owner’s Representative for review and approval.

§ 9.1.2 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 8.1.1, 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 Owner’s Representative and Owner any errors, inconsistencies, variances from applicable Laws, or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner’s Representative 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. The Contractor hereby specifically acknowledges and declares that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein in order to enter into the Contract and that the Drawings, Specifications, and all Addenda, are sufficient to enable it to construct the Work outlined therein.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable Laws but the Contractor shall promptly report to the Owner’s Representative any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner’s Representative may require.

§ 9.2 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 9.2.1 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. The Contractor shall ensure the Work is performed in a diligent and first class manner, with quality supplies, materials, equipment and workmanship and in such a manner so as to minimize the possibility of any annoyance, interference, or disruption to any tenants or other occupants or of the site or to any invitees thereon.

§ 9.2.2 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.

§ 9.3 LABOR AND MATERIALS

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

§ 9.3.2 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 skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Owner’s Representative and in accordance with a Modification.

§ 9.3.4 Contractor represents that (i) Contractor is not a Prohibited Person (as defined below); (ii) to Contractor’s knowledge, none of its investors, affiliates or brokers or other agents (if any), acting or benefiting in any capacity in connection with this Agreement are Prohibited Persons; and (iii) none of the funds or other assets, if any, to be transferred to Owner hereunder are the property of, or beneficially owned, directly or indirectly, by a Prohibited Person, nor are such funds or other assets the proceeds of any specified unlawful activity as defined by 18 U.S.C. § 1956(c)(7). "Prohibited Person" means any of the following: (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) (the "Executive Order"); (ii) a person or entity owned or controlled by, or acting for or on behalf of any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity that is named as a "specially designated national" or "blocked person" on the most current list published by the U.S. Treasury Department’s Office of Foreign Assets Control ("OFAC") at its official website, http:www/treas.gov/offices/enforcement/ofac; (iv) a person or entity that is otherwise the target of any economic sanctions program currently administered by OFAC; or (v) a person or entity that is affiliated with any person or entity identified in subclause (i), (ii), (iii) and/or (iv) above.

§ 9.3.5 The relationship between the parties is that of independent contractor, and nothing contained in this Agreement shall make either party a partner, agent, employee, joint venturer, dealer or franchisee of the other party. Contractor is retained by Owner only for the purposes and to the extent set forth in this Agreement. Neither Contractor nor Owner/Owner’s Representative may bind the other whatsoever. The Work to be provided by Contractor is not part of a continuing relationship between Contractor and Owner. Contractor agrees to pay any and all salary or other benefits to its employees and shall make all appropriate tax (including unemployment tax), social security, Medicare and other withholding deductions and payments.

§ 9.4 WARRANTY

§ 9.4.1 The Contractor warrants to the Owner and Owner’s Representative that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective at the Owner’s option. 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 under normal usage. The Contractor’s general warranty shall commence upon Substantial Completion of the work and continue as provided in Section 18.2. Contractor hereby assigns to Owner all specific written warranties provided by subcontractors, vendors and manufacturers and all such specific warranties shall continue as noted herein.

§ 9.4.2 In case of Work performed by Subcontractors, Sub-subcontractors or manufacturers, where special written guaranties and warranties are required or furnished, the Contractor shall have obtained said guaranties and warranties from the Subcontractors, Sub-subcontractors and manufacturers, addressed to and running in favor of the Owner and Owner’s assignee, and deliver the original and one copy of the guaranties and warranties to the Owner upon completion of the Work. Any warranties or guaranties which are nevertheless issued in the Contractor’s name or that of any Subcontractor shall be assigned to the Owner and Owner’s assignee, or, if they are not assignable, the Contractor will exercise all rights thereunder as requested by the Owner or for the Owner’s and Owner’s assignee, sole benefit. The Contractor shall send to the Owner all guaranties and warranties issued in the Contractor’s name. Delivery of the guarantees and warranties shall not relieve the Contractor from any obligation assumed under any other provisions of the Contract. The applicable term of each such warranty or guaranty shall commence no later than the date of Substantial Completion.

§ 9.5 TAXES

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

§ 9.6 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable Laws applicable to performance of the Work. Contractor shall ensure that, if it receives notice or becomes aware of any violation or potential violations of any Law, Contractor promptly shall take such actions as may be necessary to prevent any further violations and promptly shall provide written notice to Owner’s Representative of such violations or potential violations. If the Contractor performs Work knowing it to be contrary to applicable Laws, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 ALLOWANCES

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall not include the Contractor’s costs for unloading and handling at the site, labor, installation, overhead, and profit.

§ 9.8 CONTRACTOR’S CONSTRUCTION SCHEDULES

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner’s and Owner’s Representative’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.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Owner’s Representative.

§ 9.9 SUBMITTALS

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Owner’s Representative Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor’s construction schedule and in such sequence as to allow the Owner’s Representative reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Owner’s Representative 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. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.10 USE OF SITE

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

§ 9.10.1 The Contractor and all Subcontractors shall keep their respective employees and contractors out of areas beyond the Contract limit lines except where necessary for actual performance of Work. The Contractor shall schedule and use the site in such a manner as to cause or occasion a minimum of inconvenience or disturbance to or interference with normal operations of the site, including, without limitation, taking precautions to minimize noise, dust and construction hazards and the interruptions of existing services and utilities. The Contractor acknowledges that it is aware of the high standard of care required at the site as necessary to ensure that construction does not unreasonably inconvenience, disturb or interfere with employees, visitors, tenants, occupants and others at and surrounding the site. The Contractor shall exercise the highest degree of care in the performance of the Work.

§ 9.11 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 CLEANING UP

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 material from and about the Project and restore the site to its condition immediately prior to commencement of the Work.

§ 9.13 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 Owner’s Representative 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 Owner’s Representative. 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 Owner’s Representative.

§ 9.14 ACCESS TO WORK

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

§ 9.15 INDEMNIFICATION

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and Owner’s Representative and each of their officers, directors, shareholders, employees, partners, members, managers, subsidiaries, affiliates, landlords, agents, attorneys, successors, assigns, contractors, subcontractors, consultants and their respective authorized representatives, servants and employees, Owner’s Representative, Owner’s Representative’s consultants and agents and employees of any of them (collectively, together with Owner, the "Indemnified Parties") from and against claims, demands, damages, liabilities, judgments, penalties, fines, interest, liens, costs, losses including, without limitation, if such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property and expenses, including but not limited to attorneys’ fees (collectively, "Losses"), arising out of or resulting from performance of the Work, Contractor’s breach of any representation, warranty or covenant under this Agreement, Contractor’s breach of any law, or the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

§ 9.16 LIENS

After timely payment by Owner, should any Subcontractor, supplier or other person claiming by or through the Contractor or any such Subcontractor or supplier, or any of them, make, record or file, or maintain any action on or respecting a claim of mechanic’s lien, relating to the Work or the Project, for which the Contractor has not made timely and proper payment, the Contractor shall immediately and at its own expense cause such lien to be removed or bonded over. If Contractor has timely paid any such Subcontractor, supplier or other party making or filing any such action or claim of a mechanic’s lien relating to the Work, then the Contractor shall immediately, as part of the Cost of the Work, cause such lien to be removed or bonded over.

§ 9.17 RISK

The Contractor hereby assumes all risks of damage to the property of the Contractor and its employees, Subcontractors, consultants and agents in, upon or about the Project site, arising from any cause whatsoever, except from the gross negligence or willful misconduct of the Owner, and the Contractor hereby waives and releases all claims in respect thereof against the Owner. The Contractor hereby agrees that Owner shall not be liable to Contractor for injury to the Contractor’s business or for any loss of income therefrom, unless due to Owner’s gross negligence or intentional misconduct. Contractor hereby waives any and all claims against the Indemnified Parties and the Indemnified Parties’ properties for liabilities, losses, actions, damages, judgments, costs or expenses of whatever nature, including attorneys’ fees, incurred by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of any property, violation of Law, or otherwise in connection with (i) the condition of the Property or any facilities thereon, (ii) any event or occurrence on or about the Property, or (iii) the acts or omissions of any person, except with respect to the gross negligence or willful misconduct of an Indemnified Party. All personal property belonging to Contractor shall be brought onto the Property at the risk of Contractor, and the Indemnified Parties shall not be liable for damage or destruction to or theft of any such personal property, except with respect to the gross negligence or willful misconduct of an Indemnified Party.

# ARTICLE 10 OWNER’S REPRESENTATIVE

§ 10.1 The Owner’s Representative will provide administration of the Contract and will be an Owner’s representative during construction, until the date the Owner’s Representative issues the final Certificate for Payment. The Owner’s Representative will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. The Owner’s Representative is an individual or entity appointed by Owner and may be an architect, property manager, contractor, internal employee or representative, or other consultant.

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

§ 10.3 On the basis of the site visits, the Owner’s Representative 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 Owner’s Representative will not be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner’s Representative 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.

§ 10.4 Based on the Owner’s Representative’s evaluations of the Work and of the Contractor’s Applications for Payment, the Owner’s Representative will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.5 The Owner’s Representative has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.6 The Owner’s Representative 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.

§ 10.7 The Owner’s Representative will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Owner’s Representative will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.8 The Owner’s Representative’s decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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

# ARTICLE 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 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 Owner’s Representative the names of the Subcontractors or suppliers for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Owner’s Representative has made reasonable written objection within ten days after receipt of the Contractor’s list of Subcontractors and suppliers The Contractor shall provide a bid summary with the results of the bids for each subtrade and a recommendation for the selected Subcontractor. If requested, the Contractor shall provide copies of all bids, bid letters, and executed subcontracts to Owner within ten (10) days after execution thereof.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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 the Contract Documents, assumes toward the Owner and Owner’s Representative, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

# ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 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 21.

§ 12.2 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 activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

# ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order in Owner’s standard form signed by the Owner, Contractor and Owner’s Representative.

§ 13.2 INTENTIONALLY OMITTED

§ 13.3 The Owner’s Representative will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Owner’s Representative promptly and before conditions are disturbed.

§ 13.5 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a change in the initial Contract Time unless and until such alteration or addition has been authorized by a Change Order approved by Owner, executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents; such requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis to any claim for an increase in the Contract Sum or change in the Contract Time.

# ARTICLE 14 TIME

§ 14.1 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.

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Owner’s Representative in accordance with Section 15.4.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor’s control, or by other causes which the Owner’s Representative or Owner determines may justify delay in the schedule of the Project, and if the Schedule cannot be adjusted to compensate for the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner’s Representative or Owner may determine, subject to the provisions of Article 21.

# ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 APPLICATIONS FOR PAYMENT

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit to the Owner’s Representative, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner’s Representative may require. This schedule, unless objected to by the Owner’s Representative, shall be used in reviewing the Contractor’s Applications for Payment.

§ 15.1.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the 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.

§ 15.1.3 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 stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.1.4 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 be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner’s interests.

§ 15.2 CERTIFICATES FOR PAYMENT

§ 15.2.1 The Owner’s Representative 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 Owner’s Representative determines is properly due, or notify the Contractor and Owner in writing of the Owner’s Representative’s reasons for withholding certification in whole or in part as provided in Section 15.2.3.

§ 15.2.2 The issuance of a Certificate for Payment will constitute a representation by the Owner’s Representative to the Owner, based on the Owner’s Representative’s evaluations of the Work and the data comprising the Application for Payment, that, to the best of the Owner’s Representative’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 Owner’s Representative. 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 Owner’s Representative 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.

§ 15.2.3 The Owner’s Representative may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner’s Representative’s opinion the representations to the Owner required by Section 15.2.2 cannot be made. If the Owner’s Representative is unable to certify payment in the amount of the Application, the Owner’s Representative will notify the Contractor and Owner as provided in Section 15.2.1. If the Contractor and the Owner’s Representative cannot agree on a revised amount, the Owner’s Representative will promptly issue a Certificate for Payment for the amount for which the Owner’s Representative is able to make such representations to the Owner. The Owner’s Representative 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 Owner’s Representative’s opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 failure to carry out the Work in accordance with the Contract Documents; or

.8 other default of Contractor under the Contract Documents.

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

§ 15.2.5 In the event of any dispute between the Owner and the Contractor with respect to any of the foregoing items or any other amounts or circumstances covered by any Application for Payment, the Owner may withhold from the payment in question an amount not to exceed one hundred fifty percent (150%) of the disputed amounts, including without limitation, amounts sufficient to reimburse the Owner for its expenditures for the account of the Contractor and to secure (i) correction or reexecution of the Work which is defective or has not been performed in accordance with the Contract Documents; (ii) past due payments to Subcontractors; (iii) the Owner’s remedies in consequence of any default by the Contractor under the Contract; and (iv) any costs incurred by the Owner as a result of claims, liabilities, losses and other damages covered by the Contractor’s obligations hereunder.

§ 15.2.6 Final payment shall not become due until the Contractor has delivered to the Owner a complete final unconditional release of all liens in the form attached hereto as Exhibit A arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such lien remains unsatisfied after payments are made, the Contractor shall promptly refund to the Owner all money that the Owner may be compelled to pay in discharging any such lien, including costs and reasonable attorneys’ fees.

In addition to the release of liens above, the Contractor shall provide, prior to final payment:

• As Built or "record" documents from the Contractor and all subcontractors in red-line, paper format

• Warranty/Guarantee letters from all Subcontractors

• Sign-off City inspection cards and Certificate of Occupancy

• List of subcontractor’s names, addresses and phone numbers and list of finish materials

• Owners and Operators manuals for all installed equipment and training and instruction as to proper use and maintenance of all new, renovated or relocated systems

• Completed punchlist

• Return of all Construction Drawings to Owner’s Representative, except Contractor’s record set to be retained by Contractor

• A final Contractor’s statement from the Contractor duly executed and acknowledged showing all Subcontractors to be fully paid, less retainage, and similar final statements from Subcontractors and, where appropriate, from Sub-subcontractors

• The Contractor has provided the Owner with all conditional final lien waivers and releases for all payments up to the final payment from the Contractor and all Subcontractors waiving all lien claims in connection with materials supplied to or Work performed in connection with the Project.

§ 15.3 PROGRESS PAYMENTS

§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment, 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 similar manner.

§ 15.3.2 Neither the Owner nor Owner’s Representative shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 15.3.3 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.

§ 15.4 SUBSTANTIAL COMPLETION

§ 15.4.1 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.

§ 15.4.2 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 Owner’s Representative 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.

§ 15.4.3 Upon receipt of the Contractor’s list, the Owner’s Representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Owner’s Representative determines that the Work or designated portion thereof is substantially complete, the Owner’s Representative will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.4.4 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.

§ 15.5 FINAL COMPLETION AND FINAL PAYMENT

§ 15.5.1 Upon receipt of the Contractor’s written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner’s Representative will promptly make such inspection and, when the Owner’s Representative finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner’s Representative will promptly issue a final Certificate for Payment stating that to the best of the Owner’s Representative’s knowledge, information and belief, and on the basis of the Owner’s Representative’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 Owner’s Representative’s final Certificate for Payment will constitute a further representation that conditions stated in Section 15.5.2 as precedent to the Contractor’s being entitled to final payment have been fulfilled. In addition to the requirements in section 15.2.1 Final Completion will not be recognized until: (1) all items on the list accompanying the Certificate of Substantial Completion have been completed to the satisfaction of Owner, and Contractor is in possession of Owner’s written notice of acceptance of the Work and approval by the Owner’s Representative; and (2) final government approval, if any, has been issued by the appropriate governmental authority and received by Owner.

§ 15.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete final unconditional release of all liens in the form attached hereto as Exhibit A arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or 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 costs and reasonable attorneys’ fees.

§ 15.5.3 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 any warranties required by the Contract Documents.

§ 15.5.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of all claims against any Owner and any Owner Indemnitee 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 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 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. 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 visitors, tenants, and occupants of the property 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.

The Contractor shall comply with and give notices required by applicable Laws bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3, except for damage or loss attributable to acts or omissions of the Owner or Owner’s Representative 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 9.15.

§ 16.2 HAZARDOUS MATERIALS

§ 16.2.1 The Contractor is responsible for compliance with the requirements of 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 Owner’s Representative in writing. 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 shutdown, delay and start-up. Contractor agrees that it shall not cause or permit to occur: the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any "Hazardous Substance," on, under, or about the property or Project, or the transportation to or from the Project of any Hazardous Substance, except for the use of minor insubstantial amounts of petroleum products and other substances customarily used in construction projects provided such use is in compliance with environmental regulations and Laws and any guidelines as provided by Owner or Owner’s Representative to Contractor from time to time. Contractor shall not keep any Hazardous Substances at the Project at any time during the time of performing and completion of the Work, except in compliance with environmental regulations and Laws the guidelines prescribed by Owner from time to time.. The term "Hazardous Substances," as used herein shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCB’s), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law. Contractor shall indemnify, hold harmless and, if requested by Owner in its sole and absolute discretion, defend (with counsel approved by Owner) the Indemnified Parties from and against any and all Losses, including, without limitation, Losses associated with bodily injury, property damage, or the removal of any products and restoration of the site, to the extent arising out of a breach of any covenant, representation and warranty set forth in this Section 16.2.1 or the presence of any Hazardous Substances used in the delivery of the Work.

§ 16.2.2 INTENTIONALLY OMITTED

§ 16.2.3 INTENTIONALLY OMITTED

§ 16.2.4 Contractor covenants, represents and warrants that the Work shall be provided without the use of lead-based paint or of any constituent or product that contains lead-based paint. Contractor shall indemnify, hold harmless and, if requested by Owner in its sole and absolute discretion, defend (with counsel approved by Owner) the Indemnified Parties from and against any and all Losses, including, without limitation, Losses associated with bodily injury, property damage, or the removal of any products and restoration of the site, to the extent arising out of a breach of any covenant, representation and warranty set forth in this Section 16.2.4 or the presence of lead-based paint in any products used in the delivery of the Work. Without limiting the foregoing, Contractor shall retain full responsibility for, and shall bear all costs associated with, any remediation of the site due to the presence of lead-based paint in any products to the extent remediation is requested by any governmental authority or by Owner, in its sole discretion. If Contractor fails to undertake promptly such remediation upon request by any governmental authority or Owner, Owner shall have the right, but not the obligation, to undertake such remediation at Contractor’s sole cost and expense, and charge Contractor the cost of such remediation (including hard and soft costs), plus interest at the lesser of the maximum permitted by law or 15% on the cost of such remediation, plus an administrative overhead charge equal to 10% of the amount of such remediation.

# ARTICLE 17 INSURANCE AND BONDS

§ 17.1 The Contractor shall maintain, at its own cost and expense, insurance coverages in the following amounts and shall require that all subcontractors brought onto the site have insurance coverage, at the Contractor’s or subcontractor’s expense, in the following amounts (which amounts may be increased at Owner’s or Owner’s Representative’s written direction):

.1 Workman’s Compensation – Coverage A: Statutory amount; Coverage B: Employer’s Liability insurance:

$500,000 Each Accident

$500,000 Disease, Policy Limit

$500,000 Disease, Each Employee

Worker’s Compensation policy shall include an Alternate Employers Endorsement WC 00 03 01 naming Owner and Owner’s Representative as Alternate Employers for injuries occurring at the site.

.2 Commercial General Liability (naming Owner, Owner’s Representative, and Owner’s lender, if any, as Additional Insureds for Ongoing Operations (Form CG 20 33 10/01) and for Completed Operations (Form CG 20 37 10/01), or their equivalent on a combined form) for limits of $1,000,000 per occurrence; $2,000,000 aggregate. Such insurance shall apply per project and include contractual liability, personal injury protection and completed operations coverage and hold harmless provision in favor or Owner and Owner’s Representative. The policy must be primary and not excess of, or contributing with, any other insurance carried by or for the benefit of the Additional Insureds;

.3 Owned, Hired and Non-Owned Business Automobile liability insurance in an amount no less than $1,000,000 per accident Combined Single Limit for bodily injury and property damage;

.4 Property Insurance coverage for tools and equipment and also personal property brought onto and/or used on the site by the subcontractor – an amount equal to the replacement costs of all such tools and equipment and such personal property;

.5 Employee Theft Insurance / Comprehensive Crime Insurance in an amount not less than $1,000,000 (covering theft, criminal, fraudulent or dishonest acts); and

.6 Excess/Umbrella Liability insurance extending over coverage in sections 17.1.1, 17.1.2, and 17.1.3 in an amount no less than $5,000,000 per occurrence combined single limit bodily injury and property damage.

All coverage shall be provided by insurance companies with a current Best’s Rating of A VII or higher. When Owner’s interests apply, insurance policies shall provide 30 days’ (10 days in the event of non-payment) notice to Owner’s Representative prior to the cancellation of any insurance referred to therein. Certificates of Insurance shall be modified so the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the certificate form’s cancellation provision. At the commencement of this Agreement, Contractor shall furnish Owner’s Representative with Certificates of Insurance evidencing coverage as provided above. At least thirty (30) days prior to the expiration of any such policy, Contractor will provide to Owner’s Representative replacement or substitute Certificates of Insurance evidencing the renewal or replacement of the aforesaid policies.

Contractor shall promptly investigate and make a full, timely and written report to any insurance company providing coverage, with a copy to Owner’s Representative, of all accidents, claims or damage relating to the ownership, operation and maintenance of the site, any damage or destruction to all or any part of such site and the estimated cost of repair thereof, and shall prepare any and all further reports required by any such insurance company in connection therewith. Contractor shall have no right to settle, compromise or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance without the prior written consent of Owner’s Representative.

§ 17.2 OWNER’S LIABILITY INSURANCE

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

§ 17.3 PROPERTY INSURANCE

Owner, at its expense, will obtain and keep in force adequate insurance against physical damage (e.g., fire and extended coverage endorsement, boiler, and machinery, etc.) and against liability for loss, damage, or injury to property or persons which might arise out of the occupancy, management, operating, or maintenance of the property covered by this Agreement. Owner shall save Contractor harmless from any liability on account of loss, damage, or injury, to the extent actually insured against by Owner provided:

.1 Contractor notifies Owner within five business days after Property Manager receives notice of any such loss, damage or injury;

.2 Contractor takes no action (such as admission of liability) which bars Owner from obtaining any protection afforded by any policy Owner may hold; and

.3 Contractor agrees that Owner or its insurance company shall have the exclusive right, at its option, to conduct the defense to any claim, demand or suit within limits prescribed by the policy or policies of insurance.

Contractor shall furnish whatever information is requested by Owner for the purpose of establishing the placement of insurance coverages and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder. Owner shall include in its hazard policy covering the Project, the personal property, fixtures and equipment located thereon (owned by Owner), appropriate clauses pursuant to which the insurance carriers shall waive the rights of subrogation with respect to losses payable under such policies.

§ 17.4 PERFORMANCE BOND AND PAYMENT BOND

§ 17.4.1 The Owner shall have the right to require the Contractor to furnish bonds, satisfactory to owner, 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.

§ 17.4.2 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 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Owner’s Representative or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner’s Representative’s services and expenses made necessary thereby, shall be at the Contractor’s expense.

§ 18.2 In addition to the Contractor’s obligations under Section 9.4, 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 15.4.3, 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.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3 and Contractor shall reimburse Owner for any fees, costs or expenses incurred.

§ 18.4 If, by the terms and conditions of the Contract Documents, the Contractor is required to correct the Work, and the Contractor does not correct the Work in accordance with the Contract Documents, then the Contractor’s obligation as to the portion of the Work not corrected shall be extended beyond one year after the date of Substantial Completion of the Work as to such uncorrected portion of the Work for a period equal to one year after the date the Contractor finally has corrected such portion of the Work in accordance with the Contract Documents. 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.

§ 18.5 Except as otherwise set forth above, the one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

# ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract without written consent of the other, except that 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.

§ 19.2 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 21.4.

§ 19.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable Laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate time. 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, except as otherwise set forth below, bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner’s Representative timely notice of when and where tests and inspections are to be made so that the Owner’s Representative may be present for such procedures. The Owner shall only 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 the costs to the Contractor.

§ 19.4 LIMITATION OF LIABILITY

Contractor agrees that, notwithstanding any provision in this Agreement to the contrary, no partner, member, manager, shareholder, director, officer, employee, agent, affiliate or representative of Owner, nor any partner, member, manager, shareholder, director, officer, employee, agent, affiliate or representative of any partner of Owner, shall have any liability for the obligations of Owner under this Agreement, and Contractor agrees that its sole recourse for any such obligations shall be limited to the Owner’s interest in the Project. Notwithstanding the foregoing, Contractor acknowledges and agrees that this Section 19.4 does not grant Contractor any lien or similar rights with respect to the Project or other assets of Owner.

§ 19.5 INTENTIONALLY OMITTED

# ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 TERMINATION BY THE CONTRACTOR

If the Owner’s Representative fails to certify payment as provided in Section 15.2.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 90 days, the Contractor may, upon seven additional days’ written notice to the Owner and the Owner’s Representative, terminate the Contract and recover from the Owner payment for Work executed.

§ 20.2 TERMINATION BY THE OWNER FOR CAUSE

§ 20.2.1 The Owner may terminate the Contract if the Contractor

.1 refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 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.

§ 20.2.2 When any of the above reasons exists, the Owner, upon certification by the Owner’s Representative that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days’ written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner’s Representative’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 Owner’s Representative, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner’s convenience and without cause. 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 actually executed.

# ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 INTENTIONALLY OMITTED

§ 21.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic’s lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.3 INTENTIONALLY OMITTED

# SIGNATURES

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

OWNER (Signature) CONTRACTOR (Signature)

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(Printed name and title) (Printed name and title)