

EXHIBIT H

FORM OF THE CONTRACT

Form AIA 101 (Agreement) and AIA 201 (General Conditions) contract documents included for the 4% LIHTC Transaction and 9% LIHTC transaction components.

AIA[®] Document A101[™] – 2017

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the _____ day of May in the year 2023
(In words, indicate day, month and year.)

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

« Virgin Islands Housing Authority
9900 Oswald Harris Court
St. Thomas, VI 00802 »

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

« »

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

«Revitalization of D. Hamilton Jackson Terrace buildings 8-14 and Alphonso “Piggy” Gerard buildings 1-7 (4% LIHTC project), a 70 unit multifamily project, located at # 13-A, 13-B, 13-BA&C, 14 Estate Richmond, St. Croix »

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

« SLM Architecture, P.C.
300 Old Country Rd # 241
Mineola, NY 11501 »

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.

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

The parties should complete A101[™]-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[™]-2017, 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, the General Conditions of the Contract (an AIA Document A201-2017 edition, as modified by the parties; the "General Conditions"), other conditions of the Contract (including but not limited to Supplementary and other Conditions, if any), Drawings, Specifications, Addenda issued prior to execution of this Agreement, all exhibits to this Agreement and all documents listed in Article 9 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 referred to in each document as 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. In the event of any conflict among the Contract Documents, the same shall be construed according to the priority and in the manner established in Section 1.1.1 of the General Conditions. See also Sections 1.1.1 and 1.1.2 of the General Conditions. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in or reasonably inferable from the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. See also Section 1.1.3 of the General Conditions. The Contractor shall perform the Work in accordance with the skill, care, and diligence of a contractor experienced in completing comparable work for comparable projects in the United States Virgin Islands (the "Performance Expectations").

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date to be fixed in a notice to proceed issued by the Owner. In this regard, and provided that all required earth-change permits for the Project have been secured, Owner intends to issue a notice to proceed on the date of this Agreement or within a reasonable time thereafter (the "NTP"), which shall instruct the Contractor to begin the Work. Contractor shall thereafter continuously and diligently perform and prosecute such Work to completion, subject only to delays excused by Section 8.3.1 of the General Conditions. Contractor acknowledges and agrees that the Contractor's Work under the Contract Documents is to be Substantially Completed and delivered to the Owner in the form of twenty-two (22) buildings, as further described in the Contract Documents, in addition to all other Work required under the terms of the Contract Documents.

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work not later than twenty-seven (27) months after the Owner issues its NTP pursuant to Section 3.1 above, subject only to Excused Delays. Without limiting the definition of Substantial Completion in Section 9.8.1 of the General Conditions, in no event shall any Phase as defined in Section 3.3.3 below be considered Substantially Complete unless and until Contractor has secured a certificate of use and occupancy and full utility service restoration for each Building comprising said Phase (for Substantial Completion, if applicable, a temporary or conditional certificate of use and occupancy may suffice so long as Owner can use and occupy the Work for its intended purpose).

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
See Exhibit D—Phased Delivery Plan	

If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3 and Exhibit D, liquidated damages, if any, shall be assessed as set forth in Section 4.5

§ 3.3.2.1 In addition to the dates for Substantial Completion established above, the Contractor shall achieve Final Completion of the entire Work (as defined in Section 9.10.1 of the General Conditions) not later than the date that is sixty (60) calendar days after the scheduled Substantial Completion date for the entire Work, subject only to Excused Delays.

§ 3.3.3 The Contractor understands, acknowledges and agrees that the Contractor's Work under the Contract Documents and the contract documents for the concurrent financing closings that collectively comprise the full project is to be Substantially Completed and delivered to the Owner in five (5) distinct phases (each individually a "Phase," or collectively the "Phases"), one of which shall consist of the Project site work and the remaining four of which shall consist generally of four (4) to seven (7) buildings per Phase, all as described in Exhibit D. For the avoidance of doubt, the location of the Project specified on page 1 of this Agreement (the "Project Location") refers to the entire property of the Owner upon which Work is to take place in connection with the Work related to the Project. However, the "Project Site", as that term is used throughout the Contract Documents, shall refer to a more limited area within the entire Project Location, that is necessary to complete the specific Phase or Phases of Work currently underway. For the avoidance of doubt, the Project Site, as used in the Contract Documents, will be as specified by the Owner so as to limit the impact on the rest of the Project Location that is not then undergoing any execution of the Work. The Contractor acknowledges that it will be responsible for the construction of each Phase as well as the overall planning, coordination (including, but not limited to, communication with the relocation team members and property management), and integration of each Phase with the others (and with any existing structures and conditions at the Project site). The Contractor agrees that it shall plan, coordinate, and integrate the activities requested of the Contractor with respect to each Phase, with the other aspects of the overall Project, so that each such Phase and the overall Project is integrated, completed, and coordinated (both individually and with the existing and newly-developed structures, site work, public improvement work, and other work conditions at the Project Site), in accordance with the Contract Documents. To the extent Contractor is delayed in completing a Phase by reasons which do not entitle Contractor to schedule relief under the Contract, Contractor shall not be entitled to schedule relief for subsequent Phases.

ARTICLE 4 CONTRACT SUM

§ 4.1 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 \$ _____ (as is more specifically broken down in the Schedule of Values ("Schedule of Values") attached hereto as Exhibit C), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
« See Exhibit B. »	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
« See Exhibit B. »		

§ 4.3 Allowances, if any, included in the Contract Sum: *(Identify each allowance.)*

Item	Price

With respect to the lump sum allowances, if the actual cost of the specified items is less than the allowance, the saved amount shall be credited to Owner via a deductive change order unless otherwise specified by Owner. If the actual cost of the specified items is more than the allowance, then the Contract Sum shall be increased by change order to cover the shortfall.

In the event additional concrete repair work beyond the quantity allowance specified above is required, such additional concrete repair work shall be only as approved by the Owner via an approved Change Order, and shall be priced per square foot at the rate set forth in this Section 4.3.

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

Item	Units and Limitations	Price per Unit (\$0.00)

§ 4.5 Liquidated Damages

§ 4.5.1 Contractor acknowledges and agrees that timely completion of the Work is the essence of the Contract Documents. Specifically, the Contractor acknowledges that the Owner will incur substantial damages if the dates for Substantial Completion of the entire Work, are not met. Among other things, the Contractor acknowledges that in such events the Owner will incur additional financing costs (which in turn will reduce the Owner's equity in the Project), may be required to pay additional amounts to the Architect or other consultants and the Owner's own personnel for assistance on the Project and will suffer actual economic losses in the form of lost rental income and revenues, reduced equity, and operations costs that will not be recoverable by offsetting revenues from the Project's income. Because the exact amount of these damages cannot be readily ascertained as of the date of this Contract, and because both the Owner and Contractor desire certainty with respect to their rights and obligations in the event the Project is not completed by the aforementioned date(s), the parties agree that if the Contractor fails to achieve Substantial Completion of the entire Work by the dates established therefor, the Contractor shall pay the Owner, as agreed and liquidated damages, One Thousand Dollars (\$1,000.00) per calendar day that the Work is not Substantially Complete, beginning with the date that is thirty (30) days after the date established for Substantial Completion herein and continuing until the Work is deemed Substantially Complete (provided that Owner shall not be entitled to collect simultaneous payments for Contractor's failure to achieve Substantial Completion on overlapping Phases). These liquidated damages have been based on a reasonable approximation of the Owner's damages in the event of such failure by Contractor, and are not a penalty. Owner agrees that the liquidated damages set forth in this Section 4.5 shall be the only damages recoverable by the Owner as a result of Contractor's failure to achieve Substantial Completion of the Work by the dates required by this Agreement. However, Contractor acknowledges and agrees that the liquidated damages set forth above apply only to damages resulting from the Contractor's failure to achieve Substantial Completion of the Work by the dates required by this Agreement and does not limit or preclude Owner from recovery of any damages of any kind, type or nature to the extent they result from any other breach of contract, negligence or other action or omission of Contractor or the Subcontractors, including but not limited to any defective, substandard or deficient construction or costs to supplement workers to accelerate the Work to complete the Work as expeditiously as possible.

§ 4.5.2 Contractor acknowledges that the liquidated damages amounts set forth in Section § 4.5.1 above represents a fair and reasonable estimate of the Owner's probable losses, damage and /or expenses, and are not a penalty, for late completion of the Work and phases thereof.

§ 4.5.3 Owner shall be entitled to offset any liquidated damages owed by the Contractor against any amounts owing by Owner to Contractor.

ARTICLE 5 PAYMENTS

§ 5.1 Initial Payment

§ 5.1.1 If and only if allowed by Owner's lenders, investors, and mortgagees, and any applicable governmental authorities, the Contractor shall submit to the Owner, for presentment to the Owner's lenders and other necessary parties, a request for its reasonable, actual, and demonstrable bond and insurance costs in the amount of \$ _____ (the "Initial Payment"). For the avoidance of doubt, the Initial Payment is conditioned upon approval of the Owner's lenders, investors, mortgagees, and applicable governmental authorities, which approval may be given or withheld in their respective sole discretions, and Owner shall bear no liability to Contractor should such approval not be received.

§ 5.1.2 General conditions shall be paid out in twenty-seven (27) equal monthly installments, commencing in the first Application for Payment. If the Contract Time is extended at any point during the Project, the general conditions amount remaining unpaid at that time shall be spread across the then remaining Contract Time and, therefore, the monthly installments shall be adjusted accordingly. In no event shall the general conditions amount be spread over a period longer than twenty-eight (28) months.

§ 5.2 Progress Payments

§ 5.2.1 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. Applications for Payment shall be submitted on AIA Documents G702 and G703, or in such other form as Owner and Owner's lender shall reasonably approve, and shall be broken down, generally, by funding source, and more specifically as may be reasonably requested by Owner in order to reflect the various Project funding sources. For the avoidance of doubt, Contractor shall prepare G702 and G703 forms specific to each funding source (as set forth in the Schedule of Values) and shall present such G702 and G703 forms to Owner for review and approval prior to any official submission of same.

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

« »

§ 5.2.3 Contractor shall provide to Owner a pencil requisition not later than the Monday of the first full week of each month. Owner and Contractor shall complete a walk-through of the Project after receipt of each pencil requisition, but in no event later than the Thursday of the first full week of each month. Based on the results of each walk-through, Contractor shall prepare its formal Application for Payment and submit it to Architect and Owner. Provided that an Application for Payment is received by the Architect and Owner not later than the « 15th » day of a month, the Owner shall make payment of the amount certified (and approved by Owner's lenders) to the Contractor not later than fifteen (15) days after the Owner's receipt of the applicable Certificate for Payment approved by Owner's lenders. If an Application for Payment is received by the Architect after the application date fixed above, it shall be deemed part of the next payment cycle.

§ 5.2.4 Contractor shall provide separate accounting within its Applications for Payment for each funding source, as applicable, and as otherwise set forth in Section 5.2.1 above. Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents accepted and approved by Owner. The schedule of values shall allocate the Contract Sum among the various Phases of the Work. In addition, each Application for Payment submitted by the Contractor shall be accompanied by the following items, presented separately for each Phase of the Project: (i) a conditional partial waiver of lien executed by the Contractor covering the entire amount of the payment requested by the relevant Application for Payment; (ii) an unconditional waiver of lien executed by Contractor equal to the amount of all payments made by the Owner to the Contractor in all preceding Applications for Payment; (iii) unconditional partial waivers of lien executed by each Subcontractor performing work or furnishing supplies or materials for the Project which partial waivers of lien shall

be equal to the amount of all payments made by the Owner to the Contractor on behalf of such Subcontractor in all preceding Applications for Payment; (iv) a Section 3 compliance report (in which, among other things, Contractor represents that it has complied with any applicable, approved Section 3 plan); (v) an SBE/MBE/WBE compliance report and certified payroll report; (vi) copies of all certified payroll reports produced since the last Application for Payment; (vii) a construction schedule update; (viii) a Change Order log, including approved Change Orders on AIA G701 form (if applicable); (ix) a request for any new Change Orders, including Change Order rationale, and accounting of cost detail and estimate (if applicable); (x) a list of any and all stored materials (whether stored on-site or off-site); (xi) any additional materials required; and (xii) to the extent requested by Owner in advance of the applicable draw meeting, any and all other information or documents necessary for or required by Owner, Owner's lender, investors and mortgagees and applicable governmental authorities, including but not limited to HUD.

§ 5.2.5 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.

§ 5.2.6 In accordance with the General Conditions, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.2.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, and as provided in the General Conditions, or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives (each a "CCD") that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.2.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of General Conditions;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the General Conditions; and
- .5 Retainage withheld pursuant to Section 5.2.7.

§ 5.2.6.3 Notwithstanding anything to the contrary contained in this Agreement, the Contractor shall be entitled to include in any Application for Payment costs actually incurred by the Contractor for materials which are stored on or off the Project site, as applicable, and which are required in connection with the rehabilitation of the Project, provided that:

- (i) such materials are in accordance with the Contract Documents;
- (ii) such materials are securely stored on the island of St Croix at either:
 - a. the Project site,
 - b. the Contractor's warehouse, or
 - c. the Contractor's subcontractor's warehouse, if Contractor has provided Owner with satisfactory evidence of subcontractor's insurance, which satisfies Owner's and its lender's requirements, and, regardless of where stored, are photographed, properly inventoried, and clearly stenciled or otherwise marked to indicate that they are the property of the Owner;
- (iii) the bills of sale and contracts, detailed receipts and/or invoices under which such materials are being provided shall be in form and substance satisfactory to the Owner and its lenders,
- (iv) such materials are either:
 - a. insured for the full value against theft, destruction or other casualty (including but not limited to shipping risks) in a manner satisfactory to the Owner and its lenders, or
 - b. fully guaranteed against theft, destruction or casualty in a manner satisfactory to the Owner and its lender until fully installed for use at the property;
- (v) immediately upon payment, the Owner will own such materials free and clear of all liens and encumbrances of any nature whatsoever and establishes such ownership by evidence satisfactory

- to the Owner and its lender through: bills of sale, payment receipts, and waivers of liens provided by the Contractor or subcontractor as part of the monthly requisition process;
- (vi) the Contractor executes and delivers to the Owner and its lenders such additional commercially reasonable security documents as the Owner's lenders shall deem necessary to create and perfect lenders first lien in such materials if the evidence provided under (v) is not satisfactory and cannot be changed to be satisfactory;
 - (vii) the Owner's lenders' construction consultant has been granted access to the stored materials for the purposes of inspecting and photographing them in connection with its monthly inspection report;
 - (viii) the aggregate amount of such disbursements for such materials shall in no event at any time exceed the actual costs incurred by the Contractor for such materials as verified by the construction consultant;
 - (ix) such disbursements are for the materials, and in the amounts, set forth on Exhibit N or have otherwise been approved in advance by Owner and its lenders which approval shall not be withheld for commercially reasonable requests in compliance with this section required for timely completion of the project; and
 - (x) all stored materials shall be incorporated into the Project within the time frames set forth on Exhibit N annexed hereto or such other time frame that is commercially reasonable for the timely completion of the project and in compliance with this section or as may have been approved in advance by Owner and its lenders (clauses (i) through (ix), the "**Conditions to Stored Materials**").

Additionally, the Contractor shall be permitted to requisition for deposits necessary to lock in pricing for the materials in the amounts set forth on Exhibit N; provided, however, for any deposits, Contractor shall provide to Owner copies of detailed invoices in form and substance satisfactory to Owner and its lenders. Copies of corresponding deposit checks will be provided within thirty (30) days of funding to the Contractor of such payment of requisition for deposits. Owner will have the right to adjust future requisitions for deposits for materials not either 1) incorporated into the Project or 2) incorporated into materials which are stored on or off the Project site as described in this section, above, within the timeframes set forth in Exhibit N.

§ 5.2.7 Retainage

§ 5.2.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten percent (10%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 5.2.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.2.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

N/A

§ 5.2.7.3 Except as set forth in this Section 5.2.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.2.7. The Application for Payment submitted at Substantial Completion shall include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

Upon Substantial Completion of the Work on each building, or in the case of site work, the completion of each phase, the Owner shall release 100% of the Contract Sum applicable to that building or phase, as adjusted by

Change Order, subject to a hold back equal to two hundred percent (200%) of the value of a monetized punch list prepared by the Architect for that building or phase. Following Substantial Completion of the Work on each building or phase, no amount shall be withheld from the payment of retainage with respect to such building or phase unless a written description of the incomplete or defective work items and incomplete, incorrect or missing deliverables, the factual and contractual basis for the claims and the value attributable to each incomplete or defective work item, deliverable and claim is issued and certified as made in good faith by Owner. The Contractor shall include retainage amounts to be released in its next Application for Payment after the conditions for release have been satisfied.

§ 5.2.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of the General Conditions.

§ 5.2.9 Except with the Owner's (and, if applicable, Owner's lenders') prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2.10 In taking action on the Contractor's Applications for Payment the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect or Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 5.2.4 or other supporting data; (2) that the Architect or Owner has made exhaustive or continuous on-site inspections; or (3) that the Architect or Owner has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations and verifications, if required by the Owner, will be performed by the Owner or other representatives acting in the sole interest of the Owner.

§ 5.2.11 See General Conditions Article 9 for additional provisions regarding payment.

§ 5.3 Final Payment

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

- .1 the Contractor has fully performed the Contract and the entire Work is Finally Complete, as defined in Section 9.10.1.1 of the General Conditions, except for the Contractor's responsibility to correct Work as provided in Article 12 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect; and
- .3 all of the conditions for Final Payment as set forth in the Contract Documents have been satisfied, including, but not limited to, the delivery of all information, documents or certifications that are required by the Contract Documents, the Owner, the Owner's lenders, investors or mortgagees, the U.S. Department of Housing and Urban Development ("HUD"), or any other governmental authority with jurisdiction over the Project in order to allow the Owner to proceed to final Project completion, including but not limited to any required cost certification and completion of all punch list items for all Phases of the Work. See General Conditions Section 9.10.1.1.

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

Conditions in this Section 5.3, including specifically those in Section 5.3.1, have been satisfied.

§ 5.4 Interest

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.)

The prime rate per annum as set forth in the Wall Street Journal on the date payment was due, plus two percent (2%).

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Intentionally omitted.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of the General Conditions, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[] Arbitration pursuant to Section 15.4 of the General Conditions.

[] Litigation in a court of competent jurisdiction.

[] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in state or federal court venued in the county where the Project is located, in which case each of the parties hereby irrevocably consent to the exclusive jurisdiction and venue of such courts.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Work may be suspended, or the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s Representative:

(Name, address, email address, and other information)

« Alex Tsakidis
Vice President of Construction Operations
170 Froehlich Farm Blvd
Woodbury, NY 11797
Email: atsakidis@mdgny.com »

The Owner's Representative shall be the sole person authorized to act on behalf of the Owner with regard to the Project. In the event the Contractor receives any instructions or approvals, either orally or in writing, by persons other than one or both of the Owner 's Representatives, the Contractor shall notify the Owner 's Representatives of such instructions or approvals, and shall not act upon any such instructions or approvals until provided express directions from the Owner's Representatives.

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

« »

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten (10) days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in this Agreement, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of the General Conditions, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« N/A. Electronic notices are not permitted. »

§ 8.7 Other provisions:

§ 8.7.1 The Contractor will be furnished free of charge one (1) CD with the complete construction document set, one (1) set of reproducible Drawings and one (1) copy of the Specifications (and a similar number of any Addenda issued to either the Drawings or Specifications) for use in the execution of the Work. All other copies of the Drawings, Specifications or other Contract Documents requested or required by Contractor shall be at the Contractor's sole cost and expense.

§ 8.7.2 Notwithstanding anything herein to the contrary, this Agreement shall be expressly contingent upon Owner's closing of any and all financing, loans or other financial arrangements intended to fund this Project and to allow the Owner to discharge its obligations, and disbursement to Owner (or disbursing agent, if applicable) of all funds anticipated in connection therewith.

§ 8.7.3 Contractor shall, and shall cause all Subcontractors performing Work on the Project to comply with all federal, state, territory or local laws, statutes, ordinances, building codes, rules, regulations, permits or other authorizations, approvals and/or requirements (collectively, "Laws") applicable to the means and methods of performing the Work on the Project. Nothing in this section is intended to impose liability upon the Contractor for the design provided by the Architect or its consultants.

§ 8.7.4 Contractor acknowledges and agrees that any Work performed pursuant to this Contract that involves any movement, disturbance, removal, disposal or other displacement of the earth or soil at the site must comply with the Contract Documents and any additional, reasonable sediment control practices necessary in conjunction with the performance of the Work (collectively, the "Dust and Storm Water Requirements"), all in accordance with the Performance Expectations. Contractor agrees that it will retain in files that are readily accessible all records required by the Dust and Storm Water Requirements applicable to its Work, for a minimum of five (5) years, or for such longer time as may be required by the Dust and Storm Water Requirements. Such records shall, without limitation, include any applicable erosion and sediment control drawings, and all reports of inspection of any storm water controls installed by Contractor, if any. Contractor shall, at any time, upon request of the Owner provide the Owner with copies of any and all such records.

§ 8.7.5 The Contractor shall comply with all provisions of The Davis Bacon Act (40 U.S.C. 3141-3148) including the most current wage decision in effect at the time of execution of the Agreement between Owner and Contractor. Upon Owner's final payment to the Contractor, Contractor shall provide to Owner a certificate of Contractor confirming, to the best of its knowledge, compliance with all Davis-Bacon requirements.

§ 8.7.6 The Contractor shall submit certified payrolls to the Owner, which shall be grouped on a weekly basis and in a form acceptable to the Owner and based upon records created by the Contractor's use of "LCP Tracker" software. The Contractor shall submit to the Owner a plan for SBE/MBE/WBE participation and Section 3 hiring and business participation as required by the Owner and shall provide such reporting with respect thereto as is required by the Contract Documents or by Owner, the Project's lenders or investors and/or governmental or other authorities with jurisdiction over the Project. The Contractor shall comply with all of the requirements included in the attached Exhibit G.

§ 8.7.7 Contractor warrants that it is and will remain in compliance with all federal, state, territory and local labor and immigration laws, regulations and requirements ("Labor Laws"), including those of the Immigration and

Naturalization Service (INS), regarding all personnel retained by Contractor or any Subcontractors who will be providing work, labor, services, materials or equipment to the Project. This includes, but is not limited to, the proper processing, storage and retention of required INS Form I-9s, the examination of required documentation, and the confirmation of appropriated evidence reflecting the identity and employment eligibility of each worker performing any portion of the Work (in such form and at such times as are required by applicable law), and compliance with all visa laws and regulations. Additionally, Contractor will maintain at the Project site records required by the INS, including records of any posting requirements under H-1 visa regulations. Contractor hereby indemnifies and holds Owner harmless from and against any losses arising out of Contractor's failure to comply with all applicable laws, regulations and requirements related to Contractor's or any Subcontractor's use of non-U.S. citizens to perform or supply work, labor, services, materials or equipment to the Project. The Contractor will retain any and all documentation relating to its compliance with immigration laws, regulations and requirements for five (5) years after termination of the Contract or completion of all Work.

§ 8.7.8 Without limitation of anything in the Contract Documents, the Contractor shall comply with all rules, requirements and other Laws applicable to the Project established or imposed by HUD and/or its divisions or departments, including, without limitation, the following: HUD Training, Employment and Contracting Opportunities (Section 3); HUD Equal Employment Opportunities; and HUD-Federal Labor Standards Provisions. Contractor shall execute such certifications in this regard as may be reasonably required by Owner, its lenders, HUD, or any other governmental authority with jurisdiction over the Project or as otherwise required by applicable Laws.

§ 8.7.9 Contractor certifies that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in contracts by any Federal department or agency or the Comptroller General. Contractor shall execute such certifications in this regard as may be reasonably required by Owner, its lenders, HUD, or any other governmental authority with jurisdiction over the Project or as otherwise required by applicable Laws.

§ 8.7.10 Electronic Transfer and Storage of Information. Owner acknowledges that Contractor intends to use ProCore (the "Project Database") for purposes of storing, indexing and tracking the Project Documents (defined below) and shall provide access to the Owner, Architect, and other parties deemed necessary by the Owner or Architect. The Project Database shall be used for distribution of the following items, without limiting other items that might be circulated therein: (i) RFIs; (ii) Submittals; (iii) meeting minutes; (iv) Schedule and updated thereto; (v) Modifications and change events; (vi) daily logs; (vii) Project photographs; (viii) Drawings; (ix) Specifications; (x) safety reports; (xi) punch lists; and (xii) Applications for Payment and certifications thereof (collectively, the "Project Documents"). Contractor agrees that it and the Subcontractors shall utilize the Project Database for all Applications for Payment, submittals and approvals required under this Agreement.

§ 8.7.11 Contractor is hereby notified and acknowledges that any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

§ 8.7.12 Contractor shall, upon the request of Owner, provide to Owner federal System of Awards Management ("SAMs") verification of good standing for itself and each subcontractor. »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1** AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2** AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3** AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified by the parties and attached hereto as Exhibit L ("General Conditions"). Notwithstanding any statement contained in any of the Contract Documents to the contrary, neither the Owner nor Contractor intend that any A201 be incorporated into this Agreement by reference, except the A201 which has been modified by Owner and Contractor and is attached hereto as Exhibit L.
- .4** AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

«»

.5 Drawings

Number	Title	Date
<< >>		

.6 Specifications

Section	Title	Date	Pages
<< >>			

.7 Addenda, if any:

Number	Date	Pages
<< >>		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[<< >>] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

<< >>

[<< >>] The Sustainability Plan:

Title	Date	Pages
<< >>		

[<< >>] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<< >>			

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. The General Conditions provide that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- Exhibit B – Assumptions and Clarifications
- Exhibit C – Drawings/Specifications/Project Manual
- Exhibit D – Phasing Plan
- Exhibit E – Federal Davis Bacon Wage Decision/Rate Schedule
- Exhibit F – HUD Federal Labor Standards Provisions (Copeland (“Anti-Kickback”) Act)
- Exhibit G – HUD Section 3 Rules and Requirements and Project Specific Section 3 Goals
- Exhibit H – Project Schedule
- Exhibit I – Form of Lien Waivers
- Exhibit J – Schedule of Values (including Cost Data)
- Exhibit K – Form of Performance and Payment Bonds
- Exhibit L – A201 General Conditions
- Exhibit M – Dust Mitigation Plan/Mold Remediation Work Plan/Asbestos Abatement of Acoustic Ceiling Spray & Flooring Materials/ Lead Paint Remediation & Stabilization Work Plan

Exhibit N – Stored Materials
Exhibit O – Lender Consent»

[The remainder of this page is intentionally left blank.]

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

VIRGIN ISLANDS HOUSING AUTHORITY

« »

OWNER *(Signature)*

« Robert Graham, Executive Director »

(Printed name and title)

« »

CONTRACTOR *(Signature)*

« »

(Printed name and title)

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« Revitalization of D. Hamilton Jackson Terrace buildings 8-14 and Alphonso “Piggy” Gerard buildings 1-7 (4% LIHTC project), a 70 unit multifamily project, located at # 13-A, 13-B, 13-BA&C, 14 Estate Richmond, St. Croix »

THE OWNER:

(Name, legal status and address)

« Virgin Islands Housing Authority
9900 Oswald Harris Court
St. Thomas, VI 00802 »

THE ARCHITECT:

(Name, legal status and address)

« SLM Architecture, P.C.
300 Old Country Rd # 241
Mineola, NY 11501 »

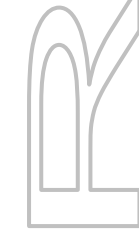
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ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.



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DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the AIA Document A101-2017 Agreement (as modified by the parties) between the Owner and Contractor (hereinafter the "Agreement") and consist of the Agreement (including any and all attachments, and Exhibits thereto), these General Conditions of the Contract (including 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 and approved by Owner pursuant to Section 7.4. 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.

§ 1.1.1.1 The term "Contract", as used herein and in all the Contract Documents, is inclusive of all the Contract Documents identified in Section 1.1.1 above. Terms defined herein and in the other Contract Documents are used in each consistently with the definitions set forth in such documents. In the event of any conflict or inconsistency among the terms of any of the Contract Documents, interpretation shall be governed in the following priority:

- .1 Modifications
- .2 Contractor Assumptions and Clarifications, if any
- .3 Agreement, as modified by the Parties
- .4 AIA A201 (2017) General Conditions, as modified by the Parties
- .5 Addendum to the Construction Documents, dated after the initial issuance of the Construction Documents
- .6 Drawings
- .7 Specifications
- .8 Other documents listed in the Contract shall have priority in the order

so listed.

With respect to conflicts or inconsistencies between the Specifications and Drawings relating to the extent of the work to be performed, all work necessary for the execution of the Work (whether shown on the Drawings and not described in the Specifications, or described in the Specifications and not shown on the Drawings) and any work which is obviously necessary to complete the Work within the limits established by the Contract Documents shall be considered as part of the Agreement, and shall be executed by the Contractor in the same manner and with the same character and quality of material as other portions of the Work without any increase in Contract Sum or extension of the Contract Time.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto with respect to the matters set forth in the Contract Documents and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a

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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.



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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.

§ 1.1.2.1 The Contractor is independently responsible for reviewing and coordinating the provisions of all of the Contract Documents. In addition, the Contractor is responsible for reviewing all reports, investigations, test data and other documents relating to the Work and the Project Site that have been provided to the Contractor. The failure to review any document shall not relieve or excuse the Contractor from compliance with its terms or the terms of any Contract Document.

§ 1.1.2.2 The Contractor's proposals and bid submittals in connection with the Project (and the invitations, instructions to bidders issued by the Owner, as well as any communications relating thereto), if any, are NOT part of the Agreement and shall not be the basis for any claim by Contractor. All are superseded by the provisions of the Contract Documents.

§ 1.1.3 THE WORK

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

§ 1.1.3.1 The Contractor shall provide, and as used in the Contract Documents the Work shall include, all labor, supervision, materials, fixtures, built-ins, equipment, tools, supplies, taxes, and permits (as described in Section 3.7.3) necessary to timely and properly produce all work and completed construction required or reasonably inferable from the Contract Documents. In determining what is reasonably inferable from the Contract Documents, all such documents shall be construed together and in accordance with industry custom and practice. Performance by the Contractor shall be required to the extent consistent with the Contract Documents or reasonably inferable from them as being necessary to produce the indicated results.

§ 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.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.4 Intentionally omitted.

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

§ 1.2.6 The Contractor acknowledges and agrees that the mechanical, electrical, plumbing, and fire suppression drawings may be diagrammatic. The mechanical, electrical, plumbing, and fire suppression Subcontractors shall coordinate with the Contractor in determining the route of pipelines, ducts and conduits, and locating equipment. Any minor variations required for conformance to the intent of the diagrammatic drawings shall be made without additional cost and without an increase in the Contract Time. Where there are intersections involving various ducts, piping and equipment, particular consideration shall be given to clearances required for future maintenance and service. Where tight conditions or interferences develop, the Contractor shall confer with the Subcontractors whose work is affected, the Architect, and the Owner to reach an acceptable solution. The suggested solution shall be submitted to the Architect and Owner for review and approval. The Contractor and all Subcontractors shall verify measurements at the Project Site.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

§ 1.5.1 The Instruments of Service, including Drawings, Specifications and other documents prepared by the Architect through which the Work to be executed by the Contractor is described shall not be used by the Contractor Parties on projects other than the Project unless expressly authorized in writing by the Owner. The Instruments of Service prepared by the Architect and copies thereof furnished to the Contractor, are for use solely with respect to this Project.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and 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.

§ 1.5.3 As used herein the term “Proprietary Information” shall mean all information which the Contractor acquires from the Owner, or arises out of the Work on the Project and concerns the present and future plans of the Owner, or pertains to the operations of the Owner's business, or to the use of the Project (Proprietary Information shall not include information that is or becomes part of the public domain except if through a disclosure in violation of this Contract). The Contractor represents to the Owner that it has, and shall employ, policies and procedures designed to protect Proprietary Information and to prevent its unauthorized publication and disclosure. The Contractor agrees that the Owner's Proprietary Information shall be subject to such policies and procedures. Specifically, and in addition to the foregoing, the Contractor agrees that it will take reasonable measures to prevent disclosure of such Proprietary Information to any third person and will not use any Proprietary Information other than on the Owner's

behalf, except as the Owner may otherwise authorize in writing. The Contractor also agrees to take all reasonable precautions to safeguard any documents which the Owner may supply to it hereunder which contain Proprietary Information. The Contractor may make copies of such documents to the extent and only to the extent necessary for the performance of its obligations hereunder. All public relations matters arising out of or in connection with the Project shall be the responsibility of and be handled by the Owner. The Contractor shall not make any announcement or publication in connection with the Project without the Owner's prior written approval, which approval shall not be unreasonably withheld. The Contractor shall have the right to include representations of the Project, including photographs of the exterior and interior, among the Contractor's promotional and professional materials. Project signs visible from off the Project Site and displayed for the purposes of advertising participation on the Project may only be erected if approved in advance by the Owner.

§ 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.

§ 2.1.1.1 The Contractor acknowledges that, in addition to the Architect, the Owner may utilize its own personnel and may retain certain consultants (who may also have certain consultants of their own) to assist the Owner with respect to various aspects of the Project, including monitoring of the Contractor's Work. Any consultants retained by the Owner are solely advisors to the Owner and shall not have authority to act as a representative or agent of Owner or to act on behalf of the Owner in connection with the Project or the Contract unless specifically so indicated to the Contractor by the Owner in writing. One such consultant with whom the Owner has an agreement is **MDG Development Partners LLC** ("MDG"), who will be acting as a construction consultant to the Owner in relation to the Project. As with other consultants engaged by the Owner, MDG's authority to act on behalf of the Owner with respect to the terms of this Agreement shall be as set forth in writing from the Owner to the Contractor. The Contractor agrees to cooperate with and make the Work accessible for review and observation by, the Owner's personnel, and any consultants hired by Owner, upon notice to Contractor specifying the roles and responsibilities of such individuals.

§ 2.1.2 The Owner shall furnish to the Contractor within ten (10) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the Project Site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the 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 Project Site, and a legal description of the Project Site. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner, as provided in the Contract Documents, 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 after receipt of a written request from the Contractor to avoid delay in the orderly progress of Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. In the event Owner fails to timely provide information requested by Contractor pursuant to this Section 2.2.4, and such failure causes an actual delay to the critical path of the Project schedule, such failure shall constitute a delay entitling Contractor to relief pursuant to Article 8 hereof, and Contractor shall have the right to make a claim pursuant to Section 15.1 below. Notwithstanding the foregoing, any delay that reasonably could have been avoided or mitigated by actions consistent with the Performance Expectations by Contractor, Subcontractors, any person or entity acting on behalf of Contractor or the Subcontractors, anyone employed by any them, or anyone for whose acts they may be liable (each, a "Contractor Party", and collectively the "Contractor Parties"), shall not constitute a delay entitling Contractor to relief pursuant to Article 8 hereof.

§ 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. All other copies of the Drawings and Specifications or other Contract Documents shall be at Contractor's sole cost and expense.

§ 2.2.6 The Owner may provide surveys, soils and analyses, environmental testing and other information to the Contractor concerning the existing conditions at the Project Site. The Contractor may rely on such information to the extent doing so is reasonable in accordance with the Performance Expectations; however, the Owner does not warrant or guarantee, and shall not be responsible for or liable for, the correctness, accuracy or completeness of any such information or any conclusions drawn therefrom by the Contractor.

§ 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 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.

§ 2.3.1 If the Contractor fails to promptly correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects or fails to carry out the Work in accordance with the Contract Documents and fails within a fifteen (15) day period after receipt of written notice from the Owner to correct any such default, failure or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies (either with the Owner's own forces or by hiring another contractor to perform the Work that the Contractor is failing or neglecting to carry out). In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's reasonable expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. 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.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project Site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor shall be responsible to examine carefully all of the Contract Documents and all reports, investigations, test data and other documents relating to the Work and the Project Site prepared by the Architect, the Owner or by the Owner's separate consultants, and provided to the Contractor, and will apprise itself of conditions relevant to the performance of the Work which are capable of ascertainment through an investigation of the Project Site. The Contractor shall make its own evaluation and analysis of the information relating to the Project Site and the Work during the pre-construction phase ("Pre-Construction Phase") in accordance with the Performance Expectations and shall clarify and resolve identifiable questions or uncertainties relating to same.

§ 3.2.1.1 The Contractor may provide incidental services involving construction consulting, including value engineering. The Owner acknowledges that, notwithstanding any other provision of the Agreement, such services are advisory and are not to be considered professional design services. Owner will refer such matters to its own design professional for professional guidance, and accordingly, the Contractor shall have no liability to the Owner with respect to any such professional design services.

§ 3.2.2 During the construction of the Project, the Contractor shall review and compare the current Contract Documents and any modifications thereto relating to the Work. If from the review of the Contract Documents issued to the Contractor prior to proceeding with the affected Work, it is apparent that there is a conflict, inconsistency, or ambiguity in the instructions applicable to such Work, the Contractor shall promptly report such inconsistency, conflict or ambiguity to the Owner and shall secure written instructions from the Owner prior to proceeding with the Work affected by or involving such inconsistency, conflict or ambiguity. If the Contractor proceeds with any Work that it knows or, based on the Contract Documents and presuming Contractor has acted in accordance with the Performance Expectations, should know contains or involves an inconsistency, conflict or ambiguity or that violates an applicable code or law without first giving the Owner notice thereof and being ordered to proceed therewith by the Owner, the Contractor (without any increase in the Contract Sum) shall be responsible to the Owner for any delay connected with, and for all costs, damages or losses suffered by the Owner as a result of, any Work so performed by the Contractor.

§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner and Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, and rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

§ 3.2.4 By executing the Agreement, the Contractor represents that it has visited the Project Site, has examined carefully all of the Contract Documents upon which the Contract Sum is based, has reviewed all information, data and documents regarding the conditions at the Site made available to the Contractor by the Owner prior to the execution of the Contract. Based on the foregoing, the Contractor shall not be entitled to any increase in the Contract Sum or to any extension in the dates for Substantial Completion or Final Completion in connection with the Work

caused by any conditions at the Site disclosed by the information made available to the Contractor by the Owner prior to the execution of the Contract, or of which the Contractor otherwise was aware, and/or disclosed by a reasonably prudent visit to and visual examination of the Site prior to the execution of the Contract.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work in accordance with the Performance Expectations. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect and Owner which are acceptable to the Contractor. The Contractor acknowledges and agrees that the Owner is under no obligation to inspect the Work or discover defects or deficiencies in the Work. The inspection, observation or acceptance of the Work by the Owner, the Architect or any consultants retained by Owner shall not in any way constitute an acceptance of defective or improper Work (unless specifically so stated by the Owner in writing) and shall not make the Owner, Architect or such consultants responsible for means, methods, sequences or techniques used to perform the Work, which items shall remain the sole responsibility of the Contractor. Similarly, the failure of the Owner, Architect or any such consultants to discover or give notice of any defects, deficiencies or other problems in the Work shall not constitute a waiver or acceptance thereof and shall not in any way affect or reduce the Contractor's responsibilities to perform the Work consistent with the terms of the Contract Documents.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, or under contract with, the Contractor or any of its Subcontractors.

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

§ 3.3.4 The Contractor shall be responsible to the Owner for any failure to perform this Contract. All Work shall be performed only by appropriately skilled personnel in sufficient numbers, trained and experienced, and familiar with the materials and methods indicated or specified, and all applicable codes, ordinances and industry standards applicable to the construction of the Work.

§ 3.3.5 Beginning with the commencement of the Work, the Contractor shall hold two (2) progress meetings at the Project Site each month, or at such other time and place as is acceptable to the Owner. At such meetings, the progress of the Work shall be reported in detail with reference to the Project schedule, and all problems or other issues relating to the Work shall be discussed and resolved. Each Subcontractor then performing work on the Project shall have a competent representative available upon Owner's request at or prior to each weekly meeting to report on the condition of his work and to receive information regarding the performance of future work by the Subcontractor. If Contractor, in its reasonable judgment, determines additional progress meetings are necessary for the timely execution of the Work, Contractor may hold up to two (2) additional progress meetings at the Project Site each month, and may request the attendance of Owner, Architect, Owner's Representative and their respective consultants. The Contractor shall provide the Owner and Architect with at least three (3) days prior notice of any meeting held pursuant to this Section and shall allow the Owner and the Architect to attend and participate in each such meeting. The Contractor shall keep minutes of each meeting held pursuant to this Section and shall circulate the minutes of each meeting to the Owner, Architect and all Subcontractors (and other persons as may be appropriate) no later than five (5) working days after the meeting is concluded.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit smoking inside the buildings at the Project at any time after any such building is in a "weather tight" condition.

§ 3.5 WARRANTY

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

§ 3.5.2 All manufactured articles, materials, and equipment shall be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by the Contractor as directed by the manufacturer unless otherwise specified. In addition to the warranties provided for in Section 3.5.1 of these General Conditions, the Contractor represents and warrants to Owner that all Work, materials and equipment furnished under this Contract shall conform to the Contract Documents and will be free from faults and defects in workmanship or materials for a period of one (1) year from the date of Substantial Completion of such Work. For the avoidance of doubt, the one-year warranty period described in the preceding sentence applicable to Work completed in Phases shall commence, with respect to each Phase of the Work, on the date that the Work related to such Phase is determined to be Substantially Complete. All Work not conforming to these standards shall be considered defective. Further, the Contractor agrees that all guarantees or warranties of equipment or materials furnished to the Contractor or Subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of, and are hereby assigned to, the Owner. Notwithstanding anything to the contrary contained in the Contract Documents, the one-year warranty provided above by the Contractor shall be in addition to and shall not, in any way, replace, shorten, supplant, or otherwise modify, any other warranties required or otherwise provided in the Contractor Documents, including, without limitation, any such longer warranty period(s) set forth in the drawings or specifications attached as Exhibit C to the Agreement, or any extended manufacturer warranty provided along with any materials or equipment to be utilized in connection with the Project.

§ 3.5.3 Subsequent to Substantial Completion of the entire Work or any applicable designated portion thereof, and prior to the Owner's initial occupancy and use of the Project, the Contractor shall schedule and conduct with the Owner a complete review and operational demonstration of all equipment and mechanical and electrical systems installed by the Contractor on the Project and shall also review the operation and maintenance of such systems with the Owner's maintenance personnel. This review and demonstration shall be conducted once for all equipment and systems, and Contractor shall produce a video-taped guide for Owner's use, clearly demonstrating proper use of each piece of equipment and each system. Contractor shall also provide such additional information or demonstration regarding each piece of equipment or system as Owner shall reasonably require to provide for proper use thereof. Contractor shall be responsible for the maintenance and operation of all equipment and systems, and the Owner shall not be deemed to have accepted the Work for the purposes of the Contractor's warranties and exclusions thereof in Section 3.5.1, until Contractor has achieved Substantial Completion of the Phase of which such equipment or system is a part. Subsequent to this review, the Contractor, with reasonable promptness and at no cost to the Owner, shall make all adjustments or corrections and shall balance all systems in order to make all equipment and systems perform as required by the Contract Documents. If necessary or requested by the Owner, the Contractor shall require the Subcontractor, supplier or materialman responsible for any such equipment or system to participate in the review and/or perform any required adjustments, corrections or balancing.

§ 3.5.4 All warranties provided in the Contract and all provisions for correction of Work in Article 12 shall include Work of Subcontractors. Failure of manufacturers to guarantee products will not relieve the Contractor of its general warranty obligations under this Contract during the one-year general warranty. Notwithstanding the prior sentence, the Contractor shall not be required to warrant a product that the manufacturer will not warrant due to its

application as specified in the Contract Documents or the location of the Project, provided the Contractor gives the Owner prompt written notice of such fact upon learning of the manufacturer's position (in which event the Contractor should not proceed with the application directed by the Contract Documents until receiving further direction from the Owner and Architect) and provided further that the foregoing shall not apply to substitutions suggested by the Contractor (other than accepted value engineering items, as evidenced by a change order). The Contractor shall be responsible for any costs or expenses arising in connection with or as a result of any defective and/or nonconforming Work, including the fees for any additional professional services of the Architect necessitated thereby. Notwithstanding anything to the contrary herein, Contractor shall have no liability for the failure of any product or equipment specified by the Owner unless such failure is the result of the Contractor's defective and/or non-conforming Work.

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

§ 3.5.6 The Contractor agrees, upon notice from the Owner, to pay for and, if requested, correct, repair, restore and cure any damage or injury, whenever the same shall occur, resulting from any defects, omissions or failure in workmanship or material by Contractor or a Contractor Party.

§ 3.5.7 The date of commencement of the guarantees and warranties required by the Contract Documents shall not in any manner be affected by any delay in the commencement, progress or completion of the Work, regardless of the cause therefor. For the avoidance of doubt, warranties shall run from the Date of Substantial Completion of each Building.

§ 3.5.8 Contractor agrees that all warranties of Contractor and Subcontractors hereunder shall be deemed to run to the benefit of, and may be assigned to, the successors-in-interest of Owner (if so assignable according to their terms). If, at the end of Contractor's warranty period, any manufacturer or vendor warranty remains in effect that do not, by their terms, run to the benefit of the ultimate user of the product in question, then Contractor shall assign such warranty to Owner at no additional cost to Owner to the extent assignable by its terms. In order to facilitate the foregoing, to the extent a warranty does not run to the benefit of Owner or the ultimate user of the item in question and cannot, by its terms, be assigned, Contractor shall take commercially reasonable steps to assist Owner in enforcing the warranty against the applicable manufacturer, vendor, or Subcontractor.

§ 3.5.9 Contractor agrees that prior to the expiration of the one-year Warranty period referenced above, at a date and time mutually agreeable to the Owner and Contractor, but anticipated to be approximately one month prior to the expiration of such Warranty, the Contractor, Owner, Architect and such other entities as the Owner may require, shall perform an inspection of the Work to determine if any of the Work may be defective and subject to correction under the Warranty provided herein. If, during or as a result of such inspection, Work is determined to be defective or otherwise entitled to correction under the Warranty, such corrective Work shall be completed in accordance with the terms of this Agreement.

§ 3.6 TAXES

The Contractor and each Subcontractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, and shall pay all taxes measured by the wages of its employees and any business privilege taxes. This Project is anticipated to be exempt from payment of any gross receipts tax or excise tax at every level (i.e. Contractor, Subcontractors, sub-subcontractors, suppliers, etc.). Contractor shall submit, and shall require and cause all Subcontractors to submit, all required documentation for the purpose of obtaining the aforementioned tax abatements (including, without limitation, abatement of excise taxes). For the avoidance of doubt, Contractor shall be solely responsible for the payment of any taxes paid by the Contractor that would otherwise have been exempt but for Contractor's failure to properly complete and/or submit the required documentation related to such exemption.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 The Owner has paid the building permit fee. The Contractor is responsible for obtaining any required trade permits, including but not necessarily limited to the electrical permit and the plumbing permit. The Contractor shall also apply, secure and pay for other required governmental inspections, testing, approvals required with respect to

such permits and licenses and any other governmental fees and licenses customarily paid for by the Contractor or a Subcontractor.

§ 3.7.1.1 The other fees or permits the Owner shall obtain include state/territory and local use fees and permits, utility connection fees, traffic control and related fees, licenses and inspections necessary for the proper execution and completion of the Work and which are legally required.

§ 3.7.1.2 The Contractor shall be responsible to prepare the Project Site and coordinate with all public utilities for installation or alteration of utilities and related services at the Project Site. Contractor shall provide to Owner copies of any and all correspondence to or from the utilities. In addition, within sixty (60) days of commencement of construction on the Project, the Contractor shall provide Owner notice of any fees, deposits or letters of credit which the Owner is required to pay or deposit with a utility in connection with the provision of services to the Project Site. Notwithstanding anything to the contrary contained in the Contract Documents, Contractor shall be responsible for ensuring continuous and uninterrupted utility service to all parts of the Project Location other than the Project Site (as the same is determined by the Owner and Contractor according to the current Phase(s) or portions of the Work being completed at such time) during execution of the Work within the Project Site. Notwithstanding the foregoing, there may be limited, temporary shutdowns to complete utility tie-ins. Contractor shall provide Owner with reasonable advance notice of same.

§ 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 and public and private utilities 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 Project Site that are (1) unknown subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, and which were not, and should not reasonably have been, discovered by the examination and review set forth in Section 3.2, or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist in the vicinity of the Project Site and in buildings of the same age and character as the buildings housing the Project, 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 fourteen (14) calendar days after first observance of the conditions. The Owner, in consultation with the Architect, shall determine whether an increase in the Contractor's cost, or time required for performance of any part of the Work, is warranted and shall, within a reasonable amount of time, issue a CCD to address these issues. If Contractor disagrees with a decision to issue or not issue a CCD, it may submit a claim as stipulated by Article 15 of these General Conditions. Under no circumstance, however, shall Contractor suspend performance of the Work pending resolution of any claim, including claims filed pursuant to this Section.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 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 ("Allowance Items") 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 unloading and handling at the Project site, labor, installation costs, materials and equipment delivered at the Project Site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for overhead, profit and all other expenses associated with the allowances are included in the Contract Sum and not in the allowance amounts; 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; (2) changes in Contractor's costs under Section 3.8.2.2; and (3) allowable mark-up in the case of Allowance overruns.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 Contractor shall, prior to the start of construction, designate one (1) individual to serve as its Project Superintendent. The Project Superintendent so designated shall be principally responsible for coordinating the Work on the Project and shall be present on the Project Site as appropriate during each day when the Work is being performed in order to ensure the timely and proper performance of such Work. If the Project Superintendent is not physically present on the Project Site for any extended period, he or she shall be available by telephone or other comparable device to respond to emergencies, problems and questions as they arise; alternatively, Contractor may designate another individual to serve as an "Interim Project Superintendent," who shall fulfill the Project Superintendent's responsibilities during the period in which Project Superintendent is absent from the Project Site. The Project Superintendent shall communicate with the Contractor, the Owner, the Architect, and all other persons involved with the Project as necessary to accomplish the timely and proper completion of all Work on the Project. The Project Superintendent shall represent the Contractor, and communications given to the Project Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Project Schedule is attached to the Agreement as an exhibit. The Project Schedule shall not be extended without the prior review and approval of the Owner and the Architect. Contractor acknowledges and agrees that it has prepared and is fully familiar with the Project Schedule, which is a critical element of its Agreement with the Owner, and agrees to be bound thereby.

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

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and shall update the same as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval, which 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 no less than fourteen (14) calendar days 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 as required to complete the Work within the Contract Time and as required by the Contract Documents. The schedule for the Work shall be maintained and updated monthly (or more frequently if the Owner reasonably determines that it is necessary) in such form (e.g. bar chart, CPM) and shall contain such information as the Owner and Architect may reasonably request. In addition, if requested by the Owner or Architect, the Contractor shall provide such additional information (such as daily force and activity reports, material purchase and delivery status reports and reports of progress against schedule milestones) as are reasonably necessary to monitor the status of the Work and respond to any delays thereto. Contractor shall also provide Owner with reasonable advance notice, whenever practicable, of the completion of various milestones and or Phases prior to their actual completion (for instance, if Contractor assumes the completion of the then-current phase within the next thirty (30) days, Contractor should specifically apprise the Owner of same, separate and apart from any other reporting obligations Contractor might have elsewhere in the Contract Documents). Notwithstanding anything to the contrary herein,

however, Contractor shall not have the right to extend the Schedule unilaterally, with any such extension required to be memorialized in a Change Order or CCD signed by Owner.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Project 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. In addition, Contractor shall deliver all submittals to the Owner electronically. At the conclusion of the Work on the Project, these marked drawings shall be given to the Architect and may be used by the Architect in connection with Architect's review and approval of the as-built drawings. The as-built drawings shall be delivered by Contractor and shall show all construction Work, within reason and in accordance with industry standards, performed on the Project as set in place during construction, and revised to show the foregoing information and changes from the original drawings made during construction. The Contractor shall be responsible and liable to the Owner for accurately and completely recording all the information required by this section on the marked set of drawings and shall, at no cost to the Owner, review the as-built drawings with the Architect to verify that this information has been accurately incorporated in the as-built drawings.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals (collectively, the "Contractor's Submittals") are not Contract Documents unless they are required to be reviewed and approved by the Architect, in which event they shall be considered Contract Documents, following their approval by Architect, if Architect and Owner, in their sole discretion, agree to designate them as such. Notwithstanding the foregoing, however, only those Contractor's Submittals that are in conformance with this Contract may be considered Contract Documents to the extent permitted herein, and under no circumstance shall any inconsistency, deviation, or conflict presented in any Contractor's Submittal control with respect to any other Contract Document unless such deviation is expressly called to the Architect's attention and accepted by Architect. It is expressly agreed that the purpose of Contractor's Submittals is to demonstrate the way by which the Contractor proposes to conform its Work 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 such submittal. Contractor may rely upon the Architect's approval of Contractor's Submittals in accordance with this Section 3.12 and subject to the limitations of Sections 4.2.7 and 4.2.13 below. 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. For avoidance of doubt, as used in the context of shop drawings and submittals, Architect's approval means that the Architect has taken no exception to a specific deviation called out on in the shop drawing or submittal.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect, with a copy to Owner, all Contractor's 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. Contractor's Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. The Architect shall have no obligation to review any Contractor's Submittal unless the actions required by this Section and Section 3.12.6 have been taken and such Contractor's Submittal has been reviewed and marked by the Contractor to indicate field conditions, proposed deviations from the Contract Documents, and any similar matters. The Contractor shall be

responsible to the Owner for all delays caused by the Contractor's failure to comply with the provisions of this Section and of Section 3.12.6.

§ 3.12.6 By submitting the Contractor's Submittals, the Contractor represents to Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, (3) reviewed field measurements and field construction criteria related thereto, or will do so, and (4) 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 Contractor's 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 Contractor's Submittals unless the Contractor's submittal clearly identifies and describes the deviation or if the deviation is the result of the Architect's alteration or mark-up of a submittal.

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

§ 3.12.10 Except as set forth in paragraph 1.1.3.2, the Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. However, to the extent the Work requires that professional services are to be provided, Contractor represents it shall procure any such services from a licensed design professional, under a separate contract, in conformance with all applicable law and with the requirements of the Contract Documents. 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. Contractor does not hold itself out to be a licensed or authorized architectural or engineering firm and Owner agrees not to raise that issue as a basis to either avoid payment or to challenge the validity of this Agreement or any lien by Contractor.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the Project Location to the Project Site (as determined by the Owner depending on the current Phase(s) and/or portion of the Work being completed at the time) and only in 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. Contractor shall also be responsible for limiting any impact on the Project Location outside of the Project Site during the execution of the Work so as not to inconvenience Owner's residents utilizing areas at the Project Location that are not considered part of the Project Site.

§ 3.13.2 The Contractor shall be solely responsible for all material or equipment stored by it or by any Subcontractors on the Project Site (subject at all times to Contractor's rights, if any, with respect to Owner's insurance coverage required by this Agreement). Beginning with issuance of the NTP and continuing through Final Completion of the Project, the Contractor shall be responsible for the security of the Project Site, including all tools, materials, equipment and completed Work on the Project Site. The specific security measures and obligations are as

stated in the Qualifications and Assumptions to the Contract Sum. The Contractor, without any increase in the Contract Sum, shall take such actions as defined in the Qualifications and Assumptions to maintain such security, including, but not limited to the erection of temporary security fencing around the Project Site. The Contractor shall properly safeguard and store any combustible material necessary to the Work so as to protect against the possibility of fire or other damage. Contractor shall be solely responsible for all damage, cost or expense caused by the use or storage of combustible materials at the Project Site, except and only to the extent that such damages, costs or expenses are actually paid by applicable insurance. The Contractor shall provide temporary protection to the extent necessary to protect the Work from weather conditions (and provided Contractor has done so in accordance with the performance Expectations, shall be entitled to a change order for any preparation of the site and clean up after a named storm or earthquake) and to allow the Work to be performed within the Contract Time and dates for Substantial Completion of the entire Work or any applicable designated portion thereof or Final Completion. Owner shall procure Builder's Risk or storage and transportation insurance with respect to material stored on or off site and in transit and Course of Construction property insurance with respect to material and Work in place.

§ 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. For the Work to be considered Substantially Complete, the Project Site exterior must be left "broom clean" and all the Project interiors must be thoroughly cleaned and vacuumed, all boxes, crates, and other Project materials shall be hauled off of and away from the Project Site at the Contractor's expense, the Contractor shall thoroughly wash and clean all glass, replace broken glass, clean hardware, remove paint stains, spots, smears, marks and dirt from all surfaces, clean fixtures, wash tile floor and all exposed concrete and vacuum all carpeted areas so as to present clean work to the Owner for acceptance. Prior to completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. In addition, Contractor shall at all times keep the Project Site and adjacent rights of way clean and free of debris or blowing trash, cut and trim all grass and weeds (within the active construction phase/s only), as necessary to maintain a neat, clean and safe Project Site and adjacent rights of way. To the extent the Specifications require more stringent requirements with regard to cleaning, the Specifications shall control.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so after 48 hours' prior notice to the Contractor (and without regard to the time for notice set forth in Section 2.4 of these General Conditions) and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Owner's consultants and the Involved Organizations and Architect access to the Work in preparation and progress wherever located. In this regard, the Contractor shall make personal safety equipment, with the exception of work boots, available to any such persons accessing the Project Site.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect and Owner. This indemnification, hold harmless and defense obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend, and hold harmless the Owner, the Involved Organizations, investors and mortgagees, the U.S. Department of Housing and Urban Development ("HUD"), the Owner's Representatives, and the Owner's consultants (including, without limitation, MDG and MDG's consultants, but excluding the Architect and the Architect's consultants), the Owner's members, the Owner's officers, directors, shareholders and affiliated companies, and agents and employees of any of them (collectively "Owner Indemnitees") from and against any and all liability, lawsuits, claims, damages, losses, interest, judgments, liens and expenses (including, but not limited to reasonable attorney's and consultants' fees, costs and disbursements) (subject to the last sentence of this section), allegedly arising out of or resulting from the performance of the Work to the extent caused by the negligent acts or omissions, or breaches of contract or statutory violations (including but not limited to claims based upon improper employment practices), of the Contractor or any other Contractor Party. The Contractor agrees to indemnify, defend, and save the Owner Indemnitees harmless from and against all lawsuits, demands, claims or asserted against the Owner Indemnitees, or any of them, to the extent they involve claims, matters or allegations that, if successful, would require the Contractor or any applicable policy of insurance to indemnify the Owner Indemnitees, or any of them. This indemnification, hold harmless and defense obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract. Notwithstanding anything else in this Section or this Agreement, Contractor's liability to the Owner for attorney's fees and expenses under this section shall be limited to the defense of claims arising out of demands or actions brought by third parties and to payment of attorney's fees awarded in any such third party actions.

§ 3.18.2 In any and all claims against the Owner, any of its agents or employees or any Indemnitee by any employee of the Contractor, a Subcontractor, a Sub-subcontractor at any tier, anyone directly or indirectly employed or retained by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligations under Section 3.18.1 or the Contract Documents shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 Owner shall defend, indemnify and hold harmless Contractor, its members, principals, officers and employees from and against any and all liability, lawsuits, claims, damages, losses, interest, judgments, liens and expenses (including, but not limited to reasonable attorney's and consultants' fees, costs and disbursements) that may be incurred to the extent they are a result of, in connection with, or as a consequence of the negligence of Owner or its agents, or the breach of the Contract by the Owner. This indemnification shall survive completion of the Project or the earlier termination of the Agreement

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

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect or designate such other individual or entity, including the Owner or its personnel, whose status under the Contract Documents shall be that of the former Architect. Owner agrees that it shall at all times have an architect retained and available to assist with interpretation of the Contract Documents and to make design decisions and to determine the date(s) of completion. If the Architect is terminated, it shall be replaced with another licensed architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representatives during construction until the date the Architect issues the final Certificate for Payment

and with Owner's direction, from time to time during the later of the one year period after the date of Final Completion of the Work or by the terms of any other applicable warranty from time to time during the one year period for correction of the Work described in Article 12. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Throughout the Project, the Owner (at its discretion) shall have the right to communicate directly with the Contractor, without involving the Architect, provided however that all communications involving design issues shall include the Architect (by direct participation or copy). In all events, all written communications between the Architect and Contractor shall be provided to the Owner. 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 and Owner each will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect (with the Owner's written consent) or Owner 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 or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Contractor is responsible to coordinate scheduling of close-up inspections with the Architect.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's Submittals, 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, within fourteen (14) calendar days. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details 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 or acceptance of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the Project Site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in the Agreement between the Owner and Architect.

§ 4.2.11 Upon written consent of the Owner, claims, disputes and other matters in question between the Contractor and the Owner relating to the execution of the Work or the interpretation of the Contract Documents may be referred initially to the Architect for decision, which will be rendered in writing with reasonable promptness. Disputes regarding the Architect's decisions on matters rendered pursuant to this Section shall be subject to further resolution as set forth in Article 15 of these General Conditions and the Contract Documents.

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 As used in this Contract, the term "Subcontractor" or "subcontractor" shall mean any person or entity who has a direct Contract with the Contractor to perform a portion of the Work on the Project (including materialmen and suppliers) and all other persons or entities (whether such persons or entities are subcontractors, sub-subcontractors, materialmen or suppliers) who provide materials, labor or services directly or indirectly to or for the Project through or under the supervision of Contractor or its Subcontractors. 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 Project Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Except for those Subcontractors previously approved in writing by Owner, Contractor will use only its employees for the Work. Contractor will not utilize any Subcontractor in performing any portion of the Work unless and until the Owner gives its specific prior written approval. As between Owner and Contractor, Contractor shall be legally obligated to prosecute and perform the Work notwithstanding that the Contract Documents may permit performance by a Subcontractor. Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special

design. Within fourteen (14) days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the fourteen (14)-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. Except for the reasons enumerated in Section 5.2.3 below, any 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Contractor shall, upon request by Owner, provide copies of all subcontracts and purchase orders to Owner, together with a certification that such documents are true, correct, and complete copies of such documents.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 In the event this Contract is terminated by the Owner for any of the reasons set forth in Section 14.2.1 or 14.4.1, the Owner shall have the right (without any responsibility so to do) to assume the rights and responsibilities of the Contractor under all or some subcontracts, any construction, materials or rental agreements, and/or any other commitments related to the Work which the Owner in its sole discretion, chooses to assume. While this provision shall constitute a present assignment of Contractor's rights with respect to any and all such contracts, agreements and commitments which Owner so chooses to assume, the Contractor, upon request from the Owner, shall promptly execute and deliver to the Owner written assignments of such contracts, agreements and commitments which the Owner in its sole discretion so chooses to take by assignment. All contracts with Subcontractors shall provide for this assignment.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site. The term "separate contractor" as used herein shall mean and refer to third parties performing work or services related to the Project under separate contracts with the Owner. 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. Owner shall require reasonable limits of insurance and reciprocal indemnity and waiver of subrogation provisions in its contracts with those separate contractors who enter within the limits of any Phase of the Work while it is ongoing. Such requirements shall not apply to separate contractors working for the Owner in areas in the location of the Project that are not under the control of the Contractor at that time.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any reasonable revisions to the construction schedule directed by the Owner after such a joint review. The construction schedules as so revised by the direction of Owner shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable and equal opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish in accordance with Section 3.15 of these General Conditions, the Owner may clean up and the Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by the prior written consent of the Owner pursuant to a valid Change Order, CCD, or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor shall not be authorized to change the scope of the Work in a manner that will result in

an increase in the Contract Sum or the Contract Time for alleged extra work, overtime, or changes in the Work of any kind unless such Work is approved in writing by Owner prior to the commencement of such work. The Architect shall not be deemed an agent of the Owner for these purposes.

§ 7.1.2 A Change Order shall be based upon a written agreement among the Owner, Contractor and Architect; a CCD requires written issuance 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 only with the prior approval of the Owner.

§ 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, CCD or order for a minor change in the Work. In the event the Owner or Contractor requests a change in the Work, the Contractor shall promptly submit to the Owner an itemized breakdown of quantities and prices with respect to work included in the change, and as otherwise provided by Section 7.3.7 below, for use by the Owner in checking the value of such work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

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

§ 7.2.2 Any adjustment to the Contract Sum resulting from a change in the Work performed pursuant to a valid Change Order or CCD shall be determined in accordance with one or more of the methods listed in Section 7.3.3 or pursuant to the provisions of Section 7.3.7 below.

§ 7.2.3 The Contractor agrees that the amount to be paid to the Contractor as set forth in any Change Order that is signed by Contractor, and the amount to be paid to the Contractor pursuant to the provisions of Section 7.3.7 (whether the Change Order arises from, or as the result of the CCD, a Claim or any other reason entitling the Contractor to such payment pursuant to the provisions of this Contract), shall constitute full compensation to the Contractor for the work required in connection with the Change Order, CCD, or Claim and full compensation for acceleration, delay, loss of efficiency, inconvenience, increased supervision or other claims, costs, expenses or damages which have been, or may be, incurred by the Contractor as a result of the issuance or occurrence of the Change Order, CCD and/or the performance of the Work required or other costs incurred in connection with the Change Order, CCD or Claim except to the extent expressly reserved in such Change Order.

§ 7.2.4 The Contractor shall permit the Owner to inspect, copy and audit their books with respect to all time and materials work or work performed pursuant to Section 7.3.7 or otherwise reimbursed on a cost-reimbursable basis. In this regard, the Contractor shall produce, and shall require Subcontractors to produce, any and all financial or related data Owner may request for the purpose of determining the correctness and allowability of the costs of all or any part of such work. The Contractor shall keep, and shall require all Subcontractors to keep such full and detailed accounts as may be necessary to reflect its operations with respect to such costs and extras, and the system adopted shall be such as is satisfactory to the Owner. The Contractor acknowledges and agrees that information obtained by the Owner pursuant to any such audit may be given to the Involved Organizations and other entities providing funding to the Project in order to obtain and justify such funding.

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A CCD is a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, 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 as set forth in the Contract Documents.

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

§ 7.3.3 If the CCD provides for an adjustment to the Contract Sum, or the Contractor is entitled to any adjustment in the Contract Sum resulting from a change in the Work performed pursuant to a valid Change Order, the adjustment shall be determined in accordance with one or more of the following methods:

- .1** Lump Sum Proposal: Upon the Owner's request, the Contractor will, with reasonable promptness after such request, transmit to the Owner a lump sum proposal detailing the proposed adjustments to the Contract Sum in connection with any change in the Work requested by the Owner. The proposal shall be itemized and segregated by labor and material (including consumables such as utilities and items required to be furnished pursuant to union contracts) for the various components of the changes in the Work and no aggregate figures for labor or material will be accepted. The Contractor shall furnish, with Contractor's lump sum proposal, supporting data consisting of final proposals from each Subcontractor, Sub-subcontractor and vendor. Only labor, materials, utilities, supervision and supplies directly attributable to the change in the Work shall be included in the proposal;
- .2** Unit Price: Upon the Owner's request, the Contractor will, with reasonable promptness after such request, transmit to the Owner a unit price proposal detailing the proposed adjustments to the Contract Sum in connection with any change in the Work requested by the Owner. The unit price proposal shall include the written proposal of Subcontractors itemizing the quantities of each item of Work for which there is an applicable unit price contained in the Contract Documents. The quantities must be itemized in relation to each specific item of the change in the Work. The unit prices will be applied to net increase in quantities of the same item. The unit prices will also be applied to net decreases in quantities of the same item; provided, however, Subcontractors shall be entitled to reasonable administrative expenses (including any restocking charges which may be payable by such Subcontractors to suppliers) in processing any such deductions from the Work to the extent that the net decrease in quantities of the same item exceeds fifteen percent (15%) of the original quantity of such item; or;
- .3** Time and Material: In the absence of an agreement to a Lump Sum or Unit Price, the Contractor will proceed with CCD Work on a time and material basis, including a reasonable fee (as provided in Section 7.3.3.4 below) for overhead and profit. If and only if a Change Order or CCD results in an increase to the Contract Time, Contractor shall be entitled to the actual, demonstrable increase in its general conditions costs, not to exceed six percent (6%) of the cost of such Work (except that such 6% limit shall not apply to CCDs or Change Orders that have a disproportionate impact of the duration and schedule of the Project relative the change in scope). The Contractor will submit to the Owner daily time and material tickets for all changes in the Work, including changes in the Work performed by Subcontractors. These tickets will include the identification number assigned to the Work, the location and description of the Work, the classification of labor employed including applicable trade Subcontractor, workers' names, the materials used, the equipment rented (not small tools) and any other information requested by the Owner; or
- .4** Fees for overhead and profit on adjustments to the Contract provided by Sections (.1), or (.3) of this Section 7.3.3 shall be limited as follows: (i) for the Contractor, eight percent (8%); (ii) for Subcontractors, including the fees or lower tier Subcontractors, and whether by their own forces or by others, twenty percent (20%). Neither the Contractor nor any Subcontractor shall be entitled to any fees for overhead and profit on adjustments to the Contract Sum made under clause (.2) of this Section 7.3.3. for unit prices established prior to execution of this Agreement. No compensation for general conditions shall be permitted except as expressly allowed pursuant to Sections (.1) through (.3) of this Section 7.3.3. In the event Contractor performs the Change Work using Contractor's own forces, Contractor shall be entitled to fees for overhead and profit as set forth in (i) and (ii).

§ 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 CCD, 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 CCD 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 Except as otherwise provided in the Agreement, if the Owner directs, or if the Contractor notifies the Owner and Architect that it disagrees with the method for adjustment in the Contract Sum, the method of adjustment shall be determined on the basis of the reasonable, actual and verifiable costs attributable to the Change Order, plus a reasonable allowance for overhead and profit not exceeding the percentages set forth in Section 7.3.3.4; and (ii) in the event of an increase to the Contract Time, Contractor shall be entitled to the greater of its actual, demonstrable, documented increase in its general conditions costs or an increase of six percent (6%) of the cost of such Work, subject in all cases to any limitations imposed by HUD. Costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, which costs shall be considered fully-burdened, including, without limitation, social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance per the schedule of stipulated, fully burdened labor billing rates liquidated in Exhibit E to the Agreement;
- .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 (these costs are stipulated to be 2% of the Cost of the Work of the Change for liability insurances and 1.0% of the Cost of the Work for Performance and Payment Bonds; 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 the estimated cost as confirmed by the Architect or any previous schedule of value line item value for such Work, if appropriate, plus a credit for insurances and bonds at the rates set forth in Section 7.3.7.5 above. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a CCD to the Owner, the Contractor may request payment for Work completed under the CCD 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.

§ 7.3.11 Notwithstanding anything to the contrary herein, including but not limited to this Article 7, Change Orders and Construction Change Directives shall be subject only to the following mark-ups on direct labor and material costs: (a) Six percent (6%) for Contractor's profit, (b) Two percent (2%) for Contractor's overhead, (c) Six percent (6%) for Contractor's general conditions, (d) Two percent (2%) for Contractor's insurance, (e) One percent (1%) for Contractor's bonds, (f) Twenty percent (20%) for Subcontractor overhead and profit (including the fees of lower tier Subcontractors, and whether by their own forces or by others) on subcontracted Work; and (g) Twenty percent (20%) for Contractor overhead and profit on Change Work performed by Contractor's own forces in addition to the markups shown in (a) through (e).

§ 7.3.12 No Change Orders or Construction Change Directives shall include any Contractor costs for supervision of the Change Work, it being agreed that such costs are included within the six percent (6%) mark-up for general conditions or another mark-up set forth in 7.3.11 above. For the avoidance of doubt, the six percent (6%) mark-up for general conditions described in 7.3.11 above shall be the only additional general conditions charges that are permitted. If justifiable circumstances require the overall Contract Time to be extended beyond the originally contemplated twenty-four (24) month period, in such case, Contractor shall be entitled to receive only actual, reasonable, verifiable increases in general conditions and general requirements costs incurred after such twenty-four

(24) month period, necessary for completion of the Work in question, and only to the extent Contractor did not receive the six percent (6%) mark-up for general conditions at the time the applicable change order was processed.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner, or commence operations on the Project Site prior to the date of issuance of the NTP as set forth in the Agreement. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion of the entire Work, or any applicable designated portion thereof, and Final Completion within the Contract Time as required by these General Conditions.

§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, unusually adverse weather conditions documented in accordance with Section 15.1.5.4, or government-ordered shutdowns as a result of COVID-19 (including any and all variants related thereto) or another pandemic; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the parties may determine. Notwithstanding the foregoing, an extension of the Contract Time will only be permitted if (i) the delay could not have reasonably been anticipated by the Contractor through the exercise of the Performance Expectations and (ii) the Contractor took all reasonable steps to mitigate the impact of such delay.

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

§ 8.3.3 Contractor shall not be entitled to any damages for any delay in its Work arising, in whole or in part, from any act or omission of Owner, the Architect or their respective employees, agents, representatives or Separate Contractors, or anyone under the direction or control of the foregoing. Notwithstanding the foregoing, in the case of delay under subpart (1) of Section 8.3.1, then in addition to an equitable adjustment of the Contract Time, Contractor will also be entitled to an equitable adjustment of the Contract Sum to the extent of its actual direct costs, including but not limited to general conditions costs and general requirements. If Contractor is entitled to an

extension of time under any other subpart of Section 8.3.1 above, then Contractor shall be entitled to an equitable increase in the Contract Sum if any delay contemplated in Section 8.3.1 gives rise to additional general conditions and general requirements costs. However, the Contractor waives any claim for lost profits or extended home office overhead or any other increase in the Contract Sum on account of any such delay. Notwithstanding the foregoing, in no event shall Contractor be entitled to any increase in the Contract Sum as a result of any delay if and to the extent Contractor would have otherwise been delayed as a result of its own acts or omissions or the acts or omissions of anyone for whom it is responsible.

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.

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

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 The Schedule of Values is attached to the Agreement as an exhibit and, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 Each Application for Payment shall be prepared by Contractor using a modified version of A.I.A. form G702 and G703, "Application and Recommendation for Payment" or another format acceptable to Owner, and shall clearly detail the amounts due from the Owner specific to each funding source (including, without limitation, funds specific to FEMA 428, CDBG-DR, etc.). Owner shall provide Contractor with the necessary funding source details so that Contractor is able to complete the Applications for Payment in accordance with the preceding sentence.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least five (5) days before the date established for submission of Contractor's Application for Payment, Contractor shall submit to Architect and Owner a "pencil copy" of its Application for Payment for Architect and Owner's review and comment. The Contractor shall, in accordance with the timeframes set forth in the Agreement, submit to the Architect an itemized Application for Payment for Work completed in the form required by Subsection 9.2.2 hereof. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by CCDs, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 With respect to all Work performed, retainage shall be held in accordance with the Agreement.

§ 9.3.1.3 The Contractor hereby agrees and is required to make payment, no later than seven (7) days after the receipt of payment from the Owner, to each Subcontractor of all amounts identified in each application for payment as intended for said Subcontractor. If Contractor does not intend to pay a Subcontractor for Work performed by such entity for the Project, Contractor shall so notify Owner in writing and explain the reason for the Contractor's decision not to make such payment. Owner shall thereafter withhold from Contractor the amounts so noted until Contractor represents that such payment will be made to the applicable Subcontractor, materialman or supplier. Contractor shall defend, indemnify, and hold harmless the Owner Indemnitees from and against any costs, damages or expenses (including reasonable attorney's fees) incurred by Owner as a result of claims made by any Subcontractor who has performed Work for the Project but who Contractor decides not to pay for such Work. Each Application for Payment submitted by the Contractor shall be accompanied by all items required under Article 12 of

the Agreement and by duly executed unconditional waivers of liens from Contractor and each Subcontractor for any amounts included in the previous month's Application for Payment and duly executed conditional waivers of liens from Contractor and each Subcontractor for any amounts included in the current Application for Payment. All such waivers shall be in the form attached to the Agreement as an exhibit. The defense, indemnity, and hold harmless obligations of Contractor hereunder shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 9.3.1.4 Without limiting the provisions of Section 9.6.8 below, Contractor shall promptly discharge or cause to be discharged or make adequate provision for discharge of any and all mechanic's or materialman's liens filed by any Contractor Parties, provided Owner has paid amounts due Contractor, subject to Owner's rights under the Agreement, in connection with the Work that is the subject of any such lien. All costs and expenses associated with any mechanic's or materialman's lien for which Contractor is responsible pursuant to this Section and which is filed or threatened to be filed shall be borne by Contractor. Contractor hereby defends, indemnifies and holds Owner, the Involved Organizations, the title insurance company providing title insurance for the property comprising the Project Site ("Title Insurer"), Owner's general and limited partners, the Owner's officers, directors, shareholders and affiliated companies, and any others with an interest in the property comprising the Project Site, harmless from and against any loss or damage (including without limitation attorneys' fees and court costs) caused by the filing of any such mechanics or materialmen lien. In addition, in such event, Contractor shall promptly take such actions as may be requested by the Title Insurer for the Owner or any mortgagee or lender to the Project in order for such Title Insurer, within ten (10) days after the date such lien is filed, to issue and deliver to Owner and any mortgagee, an Owner's and mortgagee's title policy, insuring against such lien or to issue and deliver endorsements to existing policies, insuring against such lien. These actions shall include but not be limited to, providing a lien and indemnity bond, in a form satisfactory to the Owner, should the person or entity filing the mechanics or materialmen's lien at issue fail to remove such lien or record in exchange for a release of lien bond (which lien and indemnity bond shall be in a penal sum of not less than one hundred fifty percent (150%) of any such lien claim or a greater amount as required by Law, and issued by a surety listed as acceptable in the then current Department of Treasury Listing of Approved Sureties Circular 570 and acceptable to the Title Insurer, naming the Title Insurer as an obligee, and which will fully protect the Title Insurer against all costs and expenses associated with the such lien claim). This provision shall survive termination of the Contract. Once the Contractor has removed of record any mechanic's or materialman's lien for which the Contractor is responsible pursuant to this Section or, with respect to such lien, has provided a bond acceptable to the Owner, then the Owner shall release all sums being held on account of such lien as part of the payments made in response to the next succeeding payment application submitted to Owner.

§ 9.3.1.5 Contractor hereby authorizes and consents to direct communications, at any time and in any fashion, between Owner and any Subcontractors on the Project regarding the Work performed on the Project and the status of payments to said persons or entities for said Work, provided that Owner shall submit copies of such communications to Contractor within a reasonable time thereof.

§ 9.3.2 Payment for materials and equipment stored on or off the Project Site shall be conditioned upon the Owner's prior written approval and compliance by the Contractor with procedures satisfactory to the Owner and the Involved Organizations to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the Project Site for such materials and equipment stored off the Project Site. Damage to material or equipment stored on or off site shall not entitle the Contractor to any increase in the Contract Sum unless such damage was caused by Owner or anyone for whom it is responsible. Payments for materials and equipment stored on site shall not exceed fifty percent (50%) of the value of Work in place as of the date of the relevant Application for Payment. Only invoice price, plus delivery charges and other related handling costs, will be paid for stored materials (whether storage is on or off the Project Site). Nothing in this Section shall diminish Contractor's rights with respect to Owner's storage and transportation insurance coverage for materials stored on site, off site, or in transit, as appropriate. Material stored off site need not be held in a bonded warehouse where Contractor demonstrates title, insurance and storage in a secure facility, but any such facility must be approved in advance by Owner and Owner's insurer. For purposes of this Agreement, Contractor's warehouse on St. Croix is deemed an acceptable location for off-site storage.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction of the Project or upon the receipt of payment therefor by Contractor from Owner, whichever occurs first. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors,

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 Except in the event Architect requires revisions to all or any portion of a Contractor Application for Payment, Architect will certify the Application for Payment at the Draw Meeting for such amount as the Architect determines is properly due and issue copies to the Owner, with a copy to the Contractor. If the Architect does not certify the Application for Payment at the Draw Meeting, it shall 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 in writing to the Owner. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner and the Involved Organizations is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 Contractor's negligence or failure to perform its obligations under the Contract Documents;
- .8 erroneous estimates by the Contractor of the value of the Work performed;
- .9 failure of the Contractor to provide record documents, or failure to keep record documents up to date on a monthly basis;
- .10 Contractor's failure to provide materials and Subcontractor lists prior to its initial schedule for the Work;
- .11 Contractor's failure to maintain and update the progress schedule for the Work;
- .12 Contractor's failure to provide and update such other items as may be required under the Contract Documents, including without limitation payee lists, SBE/MBE/WBE/Section 3 compliance reports and certified payroll reports;
- .13 failure to timely incorporate stored materials into the Project; or
- .14 other failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 Notwithstanding the Architect's issuance of a Certificate of Payment and notwithstanding the provisions of Section 9.5.1 and of any other provision, the Owner shall have the right to withhold from payments due to the Contractor such sums as Owner, reasonably and in good faith deems necessary to protect the Owner against any loss or damage which may result from negligence or unsatisfactory Work by the Contractor, failure by the Contractor to perform his obligations, including failure to maintain satisfactory progress of the Work, or claims against the Contractor or the Owner relating to the Contractor's performance or Work. In addition, the Owner may withhold payments from the Contractor for damages by the Contractor to others not adjusted, failure of the Contractor to make proper payments to his material suppliers and Subcontractors, and where there is reasonable evidence indicating a probable filing of any claim against the Owner or the Contractor in connection with the Work or the Project. In addition, if the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor 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 accordance with the procedures established therefor in the Contract Documents, and shall so notify the Architect unless Owner expects not to do so pursuant to Section 9.5.

§ 9.6.2 Intentionally omitted.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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 9.3.1.3, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work which is not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the 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.

§ 9.6.8 Without limiting Section 9.3.1.4 above, if Contractor fails to make timely payment to its Subcontractors for Work performed on the Project in accordance with Subcontracts for such Work, it shall protect Owner Indemnitees against any and all liens filed by such Subcontractors in a manner subject to the reasonable satisfaction of Owner, provided Contractor has been paid for such Work in the amounts required by this Agreement.

§ 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, unless such failure is due to a reason enumerated then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 As used in the Contract Documents, the terms "Substantial Completion," "Substantially Complete" and/or the "Date of Substantial Completion" (whether capitalized or lower case), shall mean the date upon which all of the following shall have occurred: (1) the Work (or any applicable designated portion thereof) has been fully completed in accordance with the Contract Documents, except and only for minor items that will not unreasonably affect the occupancy and operation of the Work, and any designated portion thereof, as intended, and the Work is sufficiently complete (with the above noted exceptions only) to enable the Owner to occupy and use the Work, or any designated portion thereof (and all aspects and elements thereof) for use for which it was intended without unreasonable disruption or interference caused by the need to complete any of the Work then remaining to be completed; (2) the punch-list items are sufficiently few and of a nature that would not interfere with Owner's ability to fully occupy and use the Work for which it was intended to the extent required by the Contract Documents and can reasonably be expected to be completed within thirty (30) days (except for long lead items); (3) the Contractor has procured and delivered to the Owner (and the Architect has so certified) all certificates, consents, approvals and permits with respect to the Contractor's Work required under applicable Law for occupancy and use of the Work or any applicable designated portion thereof, or required by the Involved Organizations, investors or mortgagees, including but not limited to the issuance by the Division of Building Permits and Virgin Islands Fire Service ("DOB&VIFS") of a permission to occupy the units comprising the entire Work (or any applicable designated portion thereof); (4) the Architect issues and signs a Certificate of Substantial Completion, AIA Document G704, current edition, certifying in writing that the entire Work (or any applicable designated portion thereof) is Substantially Complete; as required by the provisions of this paragraph above, and further certifies that Contractor has procured and delivered to Owner all certificates, permits, approvals and consents with respect to the Contractor's Work required under applicable Law for occupancy and use of the Project, or designated portion thereof, and that such Work is sufficiently compliant with the Contract Documents and applicable Law, to allow Owner to fully occupy and utilize the Work for its intended use (and all aspects and elements thereof) to the extent required by the Contract Documents, which certification is accepted in writing by Owner (such acceptance not to be unreasonably withheld, conditioned nor delayed); (5) the Contractor has complied with the terms and conditions of Section 9.8.2 of these General Conditions; (6) all mechanical, electrical and life safety support systems comprising the Work (or any applicable designated portion thereof) are functioning as required by the Contract Documents; (7) the Contractor has complied with the terms and conditions of Section 3.15.1 of these General Conditions; (8) Contractor has delivered all unit chattel lists to Owner and Architect; (9) Contractor has delivered to Owner a written authorization from the surety issuing payment and performance bonds required hereunder, if any, consenting to release of retention in accordance with the Contract Documents; (10) the Contractor (and, to the extent applicable, each Subcontractor) has satisfied all of the necessary closeout requirements, including, without limitation, those provided by and/or related to the Federal Emergency Management Agency, Community Development Block Grant Disaster Recovery Funds, USVI Department of Planning and Natural Resources, and any and all other government agencies, financing sources, regulators, partners, or other parties as identified by the Owner (to the extent relevant to Substantial Completion); (11) the Contractor has provided all documents reasonably required by the Owner, or Owner's lenders, insurers, consultants, or any other party identified by Owner, to evidence the proper removal and disposal of any Asbestos Containing Materials, Lead-Based Paint, and/or hazardous materials; and (12) the Contractor has satisfied all other conditions or requirements with respect to Substantial Completion established in the Contract Documents. To the extent that any certificate or inspection report listed above is not issued due to the fault or neglect of the Owner or Architect, then the absence of same will not preclude a determination of Substantial Completion.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Within five (5) days of receipt of Contractor's list, Architect and Owner will make an inspection to determine whether the Work (or designated portion thereof) is substantially complete. If the Architect's or Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

§ 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 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 in writing by Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work has reached Final Completion, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with 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.

§ 9.10.1.1 In addition to other requirements imposed by the Contract Documents, Final Completion of the entire Work shall require and the Work shall be "Finally Complete" when the following requirements have been met: (1) the proper and full completion of all of the Work in accordance with the Contract Documents, including, but not limited to, satisfactory operation of all equipment and systems, completion or correction of all punchlist items, delivery of all maintenance and operations manuals, chattel lists, and all warranties and guarantees (and assignments thereof), issuance of all required approvals and certificates by authorities with jurisdiction over the Project without condition (including final and unconditional certificates of occupancy), removal of all rubbish, tools, scaffoldings

and surplus materials from the Project Site and correction of all property damage that is the responsibility of the Contractor pursuant to the Contract Documents; (2) the completion of all exterior punchlist items (except and only to the extent otherwise agreed by Owner in writing); (3) submission and approval of the Contractor's final requisition; (4) a final, updated and recertified ALTA as-built and foundations survey of the Project Site prepared and stamped by Owner's surveyor, as hired by Contractor, meeting ALTA/ACSM Minimum Standard Detail Requirements for an urban land survey, including all Table A - Optional Survey Responsibilities and Specifications; (5) delivery of as-built plans and specifications; (6) submission of an executed waiver signed by the Contractor discharging and waiving all claims and lien rights which the Contractor may have against the Owner or the Property relating to the Project or the Contract conditioned only upon receipt of Final Payment; (7) submission of executed conditional lien waivers signed by Contractor and all Subcontractors as required by the terms of this Agreement, including, without limitation, those who may be entitled to a lien against the property relating to the Project or, if acceptable to the Owner in its sole discretion, a bond or other security, in such form as is directed by Owner, protecting the Owner and the Owner's property from assertion of any such liens that are not waived (with unconditional waivers to be provided from both the Contractor and all Subcontractors within ten (10) days after Contractor receives payment from Owner); and (8) delivery of all of the information, documents and certifications required by the Contract Documents, the Owner, the Involved Organizations, HUD, the DOB&VIFS, or other governmental authority with jurisdiction over the Project in order to allow the Owner to proceed to final loan closing, including but not limited to an accounting and certification of all costs incurred by Contractor in the execution of the Work and all charges or costs included in the Contractor's applications for payment with respect to the Project, which accounting and certification shall be prepared in accordance with generally accepted accounting principles, by a licensed, independent, third party accountant and shall identify and verify all costs and charges included in Contractor's payment applications and shall be accompanied by such detail and supporting documentation as required by the Contract Documents, the Owner, the Involved Organizations, HUD, or any governmental authority with jurisdiction over the Project. In addition, as a condition to final payment for the Work, the Contractor shall deliver to the owner three (3) clean, complete and readable copies of all guarantees and warranties on equipment and materials furnished by all manufacturers and suppliers to the Contractor and all Subcontractors, together with duly executed instruments properly assigning the guarantees and warranties to the Owner, and shall also deliver to the Owner three (3) clean, complete and readable copies of all related manufacturer's instructions, related maintenance manuals, and any other materials required to operate and maintain such equipment and materials or needed to maintain the effectiveness of any such warranties.

§ 9.10.2 Neither final payment nor any remaining retained percentage or amounts shall become due until the Contractor submits to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or will be paid with the proceeds of final payment, (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 delayed thirty (30) days or more through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted provided the conditions to final payment relating to such Work are first satisfied. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, 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. Owner, Architect, separate contractors, and any individuals for whom they, or any of them, are responsible, shall abide by the safety program instituted by Contractor pursuant to this Section.

§ 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 Project Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the Project Site, including adjacent street frontage and entrance area, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 the Contractor shall comply with all provisions and requirements of the Occupational Safety and Health Act of 1970 and/or the Construction Safety Act of 1969 (whichever is applicable) and with all applicable laws, ordinances, rules, regulations and orders of public authorities having jurisdiction for safety of persons or property or to protect them from damage, injury or loss.

§ 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 any existing applicable laws, safeguards for safety and protection.

§ 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 reasonable care and carry on such activities under the supervision of properly qualified personnel.

§ 10.2.5 Except for damage or loss attributable to acts or omissions of the Owner or Architect (or one 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 Contractor shall promptly remedy, at no additional cost to Owner, all damage and loss (other than damage or loss reimbursed under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by anyone for whose acts the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. 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 Project Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with all applicable laws, statutes, ordinances, codes, rules and regulations related to hazardous materials, as well as all lawful orders of public authorities and any and all requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a

hazardous material or substance not addressed in the Contract Documents and if reasonable and proper precautions will be inadequate to prevent foreseeable bodily injury or death to persons or property damage resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB) or any other material or substances that the Contractor knows requires special handling or treatment, encountered on the Project site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing and shall not thereafter resume Work in the affected area until the condition has been rendered harmless. Additionally, Contractor shall take reasonably appropriate steps to prevent any harm to areas surrounding the impacted area(s). Contractor acknowledges that the Work includes remediation of asbestos containing material and lead-based paint, all of which shall be done in accordance with all applicable regulations and industry best practices.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3. Owner shall indemnify, defend and hold harmless Contractor, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents (collectively, the "Contractor Indemnitees"), from and against any and all claims, losses, damages, liabilities and expenses, arising directly out of Owner's breach of its obligations under this Section 10.3. Notwithstanding the foregoing, the parties agree that Owner shall have no defense obligations or indemnity obligations to the Contractor Indemnitees with regard to claims, losses, damages or expenses arising from unknown hazardous materials or known hazardous materials remediated by the Contractor Indemnitees, or any of them, without Owner's prior knowledge, nor shall Owner have any defense obligations or indemnity obligations to Contractor Indemnitees with regard to any claims, losses, damages or expenses caused to the extent of the Contractor Indemnitees' improper conduct, negligence, gross negligence or breach of its obligations under this Contract (including but not limited to those in this Section 10.3).

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the Project Site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's negligence in the use and handling of such materials or substances. Contractor shall supply the Owner, upon request, documentation that all materials brought to the Project Site are free and clear of environmental contamination.

§ 10.3.5 The Contractor shall indemnify the Owner Indemnitees for the cost and expense the Owner incurs (1) for remediation of a hazardous material or substance the Contractor brings to the Project Site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. This indemnification obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 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 and maintain insurance as set forth in Exhibit A.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions set forth in Exhibit A.

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

§ 11.2 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 The Owner shall purchase and maintain property insurance as set forth in Exhibit A.

§ 11.3.1.1 If the property insurance requires deductibles, the party responsible for the loss (it being understood that the Owner shall be deemed "responsible" for acts of God) shall pay all costs of such deductibles to the proportional extent caused by its negligence.

§ 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 requirements specifically expressed in the Contract Documents or the Architect's or Owner's request (submitted in no less than 24 hours prior to examination), it must, if requested in writing by the Architect, be uncovered for examination and be replaced at the Contractor's expense without change in the Contract Time.

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

§ 12.1.3 In the event a concealed or latent defect is discovered more than one year after the date of Substantial Completion, the Owner shall report the discovery of such defective condition to Contractor within thirty (30) days and Contractor shall promptly take such action as may be necessary, at Contractor's sole cost, to correct such defective work, subject to any applicable statutes of limitation.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner as defective 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 reasonable 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 any other warranty, any of the Work is found to be not in accordance with the requirements of the Contract Documents or defective, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The Warranty Period, as it applies to the entirety of the Work, or a portion thereof (i.e. a Phase of the Work), as applicable, shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 such that any corrective Work enjoys a one (1) year warranty. The foregoing shall not extend the Warranty Period for any items that were not subject to correction.

§ 12.2.3 The Contractor shall remove from the Project Site portions of the Work that are not in accordance with the requirements of the Contract Documents and 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.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, provided the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall promptly execute all consents reasonably required to facilitate such assignment. In addition, the Owner and Contractor agree that the Owner may assign this Contract to another entity as designated by Owner provided that i) such entity is an affiliate of Owner or is an entity in which Owner or an affiliate of Owner will be a partner or joint venturer, and ii) such entity assumes all rights and obligations of Owner under the Contract

Documents. In the event of such assignment, the Contractor agrees to continue to perform in accordance with the terms of this Contract without any increase in the fees or charges set forth herein, and such assignee shall become the "Owner" under the Contract, and the originally named "Owner" shall be released of and from all liability arising from and after the effective date of the Assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered (or if delivery is refused), to a member of the 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 thereof, except as may be specifically agreed in writing or as otherwise expressly provided herein.

§ 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 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. Except as provided in Section 13.5.3 below, Owner shall bear the cost of such tests, inspections and approvals.

§ 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 Owner will 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 Owner and 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. Notwithstanding the foregoing, Owner agrees that it shall bear the cost of the first two soil compaction tests for each of the buildings within the scope of the Project. However, in the event that additional soil compaction tests are required due to the failure of Contractor or its Subcontractors to perform the Work in accordance with the Contract Documents, the cost thereof shall be borne by Contractor pursuant to the requirements of this Section.

§ 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 Owner, who shall deliver copies to Architect and Contractor. Contractor shall be responsible to make arrangements for and coordinate the timing of such tests, inspections, and approvals, pursuant to Section 13.5.1 above.

§ 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

All monies not paid when due as provided in Article 9 or elsewhere in the Contract Documents shall accrue interest as set forth in the Agreement.

§ 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 within the time period prescribed by the applicable statute of limitation and/or statute of repose under applicable law.

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 180 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 180 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 (7) additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, plus reasonable costs incurred by reason of such termination. Owner shall have the right to pay the Contractor's invoice, or approved portion thereof, during the seven day period following written notice, in which event the Contract shall not be terminated.

§ 14.1.4 If the Work is stopped for a period of 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 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 has committed a material breach of the Contract, including, but not limited to, failure of Contractor to timely commence the Work, or to prosecute the Work in a diligent and skillful manner, or to complete the Work in accordance with the schedule for the Work, or to complete the Work on or before any date established for Substantial Completion of the entire Work (or any applicable designated portion thereof) or Final Completion.

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

- .1 Exclude the Contractor from the Project Site and take possession of all materials, equipment (paid by Owner), and tools thereon whether owned by the Owner or Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 In the event of a termination pursuant to Sections 14.2.1 and 14.2.2, the Contractor shall be liable to the Owner for all costs and damages incurred by the Owner as a result of the Contractor's act, omissions, fault, negligence, errors or breach of contract (including the costs of completing the Contractor's performance of the Work as required by the Contract Documents, and the reasonable cost of any additional services required of the Architect as a result of the Contractor's fault or breach), except to the extent otherwise waived herein. After all such damages have been paid, the Contractor shall be entitled to the amount, if any, remaining due to the Contractor (after deducting such damages) for any Work performed by the Contractor up to and including the date of such termination. If such costs exceed the unpaid balance due to the Contractor, the Contractor shall be liable to the Owner for the difference.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, in its discretion, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be reasonably adjusted for reasonable increases in the cost and/or time caused by suspension, delay or interruption to the extent allowed by Section 7.3. 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 In addition to the reasons set forth in Section 14.2.1, the Owner may terminate this Contract without cause (at any time) upon seven (7) days written notice to the Contractor, provided that Owner agrees that it will not exercise its right to terminate this Contract without cause in bad faith. In the event the Owner so terminates this Contract, the Contractor shall be entitled to compensation only for the Work performed by the Contractor and accepted by the Owner, pursuant to the provisions of and subject to the limitations set forth in this Contract, up to and including the date of termination, plus the Contractor's overhead and profit thereon (on a pro rata basis), all as determined by the Schedule of Values then applicable to the Work and the percentage of completion achieved by the Contractor (overall and in each category of the Work, as applicable) as of the date of termination. The Owner agrees that acceptance of such services shall not be unreasonably withheld. Further, in the event the Owner so terminates this Contract, the Owner agrees to pay for services, materials, supplies ordered prior to the date of termination by the Contractor, for use in connection with the Project, and necessary for the reasonable discharge of the Contractor's responsibilities under this Contract, or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by the Contractor without cost or penalty upon notice of termination. In addition to the foregoing, if the Contractor is so terminated, the Owner shall pay the Contractor the reasonable value (based on purchase or rental as applicable) of any equipment retained by Owner and the reasonable costs of clean-up, removal of debris and removal of equipment, trailers and machinery used at the Project Site incurred as a result of the termination. The Owner will not be responsible, however, to reimburse the Contractor for any continuing contractual commitments to Subcontractors or penalties or damages for canceling such contractual commitments, and no compensation shall be allowed to Contractor or its Subcontractors for anticipated profit, unperformed services or intangibles. Any compensation due under this Section shall be payable to the Contractor thirty (30) days after such termination. The Contractor's sole remedy for any termination pursuant to this Section shall be the compensation allowed in this Section. Any termination by the Owner pursuant to Sections 14.2.1 and 14.2.2 that is later determined to be unjustified or without cause, and any termination of this Contract by

Contractor pursuant to Sections 14.1.1, 14.1.2 or 14.1.3, shall be treated as a termination without cause pursuant to this Section. In either such event the Contractor's remedies for such termination shall be limited to those set forth in this Section.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

Except as otherwise stated in the Agreement, Claims by the Contractor must be initiated within thirty (30) calendar days after occurrence of the event giving rise to such Claim or within thirty (30) calendar days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any Claim by Contractor must be initiated by written notice to Architect and Owner, and must clearly state that it is a "Claim," pursuant to this Section 15.1.2, to be resolved. Notwithstanding any other provision of this Contract, the failure of the Contractor to provide the Owner with written notice of any Claim (including but not limited to claims asserted pursuant to Sections 15.1.4 through 15.1.6 and any Claims seeking any increase in the Contract Sum or an extension of the Contract Time or dates for Substantial Completion for the entire Work, or any applicable designated portion thereof, or Final Completion or other damages or costs of any kind) within the applicable time frame established by this Section 15.1.2 (or such earlier time as may be established elsewhere in the Contract Documents) shall mean that the Contractor has waived such Claim and shall perform all Work required by or in connection with any occurrence or condition giving rise to the Claim without increase in the Contract Sum or extension of the Contract Time.

§ 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 Article 15.3 below.

§ 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. The Contractor's sole and complete remedy with respect to any successful Claim (including but not limited to claims based on change to the Work or delay, impact or acceleration) shall be limited to the actual increased costs (including field supervision), if any, (all measured pursuant to Section 7.3.7) incurred by the Contractor as a result of the occurrence or condition giving rise to the Claim, and/or, if necessary, an extension of the Contract Time or dates for Substantial Completion of the entire Work, or any applicable designated portion thereof, or Final Completion, as set forth in the Agreement. This recovery shall be deemed to include (and no additional damages or costs may be sought or recovered by Contractor for) all delay, acceleration or impact costs or other expenses or losses allegedly sustained or incurred by Contractor as a result of any Claim.

§ 15.1.5 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 in Section 15.1.2 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 The Contractor agrees that timely completion of the Work is of the essence in this Contract. The Contractor shall continuously and diligently perform, forward and prosecute the Work required by this Contract subject only to delays contemplated by Section 8.3.1 hereof.

§ 15.1.5.3 Intentionally omitted.

§ 15.1.5.4 Adverse weather conditions shall entitle Contractor to relief under Section 8.3.1 and Section 8.3.3 only if, and to the extent that, they are substantiated by data clearly showing that such weather conditions were abnormal for the period of time, could not have been reasonably anticipated through the exercise of the Performance Expectations, and actually had an adverse effect on the scheduled construction. Specifically, if Contractor intends to claim that adverse weather conditions constitute a delay for which it is entitled to relief, Contractor shall (i) provide written notice to the Owner of any weather-related Claims as soon as reasonably possible, but in no event later than three (3) calendar days, following the occurrence of the weather-related event; (ii) identify, in reasonable detail, the time-critical trades which will be delayed by the adverse weather and the anticipated impact thereof on the schedule; and (iii) demonstrate, to the Owner's reasonable satisfaction, that such adverse weather conditions are likely to cause an actual delay in the completion of the Project beyond the Contract Time (i.e. it must be a "critical path" delay). For purposes of this Contract, a demonstration of adverse weather conditions will require documentation by the National Weather Service sufficient to justify any claimed delay.

§ 15.1.5.5 Intentionally omitted.

§ 15.1.5.6 Irrespective of the progress of the Work, if requested by Owner, Contractor will accelerate construction subject to mutual agreement on schedule and on a price which shall be consistent with actual additional costs to be incurred to Owner for actual premium time costs incurred, including Contractor's management time, if agreed upon in advance.

§ 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.

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 (i) liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, (ii) any damages, whether consequential or otherwise, covered under the terms of any insurance policies, or (iii) any damages, whether consequential or otherwise, for which a party is obligated to indemnify the other under the terms of this Contract or applicable laws (including, without limitation, applicable theories of equitable indemnity).

§ 15.2 Intentionally Deleted

§ 15.3 DISPUTE RESOLUTION

§ 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: (i) first, a thirty-day period of informal negotiation between the parties during which time the parties shall meet to discuss, and attempt to resolve, any such dispute, then (ii) non-binding mediation, then, if the dispute is still not resolved, (iii) to arbitration as set forth in Section 15.4 below.

§ 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

AIA[®] Document A101[™] – 2017

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the _____ day of May in the year 2023
(In words, indicate day, month and year.)

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

« Virgin Islands Housing Authority
9900 Oswald Harris Court
St. Thomas, VI 00802 »

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

« »

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

«Revitalization of D. Hamilton Jackson Terrace buildings 1-7 (9% LIHTC project), a 54 unit multifamily project, located at # 13-A, 13-B, 13-BA&C Estate Richmond, St. Croix»

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

« SLM Architecture, P.C.
300 Old Country Rd # 241
Mineola, NY 11501 »

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.

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

The parties should complete A101[™]-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[™]-2017, 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.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the General Conditions of the Contract (an AIA Document A201-2017 edition, as modified by the parties; the "General Conditions"), other conditions of the Contract (including but not limited to Supplementary and other Conditions, if any), Drawings, Specifications, Addenda issued prior to execution of this Agreement, all exhibits to this Agreement and all documents listed in Article 9 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 referred to in each document as 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. In the event of any conflict among the Contract Documents, the same shall be construed according to the priority and in the manner established in Section 1.1.1 of the General Conditions. See also Sections 1.1.1 and 1.1.2 of the General Conditions. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in or reasonably inferable from the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. See also Section 1.1.3 of the General Conditions. The Contractor shall perform the Work in accordance with the skill, care, and diligence of a contractor experienced in completing comparable work for comparable projects in the United States Virgin Islands (the "Performance Expectations").

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date to be fixed in a notice to proceed issued by the Owner. In this regard, and provided that all required earth-change permits for the Project have been secured, Owner intends to issue a notice to proceed on the date of this Agreement or within a reasonable time thereafter (the "NTP"), which shall instruct the Contractor to begin the Work. Contractor shall thereafter continuously and diligently perform and prosecute such Work to completion, subject only to delays excused by Section 8.3.1 of the General Conditions. Contractor acknowledges and agrees that the Contractor's Work under the Contract Documents is to be Substantially Completed and delivered to the Owner in the form of twenty-two (22) buildings, as further described in the Contract Documents, in addition to all other Work required under the terms of the Contract Documents.

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work not later than twenty-seven (27) months after the Owner issues its NTP pursuant to Section 3.1 above, subject only to Excused Delays. Without limiting the definition of Substantial Completion in Section 9.8.1 of the General Conditions, in no event shall any Phase as defined in Section 3.3.3 below be considered Substantially Complete unless and until Contractor has secured a certificate of use and occupancy and full utility service restoration for each Building comprising said Phase (for Substantial Completion, if applicable, a temporary or conditional certificate of use and occupancy may suffice so long as Owner can use and occupy the Work for its intended purpose).

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
See Exhibit D—Phased Delivery Plan	

If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3 and Exhibit D, liquidated damages, if any, shall be assessed as set forth in Section 4.5

§ 3.3.2.1 In addition to the dates for Substantial Completion established above, the Contractor shall achieve Final Completion of the entire Work (as defined in Section 9.10.1 of the General Conditions) not later than the date that is sixty (60) calendar days after the scheduled Substantial Completion date for the entire Work, subject only to Excused Delays.

§ 3.3.3 The Contractor understands, acknowledges and agrees that the Contractor's Work under the Contract Documents and the contract documents for the concurrent financing closings that collectively comprise the full project is to be Substantially Completed and delivered to the Owner in five (5) distinct phases (each individually a "Phase," or collectively the "Phases"), one of which shall consist of the Project site work and the remaining four of which shall consist generally of four (4) to seven (7) buildings per Phase, all as described in Exhibit D. For the avoidance of doubt, the location of the Project specified on page 1 of this Agreement (the "Project Location") refers to the entire property of the Owner upon which Work is to take place in connection with the Work related to the Project. However, the "Project Site", as that term is used throughout the Contract Documents, shall refer to a more limited area within the entire Project Location, that is necessary to complete the specific Phase or Phases of Work currently underway. For the avoidance of doubt, the Project Site, as used in the Contract Documents, will be as specified by the Owner so as to limit the impact on the rest of the Project Location that is not then undergoing any execution of the Work. The Contractor acknowledges that it will be responsible for the construction of each Phase as well as the overall planning, coordination (including, but not limited to, communication with the relocation team members and property management), and integration of each Phase with the others (and with any existing structures and conditions at the Project site). The Contractor agrees that it shall plan, coordinate, and integrate the activities requested of the Contractor with respect to each Phase, with the other aspects of the overall Project, so that each such Phase and the overall Project is integrated, completed, and coordinated (both individually and with the existing and newly-developed structures, site work, public improvement work, and other work conditions at the Project Site), in accordance with the Contract Documents. To the extent Contractor is delayed in completing a Phase by reasons which do not entitle Contractor to schedule relief under the Contract, Contractor shall not be entitled to schedule relief for subsequent Phases.

ARTICLE 4 CONTRACT SUM

§ 4.1 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 \$ _____ (as is more specifically broken down in the Schedule of Values ("Schedule of Values") attached hereto as Exhibit C), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
« See Exhibit B. »	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
« See Exhibit B. »		

§ 4.3 Allowances, if any, included in the Contract Sum: *(Identify each allowance.)*

Item	Price

With respect to the lump sum allowances, if the actual cost of the specified items is less than the allowance, the saved amount shall be credited to Owner via a deductive change order unless otherwise specified by Owner. If the actual cost of the specified items is more than the allowance, then the Contract Sum shall be increased by change order to cover the shortfall.

In the event additional concrete repair work beyond the quantity allowance specified above is required, such additional concrete repair work shall be only as approved by the Owner via an approved Change Order, and shall be priced per square foot at the rate set forth in this Section 4.3.

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

Item	Units and Limitations	Price per Unit (\$0.00)

§ 4.5 Liquidated Damages

§ 4.5.1 Contractor acknowledges and agrees that timely completion of the Work is the essence of the Contract Documents. Specifically, the Contractor acknowledges that the Owner will incur substantial damages if the dates for Substantial Completion of the entire Work, are not met. Among other things, the Contractor acknowledges that in such events the Owner will incur additional financing costs (which in turn will reduce the Owner's equity in the Project), may be required to pay additional amounts to the Architect or other consultants and the Owner's own personnel for assistance on the Project and will suffer actual economic losses in the form of lost rental income and revenues, reduced equity, and operations costs that will not be recoverable by offsetting revenues from the Project's income. Because the exact amount of these damages cannot be readily ascertained as of the date of this Contract, and because both the Owner and Contractor desire certainty with respect to their rights and obligations in the event the Project is not completed by the aforementioned date(s), the parties agree that if the Contractor fails to achieve Substantial Completion of the entire Work by the dates established therefor, the Contractor shall pay the Owner, as agreed and liquidated damages, One Thousand Dollars (\$1,000.00) per calendar day that the Work is not Substantially Complete, beginning with the date that is thirty (30) days after the date established for Substantial Completion herein and continuing until the Work is deemed Substantially Complete (provided that Owner shall not be entitled to collect simultaneous payments for Contractor's failure to achieve Substantial Completion on overlapping Phases). These liquidated damages have been based on a reasonable approximation of the Owner's damages in the event of such failure by Contractor, and are not a penalty. Owner agrees that the liquidated damages set forth in this Section 4.5 shall be the only damages recoverable by the Owner as a result of Contractor's failure to achieve Substantial Completion of the Work by the dates required by this Agreement. However, Contractor acknowledges and agrees that the liquidated damages set forth above apply only to damages resulting from the Contractor's failure to achieve Substantial Completion of the Work by the dates required by this Agreement and does not limit or preclude Owner from recovery of any damages of any kind, type or nature to the extent they result from any other breach of contract, negligence or other action or omission of Contractor or the Subcontractors, including but not limited to any defective, substandard or deficient construction or costs to supplement workers to accelerate the Work to complete the Work as expeditiously as possible.

§ 4.5.2 Contractor acknowledges that the liquidated damages amounts set forth in Section § 4.5.1 above represents a fair and reasonable estimate of the Owner's probable losses, damage and /or expenses, and are not a penalty, for late completion of the Work and phases thereof.

§ 4.5.3 Owner shall be entitled to offset any liquidated damages owed by the Contractor against any amounts owing by Owner to Contractor.

ARTICLE 5 PAYMENTS

§ 5.1 Initial Payment

§ 5.1.1 If and only if allowed by Owner's lenders, investors, and mortgagees, and any applicable governmental authorities, the Contractor shall submit to the Owner, for presentment to the Owner's lenders and other necessary parties, a request for its reasonable, actual, and demonstrable bond and insurance costs in the amount of \$ _____ (the "Initial Payment"). For the avoidance of doubt, the Initial Payment is conditioned upon approval of the Owner's lenders, investors, mortgagees, and applicable governmental authorities, which approval may be given or withheld in their respective sole discretions, and Owner shall bear no liability to Contractor should such approval not be received.

§ 5.1.2 General conditions shall be paid out in twenty-seven (27) equal monthly installments, commencing in the first Application for Payment. If the Contract Time is extended at any point during the Project, the general conditions amount remaining unpaid at that time shall be spread across the then remaining Contract Time and, therefore, the monthly installments shall be adjusted accordingly. In no event shall the general conditions amount be spread over a period longer than twenty-eight (28) months.

§ 5.2 Progress Payments

§ 5.2.1 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. Applications for Payment shall be submitted on AIA Documents G702 and G703, or in such other form as Owner and Owner's lender shall reasonably approve, and shall be broken down, generally, by funding source, and more specifically as may be reasonably requested by Owner in order to reflect the various Project funding sources. For the avoidance of doubt, Contractor shall prepare G702 and G703 forms specific to each funding source (as set forth in the Schedule of Values) and shall present such G702 and G703 forms to Owner for review and approval prior to any official submission of same.

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

« »

§ 5.2.3 Contractor shall provide to Owner a pencil requisition not later than the Monday of the first full week of each month. Owner and Contractor shall complete a walk-through of the Project after receipt of each pencil requisition, but in no event later than the Thursday of the first full week of each month. Based on the results of each walk-through, Contractor shall prepare its formal Application for Payment and submit it to Architect and Owner. Provided that an Application for Payment is received by the Architect and Owner not later than the « 15th » day of a month, the Owner shall make payment of the amount certified (and approved by Owner's lenders) to the Contractor not later than fifteen (15) days after the Owner's receipt of the applicable Certificate for Payment approved by Owner's lenders. If an Application for Payment is received by the Architect after the application date fixed above, it shall be deemed part of the next payment cycle.

§ 5.2.4 Contractor shall provide separate accounting within its Applications for Payment for each funding source, as applicable, and as otherwise set forth in Section 5.2.1 above. Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents accepted and approved by Owner. The schedule of values shall allocate the Contract Sum among the various Phases of the Work. In addition, each Application for Payment submitted by the Contractor shall be accompanied by the following items, presented separately for each Phase of the Project: (i) a conditional partial waiver of lien executed by the Contractor covering the entire amount of the payment requested by the relevant Application for Payment; (ii) an unconditional waiver of lien executed by Contractor equal to the amount of all payments made by the Owner to the Contractor in all preceding Applications for Payment; (iii) unconditional partial waivers of lien executed by each Subcontractor performing work or furnishing supplies or materials for the Project which partial waivers of lien shall

be equal to the amount of all payments made by the Owner to the Contractor on behalf of such Subcontractor in all preceding Applications for Payment; (iv) a Section 3 compliance report (in which, among other things, Contractor represents that it has complied with any applicable, approved Section 3 plan); (v) an SBE/MBE/WBE compliance report and certified payroll report; (vi) copies of all certified payroll reports produced since the last Application for Payment; (vii) a construction schedule update; (viii) a Change Order log, including approved Change Orders on AIA G701 form (if applicable); (ix) a request for any new Change Orders, including Change Order rationale, and accounting of cost detail and estimate (if applicable); (x) a list of any and all stored materials (whether stored on-site or off-site); (xi) any additional materials required; and (xii) to the extent requested by Owner in advance of the applicable draw meeting, any and all other information or documents necessary for or required by Owner, Owner's lender, investors and mortgagees and applicable governmental authorities, including but not limited to HUD.

§ 5.2.5 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.

§ 5.2.6 In accordance with the General Conditions, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.2.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, and as provided in the General Conditions, or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives (each a "CCD") that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.2.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of General Conditions;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the General Conditions; and
- .5 Retainage withheld pursuant to Section 5.2.7.

§ 5.2.6.3 Notwithstanding anything to the contrary contained in this Agreement, the Contractor shall be entitled to include in any Application for Payment costs actually incurred by the Contractor for materials which are stored on or off the Project site, as applicable, and which are required in connection with the rehabilitation of the Project, provided that:

- (i) such materials are in accordance with the Contract Documents;
- (ii) such materials are securely stored on the island of St Croix at either:
 - a. the Project site,
 - b. the Contractor's warehouse, or
 - c. the Contractor's subcontractor's warehouse, if Contractor has provided Owner with satisfactory evidence of subcontractor's insurance, which satisfies Owner's and its lender's requirements, and, regardless of where stored, are photographed, properly inventoried, and clearly stenciled or otherwise marked to indicate that they are the property of the Owner;
- (iii) the bills of sale and contracts, detailed receipts and/or invoices under which such materials are being provided shall be in form and substance satisfactory to the Owner and its lenders,
- (iv) such materials are either:
 - a. insured for the full value against theft, destruction or other casualty (including but not limited to shipping risks) in a manner satisfactory to the Owner and its lenders, or
 - b. fully guaranteed against theft, destruction or casualty in a manner satisfactory to the Owner and its lender until fully installed for use at the property;
- (v) immediately upon payment, the Owner will own such materials free and clear of all liens and encumbrances of any nature whatsoever and establishes such ownership by evidence satisfactory

- to the Owner and its lender through: bills of sale, payment receipts, and waivers of liens provided by the Contractor or subcontractor as part of the monthly requisition process;
- (vi) the Contractor executes and delivers to the Owner and its lenders such additional commercially reasonable security documents as the Owner's lenders shall deem necessary to create and perfect lenders first lien in such materials if the evidence provided under (v) is not satisfactory and cannot be changed to be satisfactory;
 - (vii) the Owner's lenders' construction consultant has been granted access to the stored materials for the purposes of inspecting and photographing them in connection with its monthly inspection report;
 - (viii) the aggregate amount of such disbursements for such materials shall in no event at any time exceed the actual costs incurred by the Contractor for such materials as verified by the construction consultant;
 - (ix) such disbursements are for the materials, and in the amounts, set forth on Exhibit N or have otherwise been approved in advance by Owner and its lenders which approval shall not be withheld for commercially reasonable requests in compliance with this section required for timely completion of the project; and
 - (x) all stored materials shall be incorporated into the Project within the time frames set forth on Exhibit N annexed hereto or such other time frame that is commercially reasonable for the timely completion of the project and in compliance with this section or as may have been approved in advance by Owner and its lenders (clauses (i) through (ix), the "**Conditions to Stored Materials**").

Additionally, the Contractor shall be permitted to requisition for deposits necessary to lock in pricing for the materials in the amounts set forth on Exhibit N; provided, however, for any deposits, Contractor shall provide to Owner copies of detailed invoices in form and substance satisfactory to Owner and its lenders. Copies of corresponding deposit checks will be provided within thirty (30) days of funding to the Contractor of such payment of requisition for deposits. Owner will have the right to adjust future requisitions for deposits for materials not either 1) incorporated into the Project or 2) incorporated into materials which are stored on or off the Project site as described in this section, above, within the timeframes set forth in Exhibit N.

§ 5.2.7 Retainage

§ 5.2.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten percent (10%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 5.2.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.2.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

N/A

§ 5.2.7.3 Except as set forth in this Section 5.2.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.2.7. The Application for Payment submitted at Substantial Completion shall include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

Upon Substantial Completion of the Work on each building, or in the case of site work, the completion of each phase, the Owner shall release 100% of the Contract Sum applicable to that building or phase, as adjusted by

Change Order, subject to a hold back equal to two hundred percent (200%) of the value of a monetized punch list prepared by the Architect for that building or phase. Following Substantial Completion of the Work on each building or phase, no amount shall be withheld from the payment of retainage with respect to such building or phase unless a written description of the incomplete or defective work items and incomplete, incorrect or missing deliverables, the factual and contractual basis for the claims and the value attributable to each incomplete or defective work item, deliverable and claim is issued and certified as made in good faith by Owner. The Contractor shall include retainage amounts to be released in its next Application for Payment after the conditions for release have been satisfied.

§ 5.2.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of the General Conditions.

§ 5.2.9 Except with the Owner's (and, if applicable, Owner's lenders') prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2.10 In taking action on the Contractor's Applications for Payment the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect or Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 5.2.4 or other supporting data; (2) that the Architect or Owner has made exhaustive or continuous on-site inspections; or (3) that the Architect or Owner has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations and verifications, if required by the Owner, will be performed by the Owner or other representatives acting in the sole interest of the Owner.

§ 5.2.11 See General Conditions Article 9 for additional provisions regarding payment.

§ 5.3 Final Payment

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

- .1 the Contractor has fully performed the Contract and the entire Work is Finally Complete, as defined in Section 9.10.1.1 of the General Conditions, except for the Contractor's responsibility to correct Work as provided in Article 12 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect; and
- .3 all of the conditions for Final Payment as set forth in the Contract Documents have been satisfied, including, but not limited to, the delivery of all information, documents or certifications that are required by the Contract Documents, the Owner, the Owner's lenders, investors or mortgagees, the U.S. Department of Housing and Urban Development ("HUD"), or any other governmental authority with jurisdiction over the Project in order to allow the Owner to proceed to final Project completion, including but not limited to any required cost certification and completion of all punch list items for all Phases of the Work. See General Conditions Section 9.10.1.1.

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

Conditions in this Section 5.3, including specifically those in Section 5.3.1, have been satisfied.

§ 5.4 Interest

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.)

The prime rate per annum as set forth in the Wall Street Journal on the date payment was due, plus two percent (2%).

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Intentionally omitted.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of the General Conditions, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[] Arbitration pursuant to Section 15.4 of the General Conditions.

[] Litigation in a court of competent jurisdiction.

[] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in state or federal court venued in the county where the Project is located, in which case each of the parties hereby irrevocably consent to the exclusive jurisdiction and venue of such courts.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Work may be suspended, or the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s Representative:

(Name, address, email address, and other information)

« Alex Tsakidis
Vice President of Construction Operations
170 Froehlich Farm Blvd
Woodbury, NY 11797
Email: atsakidis@mdgny.com »

The Owner's Representative shall be the sole person authorized to act on behalf of the Owner with regard to the Project. In the event the Contractor receives any instructions or approvals, either orally or in writing, by persons other than one or both of the Owner 's Representatives, the Contractor shall notify the Owner 's Representatives of such instructions or approvals, and shall not act upon any such instructions or approvals until provided express directions from the Owner's Representatives.

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

« »

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten (10) days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in this Agreement, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of the General Conditions, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« N/A. Electronic notices are not permitted. »

§ 8.7 Other provisions:

§ 8.7.1 The Contractor will be furnished free of charge one (1) CD with the complete construction document set, one (1) set of reproducible Drawings and one (1) copy of the Specifications (and a similar number of any Addenda issued to either the Drawings or Specifications) for use in the execution of the Work. All other copies of the Drawings, Specifications or other Contract Documents requested or required by Contractor shall be at the Contractor's sole cost and expense.

§ 8.7.2 Notwithstanding anything herein to the contrary, this Agreement shall be expressly contingent upon Owner's closing of any and all financing, loans or other financial arrangements intended to fund this Project and to allow the Owner to discharge its obligations, and disbursement to Owner (or disbursing agent, if applicable) of all funds anticipated in connection therewith.

§ 8.7.3 Contractor shall, and shall cause all Subcontractors performing Work on the Project to comply with all federal, state, territory or local laws, statutes, ordinances, building codes, rules, regulations, permits or other authorizations, approvals and/or requirements (collectively, "Laws") applicable to the means and methods of performing the Work on the Project. Nothing in this section is intended to impose liability upon the Contractor for the design provided by the Architect or its consultants.

§ 8.7.4 Contractor acknowledges and agrees that any Work performed pursuant to this Contract that involves any movement, disturbance, removal, disposal or other displacement of the earth or soil at the site must comply with the Contract Documents and any additional, reasonable sediment control practices necessary in conjunction with the performance of the Work (collectively, the "Dust and Storm Water Requirements"), all in accordance with the Performance Expectations. Contractor agrees that it will retain in files that are readily accessible all records required by the Dust and Storm Water Requirements applicable to its Work, for a minimum of five (5) years, or for such longer time as may be required by the Dust and Storm Water Requirements. Such records shall, without limitation, include any applicable erosion and sediment control drawings, and all reports of inspection of any storm water controls installed by Contractor, if any. Contractor shall, at any time, upon request of the Owner provide the Owner with copies of any and all such records.

§ 8.7.5 The Contractor shall comply with all provisions of The Davis Bacon Act (40 U.S.C. 3141-3148) including the most current wage decision in effect at the time of execution of the Agreement between Owner and Contractor. Upon Owner's final payment to the Contractor, Contractor shall provide to Owner a certificate of Contractor confirming, to the best of its knowledge, compliance with all Davis-Bacon requirements.

§ 8.7.6 The Contractor shall submit certified payrolls to the Owner, which shall be grouped on a weekly basis and in a form acceptable to the Owner and based upon records created by the Contractor's use of "LCP Tracker" software. The Contractor shall submit to the Owner a plan for SBE/MBE/WBE participation and Section 3 hiring and business participation as required by the Owner and shall provide such reporting with respect thereto as is required by the Contract Documents or by Owner, the Project's lenders or investors and/or governmental or other authorities with jurisdiction over the Project. The Contractor shall comply with all of the requirements included in the attached Exhibit G.

§ 8.7.7 Contractor warrants that it is and will remain in compliance with all federal, state, territory and local labor and immigration laws, regulations and requirements ("Labor Laws"), including those of the Immigration and

Naturalization Service (INS), regarding all personnel retained by Contractor or any Subcontractors who will be providing work, labor, services, materials or equipment to the Project. This includes, but is not limited to, the proper processing, storage and retention of required INS Form I-9s, the examination of required documentation, and the confirmation of appropriated evidence reflecting the identity and employment eligibility of each worker performing any portion of the Work (in such form and at such times as are required by applicable law), and compliance with all visa laws and regulations. Additionally, Contractor will maintain at the Project site records required by the INS, including records of any posting requirements under H-1 visa regulations. Contractor hereby indemnifies and holds Owner harmless from and against any losses arising out of Contractor's failure to comply with all applicable laws, regulations and requirements related to Contractor's or any Subcontractor's use of non-U.S. citizens to perform or supply work, labor, services, materials or equipment to the Project. The Contractor will retain any and all documentation relating to its compliance with immigration laws, regulations and requirements for five (5) years after termination of the Contract or completion of all Work.

§ 8.7.8 Without limitation of anything in the Contract Documents, the Contractor shall comply with all rules, requirements and other Laws applicable to the Project established or imposed by HUD and/or its divisions or departments, including, without limitation, the following: HUD Training, Employment and Contracting Opportunities (Section 3); HUD Equal Employment Opportunities; and HUD-Federal Labor Standards Provisions. Contractor shall execute such certifications in this regard as may be reasonably required by Owner, its lenders, HUD, or any other governmental authority with jurisdiction over the Project or as otherwise required by applicable Laws.

§ 8.7.9 Contractor certifies that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in contracts by any Federal department or agency or the Comptroller General. Contractor shall execute such certifications in this regard as may be reasonably required by Owner, its lenders, HUD, or any other governmental authority with jurisdiction over the Project or as otherwise required by applicable Laws.

§ 8.7.10 Electronic Transfer and Storage of Information. Owner acknowledges that Contractor intends to use ProCore (the "Project Database") for purposes of storing, indexing and tracking the Project Documents (defined below) and shall provide access to the Owner, Architect, and other parties deemed necessary by the Owner or Architect. The Project Database shall be used for distribution of the following items, without limiting other items that might be circulated therein: (i) RFIs; (ii) Submittals; (iii) meeting minutes; (iv) Schedule and updated thereto; (v) Modifications and change events; (vi) daily logs; (vii) Project photographs; (viii) Drawings; (ix) Specifications; (x) safety reports; (xi) punch lists; and (xii) Applications for Payment and certifications thereof (collectively, the "Project Documents"). Contractor agrees that it and the Subcontractors shall utilize the Project Database for all Applications for Payment, submittals and approvals required under this Agreement.

§ 8.7.11 Contractor is hereby notified and acknowledges that any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

§ 8.7.12 Contractor shall, upon the request of Owner, provide to Owner federal System of Awards Management ("SAMs") verification of good standing for itself and each subcontractor. »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1** AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2** AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3** AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified by the parties and attached hereto as Exhibit L ("General Conditions"). Notwithstanding any statement contained in any of the Contract Documents to the contrary, neither the Owner nor Contractor intend that any A201 be incorporated into this Agreement by reference, except the A201 which has been modified by Owner and Contractor and is attached hereto as Exhibit L.
- .4** AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

«»

.5 Drawings

Number	Title	Date
<< >>		

.6 Specifications

Section	Title	Date	Pages
<< >>			

.7 Addenda, if any:

Number	Date	Pages
<< >>		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[<< >>] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

<< >>

[<< >>] The Sustainability Plan:

Title	Date	Pages
<< >>		

[<< >>] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<< >>			

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. The General Conditions provide that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- Exhibit B – Assumptions and Clarifications
- Exhibit C – Drawings/Specifications/Project Manual
- Exhibit D – Phasing Plan
- Exhibit E – Federal Davis Bacon Wage Decision/Rate Schedule
- Exhibit F – HUD Federal Labor Standards Provisions (Copeland (“Anti-Kickback”) Act)
- Exhibit G – HUD Section 3 Rules and Requirements and Project Specific Section 3 Goals
- Exhibit H – Project Schedule
- Exhibit I – Form of Lien Waivers
- Exhibit J – Schedule of Values (including Cost Data)
- Exhibit K – Form of Performance and Payment Bonds
- Exhibit L – A201 General Conditions
- Exhibit M – Dust Mitigation Plan/Mold Remediation Work Plan/Asbestos Abatement of Acoustic Ceiling Spray & Flooring Materials/ Lead Paint Remediation & Stabilization Work Plan

Exhibit N – Stored Materials
Exhibit O – Lender Consent»

[The remainder of this page is intentionally left blank.]

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

VIRGIN ISLANDS HOUSING AUTHORITY

« »

OWNER *(Signature)*

« Robert Graham, Executive Director »

(Printed name and title)

« »

CONTRACTOR *(Signature)*

« »

(Printed name and title)

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« Revitalization of D. Hamilton Jackson Terrace buildings 1-7 (9% LIHTC project), a 54 unit multifamily project, located at # 13-A, 13-B, 13-BA&C Estate Richmond, St. Croix»

THE OWNER:

(Name, legal status and address)

« Virgin Islands Housing Authority
9900 Oswald Harris Court
St. Thomas, VI 00802 »

THE ARCHITECT:

(Name, legal status and address)

« SLM Architecture, P.C.
300 Old Country Rd # 241
Mineola, NY 11501 »

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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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the AIA Document A101-2017 Agreement (as modified by the parties) between the Owner and Contractor (hereinafter the "Agreement") and consist of the Agreement (including any and all attachments, and Exhibits thereto), these General Conditions of the Contract (including 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 and approved by Owner pursuant to Section 7.4. 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.

§ 1.1.1.1 The term "Contract", as used herein and in all the Contract Documents, is inclusive of all the Contract Documents identified in Section 1.1.1 above. Terms defined herein and in the other Contract Documents are used in each consistently with the definitions set forth in such documents. In the event of any conflict or inconsistency among the terms of any of the Contract Documents, interpretation shall be governed in the following priority:

- .1 Modifications
- .2 Contractor Assumptions and Clarifications, if any
- .3 Agreement, as modified by the Parties
- .4 AIA A201 (2017) General Conditions, as modified by the Parties
- .5 Addendum to the Construction Documents, dated after the initial issuance of the Construction Documents
- .6 Drawings
- .7 Specifications
- .8 Other documents listed in the Contract shall have priority in the order

so listed.

With respect to conflicts or inconsistencies between the Specifications and Drawings relating to the extent of the work to be performed, all work necessary for the execution of the Work (whether shown on the Drawings and not described in the Specifications, or described in the Specifications and not shown on the Drawings) and any work which is obviously necessary to complete the Work within the limits established by the Contract Documents shall be considered as part of the Agreement, and shall be executed by the Contractor in the same manner and with the same character and quality of material as other portions of the Work without any increase in Contract Sum or extension of the Contract Time.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto with respect to the matters set forth in the Contract Documents and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a

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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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.

§ 1.1.2.1 The Contractor is independently responsible for reviewing and coordinating the provisions of all of the Contract Documents. In addition, the Contractor is responsible for reviewing all reports, investigations, test data and other documents relating to the Work and the Project Site that have been provided to the Contractor. The failure to review any document shall not relieve or excuse the Contractor from compliance with its terms or the terms of any Contract Document.

§ 1.1.2.2 The Contractor's proposals and bid submittals in connection with the Project (and the invitations, instructions to bidders issued by the Owner, as well as any communications relating thereto), if any, are NOT part of the Agreement and shall not be the basis for any claim by Contractor. All are superseded by the provisions of the Contract Documents.

§ 1.1.3 THE WORK

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

§ 1.1.3.1 The Contractor shall provide, and as used in the Contract Documents the Work shall include, all labor, supervision, materials, fixtures, built-ins, equipment, tools, supplies, taxes, and permits (as described in Section 3.7.3) necessary to timely and properly produce all work and completed construction required or reasonably inferable from the Contract Documents. In determining what is reasonably inferable from the Contract Documents, all such documents shall be construed together and in accordance with industry custom and practice. Performance by the Contractor shall be required to the extent consistent with the Contract Documents or reasonably inferable from them as being necessary to produce the indicated results.

§ 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.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.4 Intentionally omitted.

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

§ 1.2.6 The Contractor acknowledges and agrees that the mechanical, electrical, plumbing, and fire suppression drawings may be diagrammatic. The mechanical, electrical, plumbing, and fire suppression Subcontractors shall coordinate with the Contractor in determining the route of pipelines, ducts and conduits, and locating equipment. Any minor variations required for conformance to the intent of the diagrammatic drawings shall be made without additional cost and without an increase in the Contract Time. Where there are intersections involving various ducts, piping and equipment, particular consideration shall be given to clearances required for future maintenance and service. Where tight conditions or interferences develop, the Contractor shall confer with the Subcontractors whose work is affected, the Architect, and the Owner to reach an acceptable solution. The suggested solution shall be submitted to the Architect and Owner for review and approval. The Contractor and all Subcontractors shall verify measurements at the Project Site.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

§ 1.5.1 The Instruments of Service, including Drawings, Specifications and other documents prepared by the Architect through which the Work to be executed by the Contractor is described shall not be used by the Contractor Parties on projects other than the Project unless expressly authorized in writing by the Owner. The Instruments of Service prepared by the Architect and copies thereof furnished to the Contractor, are for use solely with respect to this Project.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and 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.

§ 1.5.3 As used herein the term “Proprietary Information” shall mean all information which the Contractor acquires from the Owner, or arises out of the Work on the Project and concerns the present and future plans of the Owner, or pertains to the operations of the Owner's business, or to the use of the Project (Proprietary Information shall not include information that is or becomes part of the public domain except if through a disclosure in violation of this Contract). The Contractor represents to the Owner that it has, and shall employ, policies and procedures designed to protect Proprietary Information and to prevent its unauthorized publication and disclosure. The Contractor agrees that the Owner's Proprietary Information shall be subject to such policies and procedures. Specifically, and in addition to the foregoing, the Contractor agrees that it will take reasonable measures to prevent disclosure of such Proprietary Information to any third person and will not use any Proprietary Information other than on the Owner's

behalf, except as the Owner may otherwise authorize in writing. The Contractor also agrees to take all reasonable precautions to safeguard any documents which the Owner may supply to it hereunder which contain Proprietary Information. The Contractor may make copies of such documents to the extent and only to the extent necessary for the performance of its obligations hereunder. All public relations matters arising out of or in connection with the Project shall be the responsibility of and be handled by the Owner. The Contractor shall not make any announcement or publication in connection with the Project without the Owner's prior written approval, which approval shall not be unreasonably withheld. The Contractor shall have the right to include representations of the Project, including photographs of the exterior and interior, among the Contractor's promotional and professional materials. Project signs visible from off the Project Site and displayed for the purposes of advertising participation on the Project may only be erected if approved in advance by the Owner.

§ 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.

§ 2.1.1.1 The Contractor acknowledges that, in addition to the Architect, the Owner may utilize its own personnel and may retain certain consultants (who may also have certain consultants of their own) to assist the Owner with respect to various aspects of the Project, including monitoring of the Contractor's Work. Any consultants retained by the Owner are solely advisors to the Owner and shall not have authority to act as a representative or agent of Owner or to act on behalf of the Owner in connection with the Project or the Contract unless specifically so indicated to the Contractor by the Owner in writing. One such consultant with whom the Owner has an agreement is **MDG Development Partners LLC** ("MDG"), who will be acting as a construction consultant to the Owner in relation to the Project. As with other consultants engaged by the Owner, MDG's authority to act on behalf of the Owner with respect to the terms of this Agreement shall be as set forth in writing from the Owner to the Contractor. The Contractor agrees to cooperate with and make the Work accessible for review and observation by, the Owner's personnel, and any consultants hired by Owner, upon notice to Contractor specifying the roles and responsibilities of such individuals.

§ 2.1.2 The Owner shall furnish to the Contractor within ten (10) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the Project Site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the 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 Project Site, and a legal description of the Project Site. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner, as provided in the Contract Documents, 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 after receipt of a written request from the Contractor to avoid delay in the orderly progress of Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. In the event Owner fails to timely provide information requested by Contractor pursuant to this Section 2.2.4, and such failure causes an actual delay to the critical path of the Project schedule, such failure shall constitute a delay entitling Contractor to relief pursuant to Article 8 hereof, and Contractor shall have the right to make a claim pursuant to Section 15.1 below. Notwithstanding the foregoing, any delay that reasonably could have been avoided or mitigated by actions consistent with the Performance Expectations by Contractor, Subcontractors, any person or entity acting on behalf of Contractor or the Subcontractors, anyone employed by any them, or anyone for whose acts they may be liable (each, a "Contractor Party", and collectively the "Contractor Parties"), shall not constitute a delay entitling Contractor to relief pursuant to Article 8 hereof.

§ 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. All other copies of the Drawings and Specifications or other Contract Documents shall be at Contractor's sole cost and expense.

§ 2.2.6 The Owner may provide surveys, soils and analyses, environmental testing and other information to the Contractor concerning the existing conditions at the Project Site. The Contractor may rely on such information to the extent doing so is reasonable in accordance with the Performance Expectations; however, the Owner does not warrant or guarantee, and shall not be responsible for or liable for, the correctness, accuracy or completeness of any such information or any conclusions drawn therefrom by the Contractor.

§ 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 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.

§ 2.3.1 If the Contractor fails to promptly correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects or fails to carry out the Work in accordance with the Contract Documents and fails within a fifteen (15) day period after receipt of written notice from the Owner to correct any such default, failure or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies (either with the Owner's own forces or by hiring another contractor to perform the Work that the Contractor is failing or neglecting to carry out). In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's reasonable expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. 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.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project Site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor shall be responsible to examine carefully all of the Contract Documents and all reports, investigations, test data and other documents relating to the Work and the Project Site prepared by the Architect, the Owner or by the Owner's separate consultants, and provided to the Contractor, and will apprise itself of conditions relevant to the performance of the Work which are capable of ascertainment through an investigation of the Project Site. The Contractor shall make its own evaluation and analysis of the information relating to the Project Site and the Work during the pre-construction phase ("Pre-Construction Phase") in accordance with the Performance Expectations and shall clarify and resolve identifiable questions or uncertainties relating to same.

§ 3.2.1.1 The Contractor may provide incidental services involving construction consulting, including value engineering. The Owner acknowledges that, notwithstanding any other provision of the Agreement, such services are advisory and are not to be considered professional design services. Owner will refer such matters to its own design professional for professional guidance, and accordingly, the Contractor shall have no liability to the Owner with respect to any such professional design services.

§ 3.2.2 During the construction of the Project, the Contractor shall review and compare the current Contract Documents and any modifications thereto relating to the Work. If from the review of the Contract Documents issued to the Contractor prior to proceeding with the affected Work, it is apparent that there is a conflict, inconsistency, or ambiguity in the instructions applicable to such Work, the Contractor shall promptly report such inconsistency, conflict or ambiguity to the Owner and shall secure written instructions from the Owner prior to proceeding with the Work affected by or involving such inconsistency, conflict or ambiguity. If the Contractor proceeds with any Work that it knows or, based on the Contract Documents and presuming Contractor has acted in accordance with the Performance Expectations, should know contains or involves an inconsistency, conflict or ambiguity or that violates an applicable code or law without first giving the Owner notice thereof and being ordered to proceed therewith by the Owner, the Contractor (without any increase in the Contract Sum) shall be responsible to the Owner for any delay connected with, and for all costs, damages or losses suffered by the Owner as a result of, any Work so performed by the Contractor.

§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner and Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, and rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

§ 3.2.4 By executing the Agreement, the Contractor represents that it has visited the Project Site, has examined carefully all of the Contract Documents upon which the Contract Sum is based, has reviewed all information, data and documents regarding the conditions at the Site made available to the Contractor by the Owner prior to the execution of the Contract. Based on the foregoing, the Contractor shall not be entitled to any increase in the Contract Sum or to any extension in the dates for Substantial Completion or Final Completion in connection with the Work

caused by any conditions at the Site disclosed by the information made available to the Contractor by the Owner prior to the execution of the Contract, or of which the Contractor otherwise was aware, and/or disclosed by a reasonably prudent visit to and visual examination of the Site prior to the execution of the Contract.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work in accordance with the Performance Expectations. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect and Owner which are acceptable to the Contractor. The Contractor acknowledges and agrees that the Owner is under no obligation to inspect the Work or discover defects or deficiencies in the Work. The inspection, observation or acceptance of the Work by the Owner, the Architect or any consultants retained by Owner shall not in any way constitute an acceptance of defective or improper Work (unless specifically so stated by the Owner in writing) and shall not make the Owner, Architect or such consultants responsible for means, methods, sequences or techniques used to perform the Work, which items shall remain the sole responsibility of the Contractor. Similarly, the failure of the Owner, Architect or any such consultants to discover or give notice of any defects, deficiencies or other problems in the Work shall not constitute a waiver or acceptance thereof and shall not in any way affect or reduce the Contractor's responsibilities to perform the Work consistent with the terms of the Contract Documents.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, or under contract with, the Contractor or any of its Subcontractors.

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

§ 3.3.4 The Contractor shall be responsible to the Owner for any failure to perform this Contract. All Work shall be performed only by appropriately skilled personnel in sufficient numbers, trained and experienced, and familiar with the materials and methods indicated or specified, and all applicable codes, ordinances and industry standards applicable to the construction of the Work.

§ 3.3.5 Beginning with the commencement of the Work, the Contractor shall hold two (2) progress meetings at the Project Site each month, or at such other time and place as is acceptable to the Owner. At such meetings, the progress of the Work shall be reported in detail with reference to the Project schedule, and all problems or other issues relating to the Work shall be discussed and resolved. Each Subcontractor then performing work on the Project shall have a competent representative available upon Owner's request at or prior to each weekly meeting to report on the condition of his work and to receive information regarding the performance of future work by the Subcontractor. If Contractor, in its reasonable judgment, determines additional progress meetings are necessary for the timely execution of the Work, Contractor may hold up to two (2) additional progress meetings at the Project Site each month, and may request the attendance of Owner, Architect, Owner's Representative and their respective consultants. The Contractor shall provide the Owner and Architect with at least three (3) days prior notice of any meeting held pursuant to this Section and shall allow the Owner and the Architect to attend and participate in each such meeting. The Contractor shall keep minutes of each meeting held pursuant to this Section and shall circulate the minutes of each meeting to the Owner, Architect and all Subcontractors (and other persons as may be appropriate) no later than five (5) working days after the meeting is concluded.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit smoking inside the buildings at the Project at any time after any such building is in a "weather tight" condition.

§ 3.5 WARRANTY

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

§ 3.5.2 All manufactured articles, materials, and equipment shall be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by the Contractor as directed by the manufacturer unless otherwise specified. In addition to the warranties provided for in Section 3.5.1 of these General Conditions, the Contractor represents and warrants to Owner that all Work, materials and equipment furnished under this Contract shall conform to the Contract Documents and will be free from faults and defects in workmanship or materials for a period of one (1) year from the date of Substantial Completion of such Work. For the avoidance of doubt, the one-year warranty period described in the preceding sentence applicable to Work completed in Phases shall commence, with respect to each Phase of the Work, on the date that the Work related to such Phase is determined to be Substantially Complete. All Work not conforming to these standards shall be considered defective. Further, the Contractor agrees that all guarantees or warranties of equipment or materials furnished to the Contractor or Subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of, and are hereby assigned to, the Owner. Notwithstanding anything to the contrary contained in the Contract Documents, the one-year warranty provided above by the Contractor shall be in addition to and shall not, in any way, replace, shorten, supplant, or otherwise modify, any other warranties required or otherwise provided in the Contractor Documents, including, without limitation, any such longer warranty period(s) set forth in the drawings or specifications attached as Exhibit C to the Agreement, or any extended manufacturer warranty provided along with any materials or equipment to be utilized in connection with the Project.

§ 3.5.3 Subsequent to Substantial Completion of the entire Work or any applicable designated portion thereof, and prior to the Owner's initial occupancy and use of the Project, the Contractor shall schedule and conduct with the Owner a complete review and operational demonstration of all equipment and mechanical and electrical systems installed by the Contractor on the Project and shall also review the operation and maintenance of such systems with the Owner's maintenance personnel. This review and demonstration shall be conducted once for all equipment and systems, and Contractor shall produce a video-taped guide for Owner's use, clearly demonstrating proper use of each piece of equipment and each system. Contractor shall also provide such additional information or demonstration regarding each piece of equipment or system as Owner shall reasonably require to provide for proper use thereof. Contractor shall be responsible for the maintenance and operation of all equipment and systems, and the Owner shall not be deemed to have accepted the Work for the purposes of the Contractor's warranties and exclusions thereof in Section 3.5.1, until Contractor has achieved Substantial Completion of the Phase of which such equipment or system is a part. Subsequent to this review, the Contractor, with reasonable promptness and at no cost to the Owner, shall make all adjustments or corrections and shall balance all systems in order to make all equipment and systems perform as required by the Contract Documents. If necessary or requested by the Owner, the Contractor shall require the Subcontractor, supplier or materialman responsible for any such equipment or system to participate in the review and/or perform any required adjustments, corrections or balancing.

§ 3.5.4 All warranties provided in the Contract and all provisions for correction of Work in Article 12 shall include Work of Subcontractors. Failure of manufacturers to guarantee products will not relieve the Contractor of its general warranty obligations under this Contract during the one-year general warranty. Notwithstanding the prior sentence, the Contractor shall not be required to warrant a product that the manufacturer will not warrant due to its

application as specified in the Contract Documents or the location of the Project, provided the Contractor gives the Owner prompt written notice of such fact upon learning of the manufacturer's position (in which event the Contractor should not proceed with the application directed by the Contract Documents until receiving further direction from the Owner and Architect) and provided further that the foregoing shall not apply to substitutions suggested by the Contractor (other than accepted value engineering items, as evidenced by a change order). The Contractor shall be responsible for any costs or expenses arising in connection with or as a result of any defective and/or nonconforming Work, including the fees for any additional professional services of the Architect necessitated thereby. Notwithstanding anything to the contrary herein, Contractor shall have no liability for the failure of any product or equipment specified by the Owner unless such failure is the result of the Contractor's defective and/or non-conforming Work.

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

§ 3.5.6 The Contractor agrees, upon notice from the Owner, to pay for and, if requested, correct, repair, restore and cure any damage or injury, whenever the same shall occur, resulting from any defects, omissions or failure in workmanship or material by Contractor or a Contractor Party.

§ 3.5.7 The date of commencement of the guarantees and warranties required by the Contract Documents shall not in any manner be affected by any delay in the commencement, progress or completion of the Work, regardless of the cause therefor. For the avoidance of doubt, warranties shall run from the Date of Substantial Completion of each Building.

§ 3.5.8 Contractor agrees that all warranties of Contractor and Subcontractors hereunder shall be deemed to run to the benefit of, and may be assigned to, the successors-in-interest of Owner (if so assignable according to their terms). If, at the end of Contractor's warranty period, any manufacturer or vendor warranty remains in effect that do not, by their terms, run to the benefit of the ultimate user of the product in question, then Contractor shall assign such warranty to Owner at no additional cost to Owner to the extent assignable by its terms. In order to facilitate the foregoing, to the extent a warranty does not run to the benefit of Owner or the ultimate user of the item in question and cannot, by its terms, be assigned, Contractor shall take commercially reasonable steps to assist Owner in enforcing the warranty against the applicable manufacturer, vendor, or Subcontractor.

§ 3.5.9 Contractor agrees that prior to the expiration of the one-year Warranty period referenced above, at a date and time mutually agreeable to the Owner and Contractor, but anticipated to be approximately one month prior to the expiration of such Warranty, the Contractor, Owner, Architect and such other entities as the Owner may require, shall perform an inspection of the Work to determine if any of the Work may be defective and subject to correction under the Warranty provided herein. If, during or as a result of such inspection, Work is determined to be defective or otherwise entitled to correction under the Warranty, such corrective Work shall be completed in accordance with the terms of this Agreement.

§ 3.6 TAXES

The Contractor and each Subcontractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, and shall pay all taxes measured by the wages of its employees and any business privilege taxes. This Project is anticipated to be exempt from payment of any gross receipts tax or excise tax at every level (i.e. Contractor, Subcontractors, sub-subcontractors, suppliers, etc.). Contractor shall submit, and shall require and cause all Subcontractors to submit, all required documentation for the purpose of obtaining the aforementioned tax abatements (including, without limitation, abatement of excise taxes). For the avoidance of doubt, Contractor shall be solely responsible for the payment of any taxes paid by the Contractor that would otherwise have been exempt but for Contractor's failure to properly complete and/or submit the required documentation related to such exemption.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 The Owner has paid the building permit fee. The Contractor is responsible for obtaining any required trade permits, including but not necessarily limited to the electrical permit and the plumbing permit. The Contractor shall also apply, secure and pay for other required governmental inspections, testing, approvals required with respect to

such permits and licenses and any other governmental fees and licenses customarily paid for by the Contractor or a Subcontractor.

§ 3.7.1.1 The other fees or permits the Owner shall obtain include state/territory and local use fees and permits, utility connection fees, traffic control and related fees, licenses and inspections necessary for the proper execution and completion of the Work and which are legally required.

§ 3.7.1.2 The Contractor shall be responsible to prepare the Project Site and coordinate with all public utilities for installation or alteration of utilities and related services at the Project Site. Contractor shall provide to Owner copies of any and all correspondence to or from the utilities. In addition, within sixty (60) days of commencement of construction on the Project, the Contractor shall provide Owner notice of any fees, deposits or letters of credit which the Owner is required to pay or deposit with a utility in connection with the provision of services to the Project Site. Notwithstanding anything to the contrary contained in the Contract Documents, Contractor shall be responsible for ensuring continuous and uninterrupted utility service to all parts of the Project Location other than the Project Site (as the same is determined by the Owner and Contractor according to the current Phase(s) or portions of the Work being completed at such time) during execution of the Work within the Project Site. Notwithstanding the foregoing, there may be limited, temporary shutdowns to complete utility tie-ins. Contractor shall provide Owner with reasonable advance notice of same.

§ 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 and public and private utilities 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 Project Site that are (1) unknown subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, and which were not, and should not reasonably have been, discovered by the examination and review set forth in Section 3.2, or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist in the vicinity of the Project Site and in buildings of the same age and character as the buildings housing the Project, 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 fourteen (14) calendar days after first observance of the conditions. The Owner, in consultation with the Architect, shall determine whether an increase in the Contractor's cost, or time required for performance of any part of the Work, is warranted and shall, within a reasonable amount of time, issue a CCD to address these issues. If Contractor disagrees with a decision to issue or not issue a CCD, it may submit a claim as stipulated by Article 15 of these General Conditions. Under no circumstance, however, shall Contractor suspend performance of the Work pending resolution of any claim, including claims filed pursuant to this Section.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 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 ("Allowance Items") 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 unloading and handling at the Project site, labor, installation costs, materials and equipment delivered at the Project Site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for overhead, profit and all other expenses associated with the allowances are included in the Contract Sum and not in the allowance amounts; 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; (2) changes in Contractor's costs under Section 3.8.2.2; and (3) allowable mark-up in the case of Allowance overruns.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 Contractor shall, prior to the start of construction, designate one (1) individual to serve as its Project Superintendent. The Project Superintendent so designated shall be principally responsible for coordinating the Work on the Project and shall be present on the Project Site as appropriate during each day when the Work is being performed in order to ensure the timely and proper performance of such Work. If the Project Superintendent is not physically present on the Project Site for any extended period, he or she shall be available by telephone or other comparable device to respond to emergencies, problems and questions as they arise; alternatively, Contractor may designate another individual to serve as an "Interim Project Superintendent," who shall fulfill the Project Superintendent's responsibilities during the period in which Project Superintendent is absent from the Project Site. The Project Superintendent shall communicate with the Contractor, the Owner, the Architect, and all other persons involved with the Project as necessary to accomplish the timely and proper completion of all Work on the Project. The Project Superintendent shall represent the Contractor, and communications given to the Project Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Project Schedule is attached to the Agreement as an exhibit. The Project Schedule shall not be extended without the prior review and approval of the Owner and the Architect. Contractor acknowledges and agrees that it has prepared and is fully familiar with the Project Schedule, which is a critical element of its Agreement with the Owner, and agrees to be bound thereby.

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

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and shall update the same as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval, which 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 no less than fourteen (14) calendar days 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 as required to complete the Work within the Contract Time and as required by the Contract Documents. The schedule for the Work shall be maintained and updated monthly (or more frequently if the Owner reasonably determines that it is necessary) in such form (e.g. bar chart, CPM) and shall contain such information as the Owner and Architect may reasonably request. In addition, if requested by the Owner or Architect, the Contractor shall provide such additional information (such as daily force and activity reports, material purchase and delivery status reports and reports of progress against schedule milestones) as are reasonably necessary to monitor the status of the Work and respond to any delays thereto. Contractor shall also provide Owner with reasonable advance notice, whenever practicable, of the completion of various milestones and or Phases prior to their actual completion (for instance, if Contractor assumes the completion of the then-current phase within the next thirty (30) days, Contractor should specifically apprise the Owner of same, separate and apart from any other reporting obligations Contractor might have elsewhere in the Contract Documents). Notwithstanding anything to the contrary herein,

however, Contractor shall not have the right to extend the Schedule unilaterally, with any such extension required to be memorialized in a Change Order or CCD signed by Owner.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Project 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. In addition, Contractor shall deliver all submittals to the Owner electronically. At the conclusion of the Work on the Project, these marked drawings shall be given to the Architect and may be used by the Architect in connection with Architect's review and approval of the as-built drawings. The as-built drawings shall be delivered by Contractor and shall show all construction Work, within reason and in accordance with industry standards, performed on the Project as set in place during construction, and revised to show the foregoing information and changes from the original drawings made during construction. The Contractor shall be responsible and liable to the Owner for accurately and completely recording all the information required by this section on the marked set of drawings and shall, at no cost to the Owner, review the as-built drawings with the Architect to verify that this information has been accurately incorporated in the as-built drawings.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals (collectively, the "Contractor's Submittals") are not Contract Documents unless they are required to be reviewed and approved by the Architect, in which event they shall be considered Contract Documents, following their approval by Architect, if Architect and Owner, in their sole discretion, agree to designate them as such. Notwithstanding the foregoing, however, only those Contractor's Submittals that are in conformance with this Contract may be considered Contract Documents to the extent permitted herein, and under no circumstance shall any inconsistency, deviation, or conflict presented in any Contractor's Submittal control with respect to any other Contract Document unless such deviation is expressly called to the Architect's attention and accepted by Architect. It is expressly agreed that the purpose of Contractor's Submittals is to demonstrate the way by which the Contractor proposes to conform its Work 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 such submittal. Contractor may rely upon the Architect's approval of Contractor's Submittals in accordance with this Section 3.12 and subject to the limitations of Sections 4.2.7 and 4.2.13 below. 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. For avoidance of doubt, as used in the context of shop drawings and submittals, Architect's approval means that the Architect has taken no exception to a specific deviation called out on in the shop drawing or submittal.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect, with a copy to Owner, all Contractor's 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. Contractor's Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. The Architect shall have no obligation to review any Contractor's Submittal unless the actions required by this Section and Section 3.12.6 have been taken and such Contractor's Submittal has been reviewed and marked by the Contractor to indicate field conditions, proposed deviations from the Contract Documents, and any similar matters. The Contractor shall be

responsible to the Owner for all delays caused by the Contractor's failure to comply with the provisions of this Section and of Section 3.12.6.

§ 3.12.6 By submitting the Contractor's Submittals, the Contractor represents to Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, (3) reviewed field measurements and field construction criteria related thereto, or will do so, and (4) 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 Contractor's 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 Contractor's Submittals unless the Contractor's submittal clearly identifies and describes the deviation or if the deviation is the result of the Architect's alteration or mark-up of a submittal.

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

§ 3.12.10 Except as set forth in paragraph 1.1.3.2, the Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. However, to the extent the Work requires that professional services are to be provided, Contractor represents it shall procure any such services from a licensed design professional, under a separate contract, in conformance with all applicable law and with the requirements of the Contract Documents. 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. Contractor does not hold itself out to be a licensed or authorized architectural or engineering firm and Owner agrees not to raise that issue as a basis to either avoid payment or to challenge the validity of this Agreement or any lien by Contractor.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the Project Location to the Project Site (as determined by the Owner depending on the current Phase(s) and/or portion of the Work being completed at the time) and only in 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. Contractor shall also be responsible for limiting any impact on the Project Location outside of the Project Site during the execution of the Work so as not to inconvenience Owner's residents utilizing areas at the Project Location that are not considered part of the Project Site.

§ 3.13.2 The Contractor shall be solely responsible for all material or equipment stored by it or by any Subcontractors on the Project Site (subject at all times to Contractor's rights, if any, with respect to Owner's insurance coverage required by this Agreement). Beginning with issuance of the NTP and continuing through Final Completion of the Project, the Contractor shall be responsible for the security of the Project Site, including all tools, materials, equipment and completed Work on the Project Site. The specific security measures and obligations are as

stated in the Qualifications and Assumptions to the Contract Sum. The Contractor, without any increase in the Contract Sum, shall take such actions as defined in the Qualifications and Assumptions to maintain such security, including, but not limited to the erection of temporary security fencing around the Project Site. The Contractor shall properly safeguard and store any combustible material necessary to the Work so as to protect against the possibility of fire or other damage. Contractor shall be solely responsible for all damage, cost or expense caused by the use or storage of combustible materials at the Project Site, except and only to the extent that such damages, costs or expenses are actually paid by applicable insurance. The Contractor shall provide temporary protection to the extent necessary to protect the Work from weather conditions (and provided Contractor has done so in accordance with the performance Expectations, shall be entitled to a change order for any preparation of the site and clean up after a named storm or earthquake) and to allow the Work to be performed within the Contract Time and dates for Substantial Completion of the entire Work or any applicable designated portion thereof or Final Completion. Owner shall procure Builder's Risk or storage and transportation insurance with respect to material stored on or off site and in transit and Course of Construction property insurance with respect to material and Work in place.

§ 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. For the Work to be considered Substantially Complete, the Project Site exterior must be left "broom clean" and all the Project interiors must be thoroughly cleaned and vacuumed, all boxes, crates, and other Project materials shall be hauled off of and away from the Project Site at the Contractor's expense, the Contractor shall thoroughly wash and clean all glass, replace broken glass, clean hardware, remove paint stains, spots, smears, marks and dirt from all surfaces, clean fixtures, wash tile floor and all exposed concrete and vacuum all carpeted areas so as to present clean work to the Owner for acceptance. Prior to completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. In addition, Contractor shall at all times keep the Project Site and adjacent rights of way clean and free of debris or blowing trash, cut and trim all grass and weeds (within the active construction phase/s only), as necessary to maintain a neat, clean and safe Project Site and adjacent rights of way. To the extent the Specifications require more stringent requirements with regard to cleaning, the Specifications shall control.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so after 48 hours' prior notice to the Contractor (and without regard to the time for notice set forth in Section 2.4 of these General Conditions) and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Owner's consultants and the Involved Organizations and Architect access to the Work in preparation and progress wherever located. In this regard, the Contractor shall make personal safety equipment, with the exception of work boots, available to any such persons accessing the Project Site.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect and Owner. This indemnification, hold harmless and defense obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend, and hold harmless the Owner, the Involved Organizations, investors and mortgagees, the U.S. Department of Housing and Urban Development ("HUD"), the Owner's Representatives, and the Owner's consultants (including, without limitation, MDG and MDG's consultants, but excluding the Architect and the Architect's consultants), the Owner's members, the Owner's officers, directors, shareholders and affiliated companies, and agents and employees of any of them (collectively "Owner Indemnitees") from and against any and all liability, lawsuits, claims, damages, losses, interest, judgments, liens and expenses (including, but not limited to reasonable attorney's and consultants' fees, costs and disbursements) (subject to the last sentence of this section), allegedly arising out of or resulting from the performance of the Work to the extent caused by the negligent acts or omissions, or breaches of contract or statutory violations (including but not limited to claims based upon improper employment practices), of the Contractor or any other Contractor Party. The Contractor agrees to indemnify, defend, and save the Owner Indemnitees harmless from and against all lawsuits, demands, claims or asserted against the Owner Indemnitees, or any of them, to the extent they involve claims, matters or allegations that, if successful, would require the Contractor or any applicable policy of insurance to indemnify the Owner Indemnitees, or any of them. This indemnification, hold harmless and defense obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract. Notwithstanding anything else in this Section or this Agreement, Contractor's liability to the Owner for attorney's fees and expenses under this section shall be limited to the defense of claims arising out of demands or actions brought by third parties and to payment of attorney's fees awarded in any such third party actions.

§ 3.18.2 In any and all claims against the Owner, any of its agents or employees or any Indemnitee by any employee of the Contractor, a Subcontractor, a Sub-subcontractor at any tier, anyone directly or indirectly employed or retained by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligations under Section 3.18.1 or the Contract Documents shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 Owner shall defend, indemnify and hold harmless Contractor, its members, principals, officers and employees from and against any and all liability, lawsuits, claims, damages, losses, interest, judgments, liens and expenses (including, but not limited to reasonable attorney's and consultants' fees, costs and disbursements) that may be incurred to the extent they are a result of, in connection with, or as a consequence of the negligence of Owner or its agents, or the breach of the Contract by the Owner. This indemnification shall survive completion of the Project or the earlier termination of the Agreement

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

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect or designate such other individual or entity, including the Owner or its personnel, whose status under the Contract Documents shall be that of the former Architect. Owner agrees that it shall at all times have an architect retained and available to assist with interpretation of the Contract Documents and to make design decisions and to determine the date(s) of completion. If the Architect is terminated, it shall be replaced with another licensed architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representatives during construction until the date the Architect issues the final Certificate for Payment

and with Owner's direction, from time to time during the later of the one year period after the date of Final Completion of the Work or by the terms of any other applicable warranty from time to time during the one year period for correction of the Work described in Article 12. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Throughout the Project, the Owner (at its discretion) shall have the right to communicate directly with the Contractor, without involving the Architect, provided however that all communications involving design issues shall include the Architect (by direct participation or copy). In all events, all written communications between the Architect and Contractor shall be provided to the Owner. 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 and Owner each will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect (with the Owner's written consent) or Owner 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 or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Contractor is responsible to coordinate scheduling of close-up inspections with the Architect.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's Submittals, 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, within fourteen (14) calendar days. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details 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 or acceptance of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the Project Site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in the Agreement between the Owner and Architect.

§ 4.2.11 Upon written consent of the Owner, claims, disputes and other matters in question between the Contractor and the Owner relating to the execution of the Work or the interpretation of the Contract Documents may be referred initially to the Architect for decision, which will be rendered in writing with reasonable promptness. Disputes regarding the Architect's decisions on matters rendered pursuant to this Section shall be subject to further resolution as set forth in Article 15 of these General Conditions and the Contract Documents.

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 As used in this Contract, the term "Subcontractor" or "subcontractor" shall mean any person or entity who has a direct Contract with the Contractor to perform a portion of the Work on the Project (including materialmen and suppliers) and all other persons or entities (whether such persons or entities are subcontractors, sub-subcontractors, materialmen or suppliers) who provide materials, labor or services directly or indirectly to or for the Project through or under the supervision of Contractor or its Subcontractors. 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 Project Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Except for those Subcontractors previously approved in writing by Owner, Contractor will use only its employees for the Work. Contractor will not utilize any Subcontractor in performing any portion of the Work unless and until the Owner gives its specific prior written approval. As between Owner and Contractor, Contractor shall be legally obligated to prosecute and perform the Work notwithstanding that the Contract Documents may permit performance by a Subcontractor. Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special

design. Within fourteen (14) days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the fourteen (14)-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. Except for the reasons enumerated in Section 5.2.3 below, any 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Contractor shall, upon request by Owner, provide copies of all subcontracts and purchase orders to Owner, together with a certification that such documents are true, correct, and complete copies of such documents.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 In the event this Contract is terminated by the Owner for any of the reasons set forth in Section 14.2.1 or 14.4.1, the Owner shall have the right (without any responsibility so to do) to assume the rights and responsibilities of the Contractor under all or some subcontracts, any construction, materials or rental agreements, and/or any other commitments related to the Work which the Owner in its sole discretion, chooses to assume. While this provision shall constitute a present assignment of Contractor's rights with respect to any and all such contracts, agreements and commitments which Owner so chooses to assume, the Contractor, upon request from the Owner, shall promptly execute and deliver to the Owner written assignments of such contracts, agreements and commitments which the Owner in its sole discretion so chooses to take by assignment. All contracts with Subcontractors shall provide for this assignment.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site. The term "separate contractor" as used herein shall mean and refer to third parties performing work or services related to the Project under separate contracts with the Owner. 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. Owner shall require reasonable limits of insurance and reciprocal indemnity and waiver of subrogation provisions in its contracts with those separate contractors who enter within the limits of any Phase of the Work while it is ongoing. Such requirements shall not apply to separate contractors working for the Owner in areas in the location of the Project that are not under the control of the Contractor at that time.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any reasonable revisions to the construction schedule directed by the Owner after such a joint review. The construction schedules as so revised by the direction of Owner shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable and equal opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish in accordance with Section 3.15 of these General Conditions, the Owner may clean up and the Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by the prior written consent of the Owner pursuant to a valid Change Order, CCD, or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor shall not be authorized to change the scope of the Work in a manner that will result in

an increase in the Contract Sum or the Contract Time for alleged extra work, overtime, or changes in the Work of any kind unless such Work is approved in writing by Owner prior to the commencement of such work. The Architect shall not be deemed an agent of the Owner for these purposes.

§ 7.1.2 A Change Order shall be based upon a written agreement among the Owner, Contractor and Architect; a CCD requires written issuance 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 only with the prior approval of the Owner.

§ 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, CCD or order for a minor change in the Work. In the event the Owner or Contractor requests a change in the Work, the Contractor shall promptly submit to the Owner an itemized breakdown of quantities and prices with respect to work included in the change, and as otherwise provided by Section 7.3.7 below, for use by the Owner in checking the value of such work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

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

§ 7.2.2 Any adjustment to the Contract Sum resulting from a change in the Work performed pursuant to a valid Change Order or CCD shall be determined in accordance with one or more of the methods listed in Section 7.3.3 or pursuant to the provisions of Section 7.3.7 below.

§ 7.2.3 The Contractor agrees that the amount to be paid to the Contractor as set forth in any Change Order that is signed by Contractor, and the amount to be paid to the Contractor pursuant to the provisions of Section 7.3.7 (whether the Change Order arises from, or as the result of the CCD, a Claim or any other reason entitling the Contractor to such payment pursuant to the provisions of this Contract), shall constitute full compensation to the Contractor for the work required in connection with the Change Order, CCD, or Claim and full compensation for acceleration, delay, loss of efficiency, inconvenience, increased supervision or other claims, costs, expenses or damages which have been, or may be, incurred by the Contractor as a result of the issuance or occurrence of the Change Order, CCD and/or the performance of the Work required or other costs incurred in connection with the Change Order, CCD or Claim except to the extent expressly reserved in such Change Order.

§ 7.2.4 The Contractor shall permit the Owner to inspect, copy and audit their books with respect to all time and materials work or work performed pursuant to Section 7.3.7 or otherwise reimbursed on a cost-reimbursable basis. In this regard, the Contractor shall produce, and shall require Subcontractors to produce, any and all financial or related data Owner may request for the purpose of determining the correctness and allowability of the costs of all or any part of such work. The Contractor shall keep, and shall require all Subcontractors to keep such full and detailed accounts as may be necessary to reflect its operations with respect to such costs and extras, and the system adopted shall be such as is satisfactory to the Owner. The Contractor acknowledges and agrees that information obtained by the Owner pursuant to any such audit may be given to the Involved Organizations and other entities providing funding to the Project in order to obtain and justify such funding.

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A CCD is a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, 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 as set forth in the Contract Documents.

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

§ 7.3.3 If the CCD provides for an adjustment to the Contract Sum, or the Contractor is entitled to any adjustment in the Contract Sum resulting from a change in the Work performed pursuant to a valid Change Order, the adjustment shall be determined in accordance with one or more of the following methods:

- .1** Lump Sum Proposal: Upon the Owner's request, the Contractor will, with reasonable promptness after such request, transmit to the Owner a lump sum proposal detailing the proposed adjustments to the Contract Sum in connection with any change in the Work requested by the Owner. The proposal shall be itemized and segregated by labor and material (including consumables such as utilities and items required to be furnished pursuant to union contracts) for the various components of the changes in the Work and no aggregate figures for labor or material will be accepted. The Contractor shall furnish, with Contractor's lump sum proposal, supporting data consisting of final proposals from each Subcontractor, Sub-subcontractor and vendor. Only labor, materials, utilities, supervision and supplies directly attributable to the change in the Work shall be included in the proposal;
- .2** Unit Price: Upon the Owner's request, the Contractor will, with reasonable promptness after such request, transmit to the Owner a unit price proposal detailing the proposed adjustments to the Contract Sum in connection with any change in the Work requested by the Owner. The unit price proposal shall include the written proposal of Subcontractors itemizing the quantities of each item of Work for which there is an applicable unit price contained in the Contract Documents. The quantities must be itemized in relation to each specific item of the change in the Work. The unit prices will be applied to net increase in quantities of the same item. The unit prices will also be applied to net decreases in quantities of the same item; provided, however, Subcontractors shall be entitled to reasonable administrative expenses (including any restocking charges which may be payable by such Subcontractors to suppliers) in processing any such deductions from the Work to the extent that the net decrease in quantities of the same item exceeds fifteen percent (15%) of the original quantity of such item; or;
- .3** Time and Material: In the absence of an agreement to a Lump Sum or Unit Price, the Contractor will proceed with CCD Work on a time and material basis, including a reasonable fee (as provided in Section 7.3.3.4 below) for overhead and profit. If and only if a Change Order or CCD results in an increase to the Contract Time, Contractor shall be entitled to the actual, demonstrable increase in its general conditions costs, not to exceed six percent (6%) of the cost of such Work (except that such 6% limit shall not apply to CCDs or Change Orders that have a disproportionate impact of the duration and schedule of the Project relative the change in scope). The Contractor will submit to the Owner daily time and material tickets for all changes in the Work, including changes in the Work performed by Subcontractors. These tickets will include the identification number assigned to the Work, the location and description of the Work, the classification of labor employed including applicable trade Subcontractor, workers' names, the materials used, the equipment rented (not small tools) and any other information requested by the Owner; or
- .4** Fees for overhead and profit on adjustments to the Contract provided by Sections (.1), or (.3) of this Section 7.3.3 shall be limited as follows: (i) for the Contractor, eight percent (8%); (ii) for Subcontractors, including the fees or lower tier Subcontractors, and whether by their own forces or by others, twenty percent (20%). Neither the Contractor nor any Subcontractor shall be entitled to any fees for overhead and profit on adjustments to the Contract Sum made under clause (.2) of this Section 7.3.3. for unit prices established prior to execution of this Agreement. No compensation for general conditions shall be permitted except as expressly allowed pursuant to Sections (.1) through (.3) of this Section 7.3.3. In the event Contractor performs the Change Work using Contractor's own forces, Contractor shall be entitled to fees for overhead and profit as set forth in (i) and (ii).

§ 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 CCD, 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 CCD 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 Except as otherwise provided in the Agreement, if the Owner directs, or if the Contractor notifies the Owner and Architect that it disagrees with the method for adjustment in the Contract Sum, the method of adjustment shall be determined on the basis of the reasonable, actual and verifiable costs attributable to the Change Order, plus a reasonable allowance for overhead and profit not exceeding the percentages set forth in Section 7.3.3.4; and (ii) in the event of an increase to the Contract Time, Contractor shall be entitled to the greater of its actual, demonstrable, documented increase in its general conditions costs or an increase of six percent (6%) of the cost of such Work, subject in all cases to any limitations imposed by HUD. Costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, which costs shall be considered fully-burdened, including, without limitation, social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance per the schedule of stipulated, fully burdened labor billing rates liquidated in Exhibit E to the Agreement;
- .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 (these costs are stipulated to be 2% of the Cost of the Work of the Change for liability insurances and 1.0% of the Cost of the Work for Performance and Payment Bonds; 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 the estimated cost as confirmed by the Architect or any previous schedule of value line item value for such Work, if appropriate, plus a credit for insurances and bonds at the rates set forth in Section 7.3.7.5 above. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a CCD to the Owner, the Contractor may request payment for Work completed under the CCD 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.

§ 7.3.11 Notwithstanding anything to the contrary herein, including but not limited to this Article 7, Change Orders and Construction Change Directives shall be subject only to the following mark-ups on direct labor and material costs: (a) Six percent (6%) for Contractor's profit, (b) Two percent (2%) for Contractor's overhead, (c) Six percent (6%) for Contractor's general conditions, (d) Two percent (2%) for Contractor's insurance, (e) One percent (1%) for Contractor's bonds, (f) Twenty percent (20%) for Subcontractor overhead and profit (including the fees of lower tier Subcontractors, and whether by their own forces or by others) on subcontracted Work; and (g) Twenty percent (20%) for Contractor overhead and profit on Change Work performed by Contractor's own forces in addition to the markups shown in (a) through (e).

§ 7.3.12 No Change Orders or Construction Change Directives shall include any Contractor costs for supervision of the Change Work, it being agreed that such costs are included within the six percent (6%) mark-up for general conditions or another mark-up set forth in 7.3.11 above. For the avoidance of doubt, the six percent (6%) mark-up for general conditions described in 7.3.11 above shall be the only additional general conditions charges that are permitted. If justifiable circumstances require the overall Contract Time to be extended beyond the originally contemplated twenty-four (24) month period, in such case, Contractor shall be entitled to receive only actual, reasonable, verifiable increases in general conditions and general requirements costs incurred after such twenty-four

(24) month period, necessary for completion of the Work in question, and only to the extent Contractor did not receive the six percent (6%) mark-up for general conditions at the time the applicable change order was processed.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner, or commence operations on the Project Site prior to the date of issuance of the NTP as set forth in the Agreement. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion of the entire Work, or any applicable designated portion thereof, and Final Completion within the Contract Time as required by these General Conditions.

§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, unusually adverse weather conditions documented in accordance with Section 15.1.5.4, or government-ordered shutdowns as a result of COVID-19 (including any and all variants related thereto) or another pandemic; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the parties may determine. Notwithstanding the foregoing, an extension of the Contract Time will only be permitted if (i) the delay could not have reasonably been anticipated by the Contractor through the exercise of the Performance Expectations and (ii) the Contractor took all reasonable steps to mitigate the impact of such delay.

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

§ 8.3.3 Contractor shall not be entitled to any damages for any delay in its Work arising, in whole or in part, from any act or omission of Owner, the Architect or their respective employees, agents, representatives or Separate Contractors, or anyone under the direction or control of the foregoing. Notwithstanding the foregoing, in the case of delay under subpart (1) of Section 8.3.1, then in addition to an equitable adjustment of the Contract Time, Contractor will also be entitled to an equitable adjustment of the Contract Sum to the extent of its actual direct costs, including but not limited to general conditions costs and general requirements. If Contractor is entitled to an

extension of time under any other subpart of Section 8.3.1 above, then Contractor shall be entitled to an equitable increase in the Contract Sum if any delay contemplated in Section 8.3.1 gives rise to additional general conditions and general requirements costs. However, the Contractor waives any claim for lost profits or extended home office overhead or any other increase in the Contract Sum on account of any such delay. Notwithstanding the foregoing, in no event shall Contractor be entitled to any increase in the Contract Sum as a result of any delay if and to the extent Contractor would have otherwise been delayed as a result of its own acts or omissions or the acts or omissions of anyone for whom it is responsible.

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.

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

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 The Schedule of Values is attached to the Agreement as an exhibit and, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 Each Application for Payment shall be prepared by Contractor using a modified version of A.I.A. form G702 and G703, "Application and Recommendation for Payment" or another format acceptable to Owner, and shall clearly detail the amounts due from the Owner specific to each funding source (including, without limitation, funds specific to FEMA 428, CDBG-DR, etc.). Owner shall provide Contractor with the necessary funding source details so that Contractor is able to complete the Applications for Payment in accordance with the preceding sentence.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least five (5) days before the date established for submission of Contractor's Application for Payment, Contractor shall submit to Architect and Owner a "pencil copy" of its Application for Payment for Architect and Owner's review and comment. The Contractor shall, in accordance with the timeframes set forth in the Agreement, submit to the Architect an itemized Application for Payment for Work completed in the form required by Subsection 9.2.2 hereof. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by CCDs, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 With respect to all Work performed, retainage shall be held in accordance with the Agreement.

§ 9.3.1.3 The Contractor hereby agrees and is required to make payment, no later than seven (7) days after the receipt of payment from the Owner, to each Subcontractor of all amounts identified in each application for payment as intended for said Subcontractor. If Contractor does not intend to pay a Subcontractor for Work performed by such entity for the Project, Contractor shall so notify Owner in writing and explain the reason for the Contractor's decision not to make such payment. Owner shall thereafter withhold from Contractor the amounts so noted until Contractor represents that such payment will be made to the applicable Subcontractor, materialman or supplier. Contractor shall defend, indemnify, and hold harmless the Owner Indemnitees from and against any costs, damages or expenses (including reasonable attorney's fees) incurred by Owner as a result of claims made by any Subcontractor who has performed Work for the Project but who Contractor decides not to pay for such Work. Each Application for Payment submitted by the Contractor shall be accompanied by all items required under Article 12 of

the Agreement and by duly executed unconditional waivers of liens from Contractor and each Subcontractor for any amounts included in the previous month's Application for Payment and duly executed conditional waivers of liens from Contractor and each Subcontractor for any amounts included in the current Application for Payment. All such waivers shall be in the form attached to the Agreement as an exhibit. The defense, indemnity, and hold harmless obligations of Contractor hereunder shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 9.3.1.4 Without limiting the provisions of Section 9.6.8 below, Contractor shall promptly discharge or cause to be discharged or make adequate provision for discharge of any and all mechanic's or materialman's liens filed by any Contractor Parties, provided Owner has paid amounts due Contractor, subject to Owner's rights under the Agreement, in connection with the Work that is the subject of any such lien. All costs and expenses associated with any mechanic's or materialman's lien for which Contractor is responsible pursuant to this Section and which is filed or threatened to be filed shall be borne by Contractor. Contractor hereby defends, indemnifies and holds Owner, the Involved Organizations, the title insurance company providing title insurance for the property comprising the Project Site ("Title Insurer"), Owner's general and limited partners, the Owner's officers, directors, shareholders and affiliated companies, and any others with an interest in the property comprising the Project Site, harmless from and against any loss or damage (including without limitation attorneys' fees and court costs) caused by the filing of any such mechanics or materialmen lien. In addition, in such event, Contractor shall promptly take such actions as may be requested by the Title Insurer for the Owner or any mortgagee or lender to the Project in order for such Title Insurer, within ten (10) days after the date such lien is filed, to issue and deliver to Owner and any mortgagee, an Owner's and mortgagee's title policy, insuring against such lien or to issue and deliver endorsements to existing policies, insuring against such lien. These actions shall include but not be limited to, providing a lien and indemnity bond, in a form satisfactory to the Owner, should the person or entity filing the mechanics or materialmen's lien at issue fail to remove such lien or record in exchange for a release of lien bond (which lien and indemnity bond shall be in a penal sum of not less than one hundred fifty percent (150%) of any such lien claim or a greater amount as required by Law, and issued by a surety listed as acceptable in the then current Department of Treasury Listing of Approved Sureties Circular 570 and acceptable to the Title Insurer, naming the Title Insurer as an obligee, and which will fully protect the Title Insurer against all costs and expenses associated with the such lien claim). This provision shall survive termination of the Contract. Once the Contractor has removed of record any mechanic's or materialman's lien for which the Contractor is responsible pursuant to this Section or, with respect to such lien, has provided a bond acceptable to the Owner, then the Owner shall release all sums being held on account of such lien as part of the payments made in response to the next succeeding payment application submitted to Owner.

§ 9.3.1.5 Contractor hereby authorizes and consents to direct communications, at any time and in any fashion, between Owner and any Subcontractors on the Project regarding the Work performed on the Project and the status of payments to said persons or entities for said Work, provided that Owner shall submit copies of such communications to Contractor within a reasonable time thereof.

§ 9.3.2 Payment for materials and equipment stored on or off the Project Site shall be conditioned upon the Owner's prior written approval and compliance by the Contractor with procedures satisfactory to the Owner and the Involved Organizations to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the Project Site for such materials and equipment stored off the Project Site. Damage to material or equipment stored on or off site shall not entitle the Contractor to any increase in the Contract Sum unless such damage was caused by Owner or anyone for whom it is responsible. Payments for materials and equipment stored on site shall not exceed fifty percent (50%) of the value of Work in place as of the date of the relevant Application for Payment. Only invoice price, plus delivery charges and other related handling costs, will be paid for stored materials (whether storage is on or off the Project Site). Nothing in this Section shall diminish Contractor's rights with respect to Owner's storage and transportation insurance coverage for materials stored on site, off site, or in transit, as appropriate. Material stored off site need not be held in a bonded warehouse where Contractor demonstrates title, insurance and storage in a secure facility, but any such facility must be approved in advance by Owner and Owner's insurer. For purposes of this Agreement, Contractor's warehouse on St. Croix is deemed an acceptable location for off-site storage.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction of the Project or upon the receipt of payment therefor by Contractor from Owner, whichever occurs first. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors,

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 Except in the event Architect requires revisions to all or any portion of a Contractor Application for Payment, Architect will certify the Application for Payment at the Draw Meeting for such amount as the Architect determines is properly due and issue copies to the Owner, with a copy to the Contractor. If the Architect does not certify the Application for Payment at the Draw Meeting, it shall 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 in writing to the Owner. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner and the Involved Organizations is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 Contractor's negligence or failure to perform its obligations under the Contract Documents;
- .8 erroneous estimates by the Contractor of the value of the Work performed;
- .9 failure of the Contractor to provide record documents, or failure to keep record documents up to date on a monthly basis;
- .10 Contractor's failure to provide materials and Subcontractor lists prior to its initial schedule for the Work;
- .11 Contractor's failure to maintain and update the progress schedule for the Work;
- .12 Contractor's failure to provide and update such other items as may be required under the Contract Documents, including without limitation payee lists, SBE/MBE/WBE/Section 3 compliance reports and certified payroll reports;
- .13 failure to timely incorporate stored materials into the Project; or
- .14 other failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 Notwithstanding the Architect's issuance of a Certificate of Payment and notwithstanding the provisions of Section 9.5.1 and of any other provision, the Owner shall have the right to withhold from payments due to the Contractor such sums as Owner, reasonably and in good faith deems necessary to protect the Owner against any loss or damage which may result from negligence or unsatisfactory Work by the Contractor, failure by the Contractor to perform his obligations, including failure to maintain satisfactory progress of the Work, or claims against the Contractor or the Owner relating to the Contractor's performance or Work. In addition, the Owner may withhold payments from the Contractor for damages by the Contractor to others not adjusted, failure of the Contractor to make proper payments to his material suppliers and Subcontractors, and where there is reasonable evidence indicating a probable filing of any claim against the Owner or the Contractor in connection with the Work or the Project. In addition, if the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor 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 accordance with the procedures established therefor in the Contract Documents, and shall so notify the Architect unless Owner expects not to do so pursuant to Section 9.5.

§ 9.6.2 Intentionally omitted.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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 9.3.1.3, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work which is not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the 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.

§ 9.6.8 Without limiting Section 9.3.1.4 above, if Contractor fails to make timely payment to its Subcontractors for Work performed on the Project in accordance with Subcontracts for such Work, it shall protect Owner Indemnitees against any and all liens filed by such Subcontractors in a manner subject to the reasonable satisfaction of Owner, provided Contractor has been paid for such Work in the amounts required by this Agreement.

§ 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, unless such failure is due to a reason enumerated then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 As used in the Contract Documents, the terms "Substantial Completion," "Substantially Complete" and/or the "Date of Substantial Completion" (whether capitalized or lower case), shall mean the date upon which all of the following shall have occurred: (1) the Work (or any applicable designated portion thereof) has been fully completed in accordance with the Contract Documents, except and only for minor items that will not unreasonably affect the occupancy and operation of the Work, and any designated portion thereof, as intended, and the Work is sufficiently complete (with the above noted exceptions only) to enable the Owner to occupy and use the Work, or any designated portion thereof (and all aspects and elements thereof) for use for which it was intended without unreasonable disruption or interference caused by the need to complete any of the Work then remaining to be completed; (2) the punch-list items are sufficiently few and of a nature that would not interfere with Owner's ability to fully occupy and use the Work for which it was intended to the extent required by the Contract Documents and can reasonably be expected to be completed within thirty (30) days (except for long lead items); (3) the Contractor has procured and delivered to the Owner (and the Architect has so certified) all certificates, consents, approvals and permits with respect to the Contractor's Work required under applicable Law for occupancy and use of the Work or any applicable designated portion thereof, or required by the Involved Organizations, investors or mortgagees, including but not limited to the issuance by the Division of Building Permits and Virgin Islands Fire Service ("DOB&VIFS") of a permission to occupy the units comprising the entire Work (or any applicable designated portion thereof); (4) the Architect issues and signs a Certificate of Substantial Completion, AIA Document G704, current edition, certifying in writing that the entire Work (or any applicable designated portion thereof) is Substantially Complete; as required by the provisions of this paragraph above, and further certifies that Contractor has procured and delivered to Owner all certificates, permits, approvals and consents with respect to the Contractor's Work required under applicable Law for occupancy and use of the Project, or designated portion thereof, and that such Work is sufficiently compliant with the Contract Documents and applicable Law, to allow Owner to fully occupy and utilize the Work for its intended use (and all aspects and elements thereof) to the extent required by the Contract Documents, which certification is accepted in writing by Owner (such acceptance not to be unreasonably withheld, conditioned nor delayed); (5) the Contractor has complied with the terms and conditions of Section 9.8.2 of these General Conditions; (6) all mechanical, electrical and life safety support systems comprising the Work (or any applicable designated portion thereof) are functioning as required by the Contract Documents; (7) the Contractor has complied with the terms and conditions of Section 3.15.1 of these General Conditions; (8) Contractor has delivered all unit chattel lists to Owner and Architect; (9) Contractor has delivered to Owner a written authorization from the surety issuing payment and performance bonds required hereunder, if any, consenting to release of retention in accordance with the Contract Documents; (10) the Contractor (and, to the extent applicable, each Subcontractor) has satisfied all of the necessary closeout requirements, including, without limitation, those provided by and/or related to the Federal Emergency Management Agency, Community Development Block Grant Disaster Recovery Funds, USVI Department of Planning and Natural Resources, and any and all other government agencies, financing sources, regulators, partners, or other parties as identified by the Owner (to the extent relevant to Substantial Completion); (11) the Contractor has provided all documents reasonably required by the Owner, or Owner's lenders, insurers, consultants, or any other party identified by Owner, to evidence the proper removal and disposal of any Asbestos Containing Materials, Lead-Based Paint, and/or hazardous materials; and (12) the Contractor has satisfied all other conditions or requirements with respect to Substantial Completion established in the Contract Documents. To the extent that any certificate or inspection report listed above is not issued due to the fault or neglect of the Owner or Architect, then the absence of same will not preclude a determination of Substantial Completion.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Within five (5) days of receipt of Contractor's list, Architect and Owner will make an inspection to determine whether the Work (or designated portion thereof) is substantially complete. If the Architect's or Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

§ 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 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 in writing by Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work has reached Final Completion, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with 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.

§ 9.10.1.1 In addition to other requirements imposed by the Contract Documents, Final Completion of the entire Work shall require and the Work shall be "Finally Complete" when the following requirements have been met: (1) the proper and full completion of all of the Work in accordance with the Contract Documents, including, but not limited to, satisfactory operation of all equipment and systems, completion or correction of all punchlist items, delivery of all maintenance and operations manuals, chattel lists, and all warranties and guarantees (and assignments thereof), issuance of all required approvals and certificates by authorities with jurisdiction over the Project without condition (including final and unconditional certificates of occupancy), removal of all rubbish, tools, scaffoldings

and surplus materials from the Project Site and correction of all property damage that is the responsibility of the Contractor pursuant to the Contract Documents; (2) the completion of all exterior punchlist items (except and only to the extent otherwise agreed by Owner in writing); (3) submission and approval of the Contractor's final requisition; (4) a final, updated and recertified ALTA as-built and foundations survey of the Project Site prepared and stamped by Owner's surveyor, as hired by Contractor, meeting ALTA/ACSM Minimum Standard Detail Requirements for an urban land survey, including all Table A - Optional Survey Responsibilities and Specifications; (5) delivery of as-built plans and specifications; (6) submission of an executed waiver signed by the Contractor discharging and waiving all claims and lien rights which the Contractor may have against the Owner or the Property relating to the Project or the Contract conditioned only upon receipt of Final Payment; (7) submission of executed conditional lien waivers signed by Contractor and all Subcontractors as required by the terms of this Agreement, including, without limitation, those who may be entitled to a lien against the property relating to the Project or, if acceptable to the Owner in its sole discretion, a bond or other security, in such form as is directed by Owner, protecting the Owner and the Owner's property from assertion of any such liens that are not waived (with unconditional waivers to be provided from both the Contractor and all Subcontractors within ten (10) days after Contractor receives payment from Owner); and (8) delivery of all of the information, documents and certifications required by the Contract Documents, the Owner, the Involved Organizations, HUD, the DOB&VIFS, or other governmental authority with jurisdiction over the Project in order to allow the Owner to proceed to final loan closing, including but not limited to an accounting and certification of all costs incurred by Contractor in the execution of the Work and all charges or costs included in the Contractor's applications for payment with respect to the Project, which accounting and certification shall be prepared in accordance with generally accepted accounting principles, by a licensed, independent, third party accountant and shall identify and verify all costs and charges included in Contractor's payment applications and shall be accompanied by such detail and supporting documentation as required by the Contract Documents, the Owner, the Involved Organizations, HUD, or any governmental authority with jurisdiction over the Project. In addition, as a condition to final payment for the Work, the Contractor shall deliver to the owner three (3) clean, complete and readable copies of all guarantees and warranties on equipment and materials furnished by all manufacturers and suppliers to the Contractor and all Subcontractors, together with duly executed instruments properly assigning the guarantees and warranties to the Owner, and shall also deliver to the Owner three (3) clean, complete and readable copies of all related manufacturer's instructions, related maintenance manuals, and any other materials required to operate and maintain such equipment and materials or needed to maintain the effectiveness of any such warranties.

§ 9.10.2 Neither final payment nor any remaining retained percentage or amounts shall become due until the Contractor submits to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or will be paid with the proceeds of final payment, (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 delayed thirty (30) days or more through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted provided the conditions to final payment relating to such Work are first satisfied. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, 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. Owner, Architect, separate contractors, and any individuals for whom they, or any of them, are responsible, shall abide by the safety program instituted by Contractor pursuant to this Section.

§ 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 Project Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the Project Site, including adjacent street frontage and entrance area, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 the Contractor shall comply with all provisions and requirements of the Occupational Safety and Health Act of 1970 and/or the Construction Safety Act of 1969 (whichever is applicable) and with all applicable laws, ordinances, rules, regulations and orders of public authorities having jurisdiction for safety of persons or property or to protect them from damage, injury or loss.

§ 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 any existing applicable laws, safeguards for safety and protection.

§ 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 reasonable care and carry on such activities under the supervision of properly qualified personnel.

§ 10.2.5 Except for damage or loss attributable to acts or omissions of the Owner or Architect (or one 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 Contractor shall promptly remedy, at no additional cost to Owner, all damage and loss (other than damage or loss reimbursed under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by anyone for whose acts the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. 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 Project Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with all applicable laws, statutes, ordinances, codes, rules and regulations related to hazardous materials, as well as all lawful orders of public authorities and any and all requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a

hazardous material or substance not addressed in the Contract Documents and if reasonable and proper precautions will be inadequate to prevent foreseeable bodily injury or death to persons or property damage resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB) or any other material or substances that the Contractor knows requires special handling or treatment, encountered on the Project site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing and shall not thereafter resume Work in the affected area until the condition has been rendered harmless. Additionally, Contractor shall take reasonably appropriate steps to prevent any harm to areas surrounding the impacted area(s). Contractor acknowledges that the Work includes remediation of asbestos containing material and lead-based paint, all of which shall be done in accordance with all applicable regulations and industry best practices.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3. Owner shall indemnify, defend and hold harmless Contractor, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents (collectively, the "Contractor Indemnitees"), from and against any and all claims, losses, damages, liabilities and expenses, arising directly out of Owner's breach of its obligations under this Section 10.3. Notwithstanding the foregoing, the parties agree that Owner shall have no defense obligations or indemnity obligations to the Contractor Indemnitees with regard to claims, losses, damages or expenses arising from unknown hazardous materials or known hazardous materials remediated by the Contractor Indemnitees, or any of them, without Owner's prior knowledge, nor shall Owner have any defense obligations or indemnity obligations to Contractor Indemnitees with regard to any claims, losses, damages or expenses caused to the extent of the Contractor Indemnitees' improper conduct, negligence, gross negligence or breach of its obligations under this Contract (including but not limited to those in this Section 10.3).

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the Project Site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's negligence in the use and handling of such materials or substances. Contractor shall supply the Owner, upon request, documentation that all materials brought to the Project Site are free and clear of environmental contamination.

§ 10.3.5 The Contractor shall indemnify the Owner Indemnitees for the cost and expense the Owner incurs (1) for remediation of a hazardous material or substance the Contractor brings to the Project Site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. This indemnification obligation shall survive acceptance of the Work and completion or termination, with or without cause, of the Contract.

§ 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 and maintain insurance as set forth in Exhibit A.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions set forth in Exhibit A.

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

§ 11.2 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 The Owner shall purchase and maintain property insurance as set forth in Exhibit A.

§ 11.3.1.1 If the property insurance requires deductibles, the party responsible for the loss (it being understood that the Owner shall be deemed "responsible" for acts of God) shall pay all costs of such deductibles to the proportional extent caused by its negligence.

§ 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 requirements specifically expressed in the Contract Documents or the Architect's or Owner's request (submitted in no less than 24 hours prior to examination), it must, if requested in writing by the Architect, be uncovered for examination and be replaced at the Contractor's expense without change in the Contract Time.

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

§ 12.1.3 In the event a concealed or latent defect is discovered more than one year after the date of Substantial Completion, the Owner shall report the discovery of such defective condition to Contractor within thirty (30) days and Contractor shall promptly take such action as may be necessary, at Contractor's sole cost, to correct such defective work, subject to any applicable statutes of limitation.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner as defective 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 reasonable 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 any other warranty, any of the Work is found to be not in accordance with the requirements of the Contract Documents or defective, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The Warranty Period, as it applies to the entirety of the Work, or a portion thereof (i.e. a Phase of the Work), as applicable, shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 such that any corrective Work enjoys a one (1) year warranty. The foregoing shall not extend the Warranty Period for any items that were not subject to correction.

§ 12.2.3 The Contractor shall remove from the Project Site portions of the Work that are not in accordance with the requirements of the Contract Documents and 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.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, provided the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall promptly execute all consents reasonably required to facilitate such assignment. In addition, the Owner and Contractor agree that the Owner may assign this Contract to another entity as designated by Owner provided that i) such entity is an affiliate of Owner or is an entity in which Owner or an affiliate of Owner will be a partner or joint venturer, and ii) such entity assumes all rights and obligations of Owner under the Contract

Documents. In the event of such assignment, the Contractor agrees to continue to perform in accordance with the terms of this Contract without any increase in the fees or charges set forth herein, and such assignee shall become the "Owner" under the Contract, and the originally named "Owner" shall be released of and from all liability arising from and after the effective date of the Assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered (or if delivery is refused), to a member of the 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 thereof, except as may be specifically agreed in writing or as otherwise expressly provided herein.

§ 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 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. Except as provided in Section 13.5.3 below, Owner shall bear the cost of such tests, inspections and approvals.

§ 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 Owner will 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 Owner and 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. Notwithstanding the foregoing, Owner agrees that it shall bear the cost of the first two soil compaction tests for each of the buildings within the scope of the Project. However, in the event that additional soil compaction tests are required due to the failure of Contractor or its Subcontractors to perform the Work in accordance with the Contract Documents, the cost thereof shall be borne by Contractor pursuant to the requirements of this Section.

§ 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 Owner, who shall deliver copies to Architect and Contractor. Contractor shall be responsible to make arrangements for and coordinate the timing of such tests, inspections, and approvals, pursuant to Section 13.5.1 above.

§ 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

All monies not paid when due as provided in Article 9 or elsewhere in the Contract Documents shall accrue interest as set forth in the Agreement.

§ 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 within the time period prescribed by the applicable statute of limitation and/or statute of repose under applicable law.

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 180 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 180 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 (7) additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, plus reasonable costs incurred by reason of such termination. Owner shall have the right to pay the Contractor's invoice, or approved portion thereof, during the seven day period following written notice, in which event the Contract shall not be terminated.

§ 14.1.4 If the Work is stopped for a period of 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 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 has committed a material breach of the Contract, including, but not limited to, failure of Contractor to timely commence the Work, or to prosecute the Work in a diligent and skillful manner, or to complete the Work in accordance with the schedule for the Work, or to complete the Work on or before any date established for Substantial Completion of the entire Work (or any applicable designated portion thereof) or Final Completion.

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

- .1 Exclude the Contractor from the Project Site and take possession of all materials, equipment (paid by Owner), and tools thereon whether owned by the Owner or Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 In the event of a termination pursuant to Sections 14.2.1 and 14.2.2, the Contractor shall be liable to the Owner for all costs and damages incurred by the Owner as a result of the Contractor's act, omissions, fault, negligence, errors or breach of contract (including the costs of completing the Contractor's performance of the Work as required by the Contract Documents, and the reasonable cost of any additional services required of the Architect as a result of the Contractor's fault or breach), except to the extent otherwise waived herein. After all such damages have been paid, the Contractor shall be entitled to the amount, if any, remaining due to the Contractor (after deducting such damages) for any Work performed by the Contractor up to and including the date of such termination. If such costs exceed the unpaid balance due to the Contractor, the Contractor shall be liable to the Owner for the difference.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, in its discretion, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be reasonably adjusted for reasonable increases in the cost and/or time caused by suspension, delay or interruption to the extent allowed by Section 7.3. 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 In addition to the reasons set forth in Section 14.2.1, the Owner may terminate this Contract without cause (at any time) upon seven (7) days written notice to the Contractor, provided that Owner agrees that it will not exercise its right to terminate this Contract without cause in bad faith. In the event the Owner so terminates this Contract, the Contractor shall be entitled to compensation only for the Work performed by the Contractor and accepted by the Owner, pursuant to the provisions of and subject to the limitations set forth in this Contract, up to and including the date of termination, plus the Contractor's overhead and profit thereon (on a pro rata basis), all as determined by the Schedule of Values then applicable to the Work and the percentage of completion achieved by the Contractor (overall and in each category of the Work, as applicable) as of the date of termination. The Owner agrees that acceptance of such services shall not be unreasonably withheld. Further, in the event the Owner so terminates this Contract, the Owner agrees to pay for services, materials, supplies ordered prior to the date of termination by the Contractor, for use in connection with the Project, and necessary for the reasonable discharge of the Contractor's responsibilities under this Contract, or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by the Contractor without cost or penalty upon notice of termination. In addition to the foregoing, if the Contractor is so terminated, the Owner shall pay the Contractor the reasonable value (based on purchase or rental as applicable) of any equipment retained by Owner and the reasonable costs of clean-up, removal of debris and removal of equipment, trailers and machinery used at the Project Site incurred as a result of the termination. The Owner will not be responsible, however, to reimburse the Contractor for any continuing contractual commitments to Subcontractors or penalties or damages for canceling such contractual commitments, and no compensation shall be allowed to Contractor or its Subcontractors for anticipated profit, unperformed services or intangibles. Any compensation due under this Section shall be payable to the Contractor thirty (30) days after such termination. The Contractor's sole remedy for any termination pursuant to this Section shall be the compensation allowed in this Section. Any termination by the Owner pursuant to Sections 14.2.1 and 14.2.2 that is later determined to be unjustified or without cause, and any termination of this Contract by

Contractor pursuant to Sections 14.1.1, 14.1.2 or 14.1.3, shall be treated as a termination without cause pursuant to this Section. In either such event the Contractor's remedies for such termination shall be limited to those set forth in this Section.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

Except as otherwise stated in the Agreement, Claims by the Contractor must be initiated within thirty (30) calendar days after occurrence of the event giving rise to such Claim or within thirty (30) calendar days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. Any Claim by Contractor must be initiated by written notice to Architect and Owner, and must clearly state that it is a "Claim," pursuant to this Section 15.1.2, to be resolved. Notwithstanding any other provision of this Contract, the failure of the Contractor to provide the Owner with written notice of any Claim (including but not limited to claims asserted pursuant to Sections 15.1.4 through 15.1.6 and any Claims seeking any increase in the Contract Sum or an extension of the Contract Time or dates for Substantial Completion for the entire Work, or any applicable designated portion thereof, or Final Completion or other damages or costs of any kind) within the applicable time frame established by this Section 15.1.2 (or such earlier time as may be established elsewhere in the Contract Documents) shall mean that the Contractor has waived such Claim and shall perform all Work required by or in connection with any occurrence or condition giving rise to the Claim without increase in the Contract Sum or extension of the Contract Time.

§ 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 Article 15.3 below.

§ 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. The Contractor's sole and complete remedy with respect to any successful Claim (including but not limited to claims based on change to the Work or delay, impact or acceleration) shall be limited to the actual increased costs (including field supervision), if any, (all measured pursuant to Section 7.3.7) incurred by the Contractor as a result of the occurrence or condition giving rise to the Claim, and/or, if necessary, an extension of the Contract Time or dates for Substantial Completion of the entire Work, or any applicable designated portion thereof, or Final Completion, as set forth in the Agreement. This recovery shall be deemed to include (and no additional damages or costs may be sought or recovered by Contractor for) all delay, acceleration or impact costs or other expenses or losses allegedly sustained or incurred by Contractor as a result of any Claim.

§ 15.1.5 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 in Section 15.1.2 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 The Contractor agrees that timely completion of the Work is of the essence in this Contract. The Contractor shall continuously and diligently perform, forward and prosecute the Work required by this Contract subject only to delays contemplated by Section 8.3.1 hereof.

§ 15.1.5.3 Intentionally omitted.

§ 15.1.5.4 Adverse weather conditions shall entitle Contractor to relief under Section 8.3.1 and Section 8.3.3 only if, and to the extent that, they are substantiated by data clearly showing that such weather conditions were abnormal for the period of time, could not have been reasonably anticipated through the exercise of the Performance Expectations, and actually had an adverse effect on the scheduled construction. Specifically, if Contractor intends to claim that adverse weather conditions constitute a delay for which it is entitled to relief, Contractor shall (i) provide written notice to the Owner of any weather-related Claims as soon as reasonably possible, but in no event later than three (3) calendar days, following the occurrence of the weather-related event; (ii) identify, in reasonable detail, the time-critical trades which will be delayed by the adverse weather and the anticipated impact thereof on the schedule; and (iii) demonstrate, to the Owner's reasonable satisfaction, that such adverse weather conditions are likely to cause an actual delay in the completion of the Project beyond the Contract Time (i.e. it must be a "critical path" delay). For purposes of this Contract, a demonstration of adverse weather conditions will require documentation by the National Weather Service sufficient to justify any claimed delay.

§ 15.1.5.5 Intentionally omitted.

§ 15.1.5.6 Irrespective of the progress of the Work, if requested by Owner, Contractor will accelerate construction subject to mutual agreement on schedule and on a price which shall be consistent with actual additional costs to be incurred to Owner for actual premium time costs incurred, including Contractor's management time, if agreed upon in advance.

§ 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.

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 (i) liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, (ii) any damages, whether consequential or otherwise, covered under the terms of any insurance policies, or (iii) any damages, whether consequential or otherwise, for which a party is obligated to indemnify the other under the terms of this Contract or applicable laws (including, without limitation, applicable theories of equitable indemnity).

§ 15.2 Intentionally Deleted

§ 15.3 DISPUTE RESOLUTION

§ 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: (i) first, a thirty-day period of informal negotiation between the parties during which time the parties shall meet to discuss, and attempt to resolve, any such dispute, then (ii) non-binding mediation, then, if the dispute is still not resolved, (iii) to arbitration as set forth in Section 15.4 below.

§ 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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