

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

HAREN & LAUGHLIN CONSTRUCTION
COMPANY, INC., a Kansas corporation,

Plaintiff,

v.

ARNOLD DEVELOPMENT GROUP LLC, a
Missouri limited liability company, *et al.*

Defendants.

Case No. 1716-CV13992

Division 13

SECOND AND DELAWARE LLC, a Missouri
limited liability company,

Counterclaim plaintiff,

v.

HAREN & LAUGHLIN CONSTRUCTION
COMPANY, INC., a Kansas corporation, and
WESTERN SURETY COMPANY, a South
Dakota surety company,

Counterclaim defendants.

**DEFENDANT SECOND AND DELAWARE LLC'S ANSWER
TO THIRD AMENDED PETITION AND COUNTERCLAIMS**

For its answer to the *Third Amended Petition for Enforcement of Mechanic's Lien and Other Relief* of plaintiff Haren & Laughlin Construction Company, Inc. ("HLC"), defendant Second and Delaware LLC ("Delaware") states and alleges as follows:

1. On information and belief, Delaware admits the allegations in paragraph 1.
2. Delaware denies the allegations in the first sentence of paragraph 2, as phrased, because it does not accurately state the legal name of the referenced entity; however, Delaware

admits that co-defendant Arnold Development Group LLC is a Missouri limited liability company that maintains its registered office at the stated address in Kansas City, Missouri. Delaware admits the allegations in the second sentence of paragraph 2. The allegations in the third sentence of paragraph 2 state a legal conclusion to which no response is required.

3. Delaware denies the allegations in the first sentence of paragraph 3 because it does not accurately state its legal name (the actual name of the entity is Second and Delaware LLC rather than Second and Delaware, LLC) and incorrectly alleges that its registered office is located at the stated address in Kansas City, Missouri. Delaware's registered office is located at 221 Bolivar Street, Jefferson City, MO 65101. Delaware admits the allegations in the second sentence of paragraph 3. The allegations in the third sentence of paragraph 3 state a legal conclusion to which no response is required; however, Delaware does not dispute that jurisdiction and venue are proper in this judicial circuit.

4. Delaware admits the allegations in the first three sentences of paragraph 4. The allegations in the fourth sentence of paragraph 4 state a legal conclusion to which no response is required.

5. Delaware admits the allegations in the first sentence of paragraph 5. The allegations in the second sentence of paragraph 5 state a legal conclusion to which no response is required.

6. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 6 and therefore denies these allegations. Delaware admits the allegations in the third, fourth and fifth sentences of paragraph 6. The allegations in the sixth sentence of paragraph 6 state a legal conclusion to which no response is required

7. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 7 and therefore denies these allegations. Delaware denies the allegations in the last sentence of paragraph 7.

8. The allegations in paragraph 8 state a legal conclusion to which no response is required. If and to the extent a response to the allegations in paragraph 8 may be required, Delaware states that it lacks knowledge and information sufficient to form a belief as to the truth of these allegations and therefore denies these allegations.

9. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 9 and therefore denies these allegations.

10. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 10 and therefore denies these allegations.

11. On information and belief, Delaware admits the allegations in the first sentence of paragraph 11. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 and therefore denies these allegations.

12. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 12 and therefore denies these allegations.

13. Delaware denies the allegations in the first sentence of paragraph 13. Delaware admits the allegations in the second sentence of paragraph 13 and affirmatively asserts that the terms and conditions of the referenced Regulatory Agreement speak for themselves.

14. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 14 and therefore denies these allegations.

15. On information and belief, Delaware admits the allegations in the first two sentences of paragraph 15. Delaware lacks knowledge and information sufficient to form a belief

as to the truth of the allegations in the third sentence of paragraph 15 and therefore denies these allegations. Delaware admits the allegations in the last two sentences of paragraph 15.

16. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 16 and therefore denies these allegations.

17. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 17 and therefore denies these allegations.

18. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 18 and therefore denies these allegations.

19. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 19 and therefore denies these allegations.

20. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 20 and therefore denies these allegations.

21. The allegations in the first sentence paragraph 21 state legal conclusions to which no response is required; however, if and to the extent a response to the allegations in the first sentence of paragraph 21 may be required, Delaware denies these allegations. Delaware admits the allegations in the second sentence of paragraph 21, as phrased, but denies any liability to HLC under any theory and further denies that HLC possesses a valid interest in the subject property. Delaware denies the allegations in the last sentence of paragraph 21 but does not dispute that jurisdiction and venue are proper in this judicial circuit.

COUNT I – BREACH OF CONTRACT

(Arnold Development Group LLC and Second and Delaware LLC)

22. Delaware admits the allegations in paragraph 22.

23. Delaware admits the allegations in paragraph 23.

24. Delaware denies the allegations in paragraph 24 and affirmatively asserts that the terms and conditions contained in the *Construction Contract* entered into by HLC and Delaware on or about January 13, 2016 (the “HUD Contract”), including its payment provisions, establish and govern the parties’ respective rights and obligations on the Project.

25. Delaware denies the allegations in paragraph 25 and affirmatively asserts that, per its express terms, the *Standard Multi-Party Integrated Project Delivery (IPD) Agreement* entered into by Arnold Development Group, LLC (“ADG”) and HLC dated February 25, 2016 (the “IPD Agreement”) is “ancillary to” the HUD Contract and “[i]n the event of a conflict, the terms of the [HUD Contract] shall govern over the [IPD Agreement].” Moreover, Delaware affirmatively asserts that HLC’s contention the IPD Agreement governed its performance and purported entitlement to payment is belied by HLC’s actions during the course of the project, such as: (i) all payment requests submitted by HLC prior to its wrongful abandonment of the project were prepared and submitted in accordance with the terms of the HUD Contract and on HUD forms; (ii) prior to closing and signing of the IPD Agreement, HLC deleted certain sections from the IPD Agreement because HLC acknowledged and agreed that the HUD Contract governed and controlled the parties’ respective rights and obligations concerning payment; (iii) consistent with the terms of the HUD Contract and inconsistent with conflicting language in the IPD Agreement, HLC did not bill Delaware for equipment and materials that were onsite but not yet installed; and (iv) when HLC submitted change orders for weather-related delays, HLC did so in a manner that was consistent with the terms of the HUD Contract and inconsistent with the terms of the IPD Agreement.

26. Delaware denies the allegations in paragraph 26 and affirmatively asserts that the respective provisions of the HUD Contract and IPD Agreement speak for themselves, including

the provisions in the IPD Agreement which state that it is “ancillary to” the HUD Contract and “[i]n the event of a conflict, the terms of the [HUD Contract] shall govern over the [IPD Agreement].”

27. Delaware denies the allegations in paragraph 27.
28. Delaware denies the allegations in paragraph 28.
29. Delaware denies the allegations in paragraph 29.
30. Delaware denies the allegations in paragraph 30.
31. Delaware denies the allegations in paragraph 31.
32. Delaware denies the allegations in paragraph 32.
33. Delaware denies the allegations in paragraph 33.
34. Delaware denies the allegations in paragraph 34.
35. Delaware denies the allegations in paragraph 35.
36. Delaware denies the allegations in paragraph 36.
37. Delaware denies the allegations in paragraph 37.
38. Delaware denies the allegations in paragraph 38.
39. Delaware denies the allegations in paragraph 39.
40. Delaware denies the allegations in paragraph 40 and all allegations contained in the following unnumbered “WHEREFORE” paragraph.

COUNT II – QUANTUM MERUIT
(Arnold Development Group LLC and Second and Delaware LLC)

40. Delaware admits the allegations in the second paragraph 40 and affirmatively asserts that the terms of the HUD Contract, the IPD Agreement, and the Builder Sponsor Profit Risk Allowance Agreement (“BSPRA Agreement”) speak for themselves.¹

41. Delaware denies the allegations in paragraph 41 and affirmatively assert there were no alleged and so-called “constructive and cardinal changes” to the Project.

42. Delaware denies the allegations in paragraph 42.

43. Delaware denies the allegations in paragraph 43.

44. Delaware denies the allegations in paragraph 44 and all allegations contained in the following unnumbered “WHEREFORE” paragraph.

COUNT III – BREACH OF CONTRACT
(PASS-THROUGH CLAIMS OF SUBCONTRACTORS)
(Arnold Development Group LLC and Second and Delaware LLC)

45. Delaware denies the allegations in paragraph 45 and affirmatively asserts that the terms of the HUD Contract and IPD Agreement speak for themselves. However, Delaware does not dispute that HLC entered into subcontract agreements with the entities referenced in this paragraph and those subcontractors performed certain work on the Project.

46. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 46 and therefore denies these allegations. The allegations in the second sentence of paragraph 46 state commentary and legal conclusions to which no response is required.

¹ HLC’s Third Amended Petition contains duplicate paragraph numbers in two locations, specifically paragraphs 40 and 71. To maintain consistency and avoid confusion, Delaware has incorporated HLC’s duplicate paragraph numbers in this Answer.

47. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 47 and therefore denies these allegations.

48. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 48 and therefore denies these allegations.

49. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 49, and each of its subparagraphs, and therefore denies these allegations.

50. Delaware denies the allegations in paragraph 50.

51. Delaware denies the allegations in paragraph 51.

52. Delaware denies the allegations in paragraph 52.

53. Delaware denies the allegations in paragraph 53 and all allegations contained in the following unnumbered “WHEREFORE” paragraph.

COUNT IV – IMPLIED CONTRACT / QUANTUM MERUIT

(Jonathan Arnold, Arnold Development Group LLC and Second and Delaware LLC)

54. Delaware denies the allegations in paragraph 54.

55. Delaware denies the allegations in paragraph 55.

56. Delaware denies the allegations in paragraph 56.

57. Delaware denies the allegations in paragraph 57.

58. Delaware denies the allegations in paragraph 58.

59. Delaware denies the allegations in paragraph 59.

60. Delaware denies the allegations in paragraph 60 and all allegations contained in the following unnumbered “WHEREFORE” paragraph.

COUNT V – BSPRA AGREEMENT
*(Second and Delaware Manager, LLC, Second and Delaware LLC
and Arnold Development Group LLC)*

61. Delaware admits the allegations in paragraph 61 and affirmatively asserts that the terms of the BSPRA Agreement speak for themselves.

62. Delaware denies the allegations in paragraph 62 and affirmatively asserts that the terms of the BSPRA Agreement speak for themselves.

63. Delaware denies the allegations in paragraph 63 and affirmatively asserts that the terms of the BSPRA Agreement speak for themselves.

64. Delaware denies the allegations in paragraph 64 and affirmatively asserts that paragraph 7 of the BSPRA Agreement provides:

In the event of a default by Company hereunder, Contractor agrees not to assert a claim or lien against the Project, the proceeds of the HUD insured loan or the income of the Project. Developer hereby absolutely, unconditionally and irrevocably guarantees the punctual payment of the BSPRA and Risk Pool Profit, as and when such payment or performance shall respectively become due, payable and/or performable in accordance with the terms of the obligations. This is a guaranty of payment and performance and not a guaranty of collection.

65. Delaware denies the allegations in paragraph 65 and affirmatively asserts that paragraph 10 of the BSPRA Agreement provides:

In the event of any litigation between the parties to declare or enforce any provision of this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties, in addition to any other recovery and costs, reasonable attorney fees incurred in such litigation, in both the trial and in all appellate courts.

66. Delaware denies the allegation in paragraph 66.

67. Delaware denies the allegations in paragraph 67 and affirmatively asserts that the terms of the BSPRA Agreement speak for themselves.

68. Delaware denies the allegations in paragraph 68.

69. Delaware denies the allegations in paragraph 69.

70. Delaware denies the allegations in paragraph 70 and all allegations contained in the following unnumbered “WHEREFORE” paragraph.

COUNT VI – PERSONAL GUARANTY
(Jonathan Arnold only)

70. Because the allegations in the second paragraph 70 in the Third Amended Petition are not directed at Delaware, no response to these allegations is required from Delaware; however, if and to the extent a response may be required, Delaware denies the allegations in second paragraph 70.

71. Because the allegations in paragraph 71 are not directed at Delaware, no response to these allegations is required from Delaware; however, if and to the extent a response may be required, Delaware denies the allegations in paragraph 71.

72. Because the allegations in paragraph 72 are not directed at Delaware, no response to these allegations is required from Delaware; however, if and to the extent a response may be required, Delaware denies the allegations in paragraph 72.

73. Because the allegations in paragraph 73 are not directed at Delaware, no response to these allegations is required from Delaware; however, if and to the extent a response may be required, Delaware denies the allegations in paragraph 73.

74. Because the allegations in paragraph 74 are not directed at Delaware, no response to these allegations is required from Delaware; however, if and to the extent a response may be required, Delaware denies the allegations in paragraph 74.

75. Because the allegations in paragraph 75 are not directed at Delaware, no response to these allegations is required from Delaware; however, if and to the extent a response may be

required, Delaware denies the allegations in paragraph 75 and all allegations contained in the following unnumbered “WHEREFORE” paragraph.

COUNT VII – FORECLOSURE OF MECHANIC’S LIEN
(All Defendants)

76. Delaware denies the allegations in paragraph 76.

77. Delaware denies the allegations in paragraph 77.

78. Delaware denies the allegations in paragraph 78.

79. Delaware denies the allegations in paragraph 79.

80. Delaware denies the allegations in paragraph 80.

81. Delaware denies the allegations in paragraph 81.

82. Delaware denies the allegations in paragraph 82.

83. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 83 and therefore denies these allegations.

84. Delaware denies the allegations in paragraph 84.

85. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 85 and therefore denies these allegations.

86. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 86 and therefore denies these allegations.

87. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 87 and therefore denies these allegations.

88. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 88 and therefore denies these allegations.

89. Delaware lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 89 and therefore denies these allegations.

90. Delaware denies the allegations in paragraph 90.
91. Delaware denies the allegations in paragraph 91.
92. Delaware denies the allegations in paragraph 92.
93. Delaware denies the allegations in paragraph 93.
94. Delaware denies the allegations in paragraph 94 and all allegations contained in the following unnumbered “WHEREFORE” paragraph.
95. Delaware denies all allegations in HLC’s Third Amended Petition except those expressly admitted in this Answer.

AFFIRMATIVE DEFENSES

1. Count I of HLC’s Third Amended Petition fails to state a claim upon which relief may be granted against Delaware, in whole or in part.
2. To the extent Counts I of HLC’s Third Amended Petition is purportedly based on the terms and conditions contained in the IPD Agreement, this count is barred by the terms and conditions of the HUD Contract. As alleged above, the terms of the HUD Contract, including its payment provisions, establish and govern the parties’ respective rights and obligations on the Project. Moreover, per its express terms, the IPD Agreement is “ancillary to” the HUD Contract and “[i]n the event of a conflict, the terms of the [HUD Contract] shall govern over the [IPD Agreement].”
3. Count II of HLC’s Third Amended Petition fails to state a claim upon which relief may be granted against Delaware, in whole or in part.
4. Count III of HLC’s Third Amended Petition fails to state a claim upon which relief may be granted against Delaware, in whole or in part.

5. Count IV of HLC's Third Amended Petition fails to state a claim upon which relief may be granted against Delaware, in whole or in part.

6. Count V of HLC's Third Amended Petition fails to state a claim upon which relief may be granted against Delaware, in whole or in part.

7. Count I of HLC's Third Amended Petition is not directed at Delaware, does not assert any factual allegations or causes of action against Delaware, and therefore fails to state a claim upon which relief may be granted against Delaware, in whole or in part.

8. Count VII of HLC's Third Amended Petition fails to state a claim upon which relief may be granted against Delaware, in whole or in part

9. HLC's claims against Delaware are barred because HLC materially breached the HUD Contract in multiple respects, including its failure to perform its obligations under the HUD Contract and its wrongful and unjustified abandonment of the Project.

10. HLC's claims for relief are barred, in whole or substantial part, by the express terms of AIA-A201, which were expressly incorporated into and a part of the HUD Contract, including:

<u>SECTION</u>	<u>TEXT OF SECTION</u>
§ 3.12.8:	"The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof."
§ 9.3.1:	"At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application

shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents."

§ 9.4.2: "The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum."

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

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

.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....”

§ 15.1.2: “Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.”

§ 15.1.3: “Pending final resolution of a Claim . . . the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.”

§ 15.2.1: “Claims...shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement.... [A]n initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.”

11. HLC’s purported claims against Delaware based on implied contract are barred because an express and written contract – specifically the HUD Contract – exists between the parties.

12. HLC’s purported claims against Delaware based on implied contract are barred by the express terms of Article 1(A) of the HUD Contract, which provides:

“The Contract between the parties is set forth in the ‘**Contract Documents,**’ which consist of this Agreement and the other documents identified in Article 2 below. Together, these form the entire Contract between Owner and Contractor, and by this reference these Contract Documents are fully incorporated herein. Any previously existing contract or understanding concerning the Work contemplated by the Contract Documents is hereby

revoked. Any side agreements between Owner and Contractor shall be disclosed to HUD.”

13. Delaware reserves the right to assert any and all additional affirmative defenses that become known or available prior to trial.

COUNTERCLAIMS AGAINST HLC AND WESTERN

For its counterclaims and causes of action against Haren & Laughlin Construction Company, Inc. (“HLC”) and additional counterclaim defendant Western Surety Company (“Western”), Second and Delaware LLC (“Delaware”) states and alleges as follows:

1. Delaware is a Missouri limited liability company with its registered office at 210 West 5th Street, Kansas City, Missouri 64105. One of Delaware’s members is Jonathan Arnold, who is a Kansas resident.

2. Delaware is the owner of an ongoing, but currently stalled, multi-family residential construction Project in Kansas City, Missouri commonly known as Second and Delaware Apartments (the “Project”).

3. HLC is a Kansas corporation with its principal place of business located at 8035 Nieman Road in Lenexa, Kansas. HLC is registered to do business in Missouri and may be served by serving its attorney and registered agent, Scott Long, at 1800 Baltimore, Suite 500, Kansas City, Missouri 64108.

4. Western is a South Dakota surety company with its principal place of business located at 333 S. Wabash Avenue, Chicago, Illinois. Western can be served by serving the Director of the Missouri Department of Insurance, 301 W. High Street, Room 530, Jefferson City, Missouri 65101.

5. This Court has jurisdiction over this matter and venue is proper in this judicial circuit because Delaware’s claims arose in Jackson County, the contract upon which Delaware’s

claims are based was made in Jackson County, the real estate that is the focus of Delaware's claims is located in Jackson County, and Delaware's damages were incurred in Jackson County.

6. Delaware may join Western as an additional party in this action because, as set forth below, its claims arise out of the same transactions and occurrences and a common question of law and fact exists among the claims brought against Western and HLC.

Overview of the Design Concept and Objectives of the Project

7. The vast majority of multi-family residential structures constructed in the United States over the past several decades are wood-framed buildings. These wood-framed structures tend to be poorly insulated and energy inefficient, susceptible to water intrusion and mold, and are expensive to maintain and operate over time. And because these structures typically have a relatively short useful life, they often cease to be attractive properties – to tenants, investors and the community in general – in 30 years or less.

8. The Project involves the construction of multi-family residential structures containing 276 units, roughly 20 percent of which will constitute affordable workforce housing. However, the Project is unique and markedly different than typical multi-family residential developments because the structures are designed to achieve “Passive House” building standards, maximize energy efficiency, and minimize maintenance and operating costs. For example:

a. Whereas the walls and windows of a typical wood-frame structure are poorly insulated and require substantial HVAC equipment and energy to condition the interior units, the Project utilizes 16-inch insulated concrete walls and triple-pane windows that result in a virtually airtight building envelope that requires smaller HVAC equipment and up to 90 percent less energy to heat and cool the buildings;

b. Because the Project is to be constructed out of concrete rather than wood, the structures will be inherently durable (indeed they are designed to last at least 100 years), fireproof, and significantly less prone to damage from tornados and high winds;

c. Because the Project is to be constructed out of concrete rather than wood, the costs to operate and maintain the building over time are dramatically reduced; and

d. The concrete structure enables the roof of the buildings to be used for landscaped amenities, such as rooftop gardens, which allow the residents to have access to nature while living in a walkable neighborhood.

9. When completed, the Project will be the largest passive house certified building in the world. This factor, coupled with the long-term quality of the structure and the workforce housing, played an important role in the City of Kansas City Missouri's decision to support the Project with financial incentives.

Development of the Project Design and Estimate

10. On or about April 30, 2013, the then-prospective developer of the Project, Arnold Development Group LLC ("ADG"), hired an architect, Jeffrey White with Direct Design Enterprises (hereafter "the Architect"), to prepare preliminary design drawings and specifications for the Project consistent with the concepts and objectives summarized above.

11. In July 2014, representatives of ADG, including its principal Jonathan Arnold, held an initial meeting with representatives of HLC to generally discuss the concept and objectives of the Project, including the requirement of achieving "Passive House" building standards, and to explore whether HLC was capable and equipped to perform the Project. HLC's representatives expressed interest and a desire to continue discussions if the Project moved forward.

12. Beginning in approximately November 2014, ADG and HLC resumed discussions and began exchanging information about the Project. On information and belief, HLC began identifying and considering potential subcontractors for the Project shortly thereafter.

13. In December 2014, Jonathan Arnold of ADG sent an email to Wells Haren of HLC identifying potential subcontractors who could potentially be a good fit for the Project, including Dahlmer Contracting Group (“Dahlmer”) for the concrete work. On information and believe, HLC considered but rejected Dahlmer.

14. In approximately mid-January 2015, ADG discontinued discussions with other potential general contractors and began negotiating exclusively with HLC.

15. In late January 2015, a representative of Western Forms suggested to Jonathan Arnold and HLC that Dan Haake of Haake Foundations (“Haake”) could be the subcontractor to set the forms and tie the rebar for the Project. At the time, Mr. Arnold had not previously met Mr. Haake and possessed no personal knowledge about Haake’s capabilities and experience. However, representatives of HLC informed Mr. Arnold that HLC had worked with Mr. Haake on previous projects and that Mr. Haake could “run a concrete crew like no other.”

16. On February 4-6, 2015, a non-disclosure agreement concerning the Project entitled *Mutual Undertaking of Confidentiality* was signed by ADG, HLC and several companies that had been identified as potential subcontractors to HLC on the Project. Notably, Haake did not sign and was not mentioned in the Non-Disclosure Agreement.

17. On information and belief, in or around February 2015, HLC commenced discussions and began negotiating with potential subcontractors for the Project, including Haake. During the course of these negotiations, Haake was sold to and began operating under the name KAT Excavation, Inc. (“KAT”).

18. Throughout 2015, HLC created and submitted several preliminary cost estimates for the Project. For example, in March 2015, HLC submitted a preliminary \$11.9 million estimate for the concrete shell. Later, in October 2015, HLC submitted an updated preliminary estimate for the concrete shell in the amount of \$11.8 million.

19. On or about September 18, 2015, the Architect completed the construction permit drawings and, shortly thereafter, ADG sent them to HLC to determine and provide updated pricing for the Project.

20. On information and belief, sometime in mid-December 2015, KAT submitted to HLC its estimate and proposed schedule to perform all or substantially all of the concrete work on the Project (e.g., foundations, rebar, walls, shoring, etc.).

21. HLC managed the evaluation, validation and compilation of all subcontractor estimates for the Project, and HLC independently negotiated the terms of its agreements with subcontractors.

22. On or about December 29, 2015, HLC submitted its final proposed price for the Project to ADG. HLC's final bid included and was based, in substantial part, on the bid HLC received from KAT to perform the concrete work.

23. ADG and Delaware accepted HLC's final proposed price for the Project and the parties commenced contract negotiations.

**HLC Entered into the HUD Contract and Agreed to Construct the Project
on a Cost-Plus Basis With a Guaranteed Maximum Price of \$45.9 Million**

24. Because the United States Department of Housing and Urban Development (“HUD”) guaranteed Delaware’s construction loan for the Project, HUD required Delaware and its selected general contractor to utilize and execute HUD’s then-current standard-form construction agreement (HUD-92442M) for the Project.

25. In late December 2015 and early January 2016, Delaware and HLC, as Owner and Contractor, respectively, jointly negotiated and agreed to enter into a written contract entitled *Construction Contract*, which was a modified version HUD’s then-current standard-form construction agreement (the “HUD Contract”).

26. Delaware and HLC executed the HUD Contract on January 13, 2016. A copy of the HUD Contract is attached as Exhibit 1.

27. The HUD Contract identifies as one of the Contract Documents and incorporates substantially all of the *General Conditions of the Contract for Construction*, AIA A-201 (2007) (“General Conditions”). [Exhibit 1 §2(A)].² A copy of the General Conditions is attached as Exhibit 2.

28. As set forth in the HUD Contract:

- a. HLC agreed to fully construct the Project in accordance with the plans and specifications on a “cost-plus” basis with a guaranteed maximum price of \$45,902,000;
- b. HLC agreed to achieve substantial completion of the Project by July 13, 2017;

² The provisions in the General Conditions mandating binding arbitration were excepted from the HUD Contract. [Exhibit 1 § 2(A)].

c. HLC agreed to pay Delaware liquidated damages in the amount of \$25.03 per day, per unit, if HLC did not achieve substantial completion of the Project by July 13, 2017.

[Exhibit 1 §§ 4, 3(A), 3(E)].

29. As set forth in the General Conditions:

a. HLC agreed that itemized Applications for Payment were to be submitted to the Architect prior to receiving any progress payments;

b. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work;

c. The Architect's issuance of a Certificate for Payment constitutes a representation, by the Architect to Delaware, that he has evaluated the Work and data comprising the Application for Payment and can represent that the work has progressed to a point and is of a quality to warrant payment in the amount certified;

d. The Architect has discretion to withhold a Certificate for Payment if he cannot make the representations associated with the issuance of a Certificate for Payment;

e. The Architect also has discretion to withhold a Certificate for Payment or may nullify a previously-issued Certificate for Payment to protect Delaware from loss for which HLC is responsible, including (1) evidence that the work cannot be completed for the unpaid balance of the Contract Sum and/or (2) 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;

f. HLC agreed that any Claim for payment of money or other relief against Delaware was to be initiated by written notice to Delaware and the Architect within the later of 21 days after the occurrence of the event giving rise to the claim or 21 days after HLC first recognized the condition giving rise to the Claim;

g. HLC also agreed that pending the final resolution of its Claim, it was to proceed diligently with the performance of the HUD Contract.

[Exhibit 2, §§ 9.3.1, 9.3.2, 9.4.2, 9.5.2, 9.5.1, 15.1.2, 15.1.3]

30. The amount, timing, and preconditions of HLC's payment for work on the Project was governed by the HUD Contract.

**HLC and Western, as Principal and Surety, Respectively,
Issued Performance and Payment Bonds for the Project**

31. On January 13, 2016, HLC and Western, as principal and surety, respectively, executed and issued a *Performance Bond* in the amount of \$48,135,123.65 (the "Performance Bond") to Delaware, HUD, and one of Delaware's lenders, Oppenheimer Multifamily Housing & Healthcare Finance, Inc. ("Oppenheimer").

32. In the Performance Bond, HLC and Western jointly and severally guaranteed that HLC would perform the HUD Contract and fully complete the Project. A copy of the Performance Bond is attached as Exhibit 3.

33. Also on January 13, 2016, HLC and Western, as principal and surety, respectively, executed and issued a *Payment Bond* in the amount of \$48,135,123.65 (the "Payment Bond") to Delaware, HUD, and Oppenheimer. A copy of the Payment Bond is attached as Exhibit 4.

34. In the Payment Bond, HLC and Western jointly and severally agreed and bonded themselves to pay for labor, materials and equipment furnished for use in the performance of the HUD Contract.

The BSPRA Agreement

35. On the same day the HUD Contract was executed and the Performance and Payment Bonds were issued, HLC, ADG, and Delaware's managing member, Second and Delaware Manager LLC ("Manager"), entered into a separate agreement entitled *Builder Sponsor Profit Risk Allowance Agreement* (the "BSPRA Agreement"). A copy of the BSPRA Agreement is attached as Exhibit 5.

36. The purpose of the BSPRA Agreement was to provide a mechanism to allocate risk in the event the final Project costs exceeded the budget and allocate profit if the Project costs were less than budget.

37. The BSPRA Agreement divides the risk and profit into contingency layers, all funded by ADG and Manager.

38. The first contingency layer is called the "IPD Contingency," which is an \$800,000 fund that would be drawn from should the Project go over budget. [Exhibit 5 § 2].

39. The next contingency layer was a \$421,525 fund – or Risk Pool Profit – that was to be used to fund excess costs in the event the IPD Contingency was depleted. [Exhibit 5 § 3]. Any unused portion of the Risk Pool Profit was to be retained by HLC. [Exhibit 5 § 3]. Additionally, proportional to the degree the Project is under budget, the Risk Pool Profit amount would increase to a maximum amount of \$843,050. [Exhibit 5 § 3].

40. The third contingency layer is the \$800,000 Developer Contingency, which is to be drawn from if the Risk Pool Profit was exhausted. [Exhibit 5 § 3].

41. Under the terms of the BSPRA Agreement, HLC was responsible for any costs in excess of the combined \$2,021,525, not including change orders or amendments to the HUD Contract. [Exhibit 5 § 5].

The IPD Agreement

42. Roughly one month later, on February 25, 2016, HLC entered into a separate agreement with ADG entitled *Standard Multi-Party Integrated Project Delivery (IPD) Agreement* (the “IPD Agreement”). A copy of the IPD Agreement is attached as Exhibit 6.

43. The central purpose of the IPD Agreement was to incentivize the parties to maximize efficiencies and minimize waste on the Project—and thereby improve the quality and cost of the Project—by establishing a structure and mechanism for sharing certain potential financial risks and rewards.

44. Per its express terms, the IPD Agreement was “ancillary” and subject to the terms of the HUD Contract. [Exhibit 6 § 1]. Indeed, the IPD Agreement expressly states that, “[i]n the event of a conflict, the terms of the [HUD Contract] shall govern over the [IPD Agreement].” [Exhibit 6 § 1].

45. Moreover, the IPD Agreement clarifies that in the event of “any inconsistency, conflict, or ambiguity” between the HUD Contract and the IPD Agreement, the terms of the HUD Contract control:

In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the following order shall govern: (a) Change Orders and written amendments to this Agreement; (b) the HUD Construction Contract and BSPRA; (c) the Risk Pool Plan; (d) this Agreement; (e) the drawings (large scale governing over small scale), specifications, and addenda Issued prior to the execution of this Agreement or signed by both Parties; (f) Information furnished by Developer that is designated as a Contract Document; and (g) other Contract Documents. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control except as provided in subsections 19.2.2 or 19.2.3. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

[Exhibit 6 § 19.2.5].

46. Notably, because the HUD Contract contains provisions governing the parties' respective rights and obligations concerning payment on the Project (e.g., amount, timing, preconditions, etc.), and because HLC recognized that the HUD Contract controlled and took precedence over the IPD Agreement, HLC's representatives removed virtually all provisions pertaining to payment in the IPD Agreement – including Paragraph 16.4 – during the negotiation process.

47. During the course of their negotiations, the parties to the IPD Agreement intentionally decided not to delete Paragraph 16.3 from the IPD Agreement for one reason: so the IPD team members would have to provide transparency each month to the other IPD team members, as the fate of their profits was tied to the success of the Project as a whole, as was the IPD members' ability to realize additional profit through shared savings. However, as stated in the agreements and repeatedly acknowledged by HLC, the IPD Agreement was ancillary to the HUD Contract and, in the event of a conflict, the payment provisions in the HUD Contract overrode the provisions in the IPD Agreement, including Paragraph 16.3.

48. Regardless, and despite its suggestions to the contrary, HLC never complied with the terms and spirit of Paragraph 16.3 of the IPD Agreement throughout the course of the Project.

KAT Abandoned the Project Due to an Impasse with HLC Regarding Subcontract Terms

49. Unbeknownst to Delaware and ADG, despite having entered into the HUD Contract several months earlier and having already commenced work on the Project, HLC had not entered into a subcontract agreement with HLC's concrete subcontractor, KAT.

50. On or about May 27, 2016, KAT discontinued negotiations with HLC and abandoned the Project because the parties could not agree on certain financial terms, including

whether and to what extent KAT would agree to assume the risk of liquidated damages if the Project was not completed on schedule.

51. On June 8, 2016, HLC sent a letter notifying Delaware that KAT had abandoned the Project and that HLC was working to find replacement concrete subcontractors. In its letter, HLC also stated that HLC was purportedly reserving a “claim” to seek additional compensation and an extension of time “due to the inability of KAT to meet their commitments made back on December 19, 2015.”

52. Roughly two days later, ADG responded to HLC’s letter of June 8, 2016. In its response, ADG unequivocally rejected HLC’s purported claim of entitlement to additional compensation or an extension of time due to KAT’s abandonment of the Project because these circumstances were caused by HLC, not Delaware, and therefore did not warrant a change order.

53. Despite having received Delaware’s response and knowing that no change order was forthcoming, HLC proceeded to interview several potential concrete subcontractors to replace KAT.

54. Ultimately, in or around late July 2016, HLC selected and entered into subcontracts with George J. Shaw Construction Company (“Shaw”), 3-Feathers Construction (“3-Feathers”), and Dun-Par Engineered Form Company (“Dun-Par”) to construct the concrete footings and parking garage. Delaware was not involved in HLC’s negotiations of these subcontracts, was not privy to their terms, and did not receive copies of the subcontracts until after HLC abandoned the Project..

55. Shortly thereafter, in late January 2017, HLC contracted with Shaw, 3-Feathers, and Dun-Par to construct the upper levels. As with HLC’s earlier subcontracts with these

subcontractors, Delaware was not involved in HLC's negotiation of these subcontracts and was not privy to their terms.

56. Unbeknownst to Delaware, and despite the existence of a substantial completion deadline in the HUD Contract that was less than twelve months away, HLC entered into a subcontract with Shaw that did not include a schedule or any milestone dates for Shaw to complete the parking garage. Instead, HLC's subcontract with Shaw inexplicably provided the parties would endeavor to negotiate a mutually-agreeable schedule that would enable Shaw to complete the parking garage by mid-October 2016 – *a month after the completion deadline for the garage as set forth in the published milestone schedule.*

57. Unbeknownst to Delaware, HLC also failed to properly manage and coordinate Shaw's work. Among other things, HLC permitted Shaw to substantially construct the parking garage in its entirety before beginning construction of the "D Tower." Constructing the garage in this manner impacted the critical path for the Project and substantially delayed commencement of subsequent construction activities, including construction of the "D Tower" among other things.

58. Moreover, and unbeknownst to Delaware, HLC failed to supply adequate field supervision and carry out proper quality control measures. As an example, in approximately 45 separate locations, HLC's subcontractors installed rebar and concrete that was not in accordance with the approved plans, specifications and shop drawings. HLC's failure to notice and correct the situation, resulted in deficient work that had to be rejected and reperformed, thus further delaying the progress of the Project.

59. By April 2017, the concrete work for the Project was substantially behind schedule. Indeed, whereas HLC's schedule for the Project contemplated the concrete work would be completed in 547 days, based on the then-current status and rate of progress, Delaware and the

Architect were forecasting it would take *at least* 904 days (a 78 percent increase) – and probably more – to complete the concrete work.

HLC Unjustifiably and Wrongfully Abandons the Project

60. Due to several factors, including HLC's failure to enter into a subcontract agreement with KAT and HLC's exceptionally poor management of the Project, the concrete work was also costing HLC substantially more than it had anticipated.

61. On or about April 9, 2017, HLC informed Delaware that it would likely be unable to complete the concrete work and would have to abandon the Project unless it received additional funding.

62. On or about May 17, 2017, HLC sent a proposed change order to Delaware requesting a \$16.8 million increase of the guaranteed maximum price along with a 556-day schedule extension. HLC's proposed change order was rejected by the Architect due to the lack of any owner-caused change in the scope of the work.

63. On or about May 25, 2017, HLC submitted its Payment Application #18 requesting payment in the amount of \$969,501 for work HLC claimed to have completed between April 27, 2017 and May 25, 2017.

64. On June 13, 2017, the Architect rejected HLC's Payment Application #18 based on his independent and objective analysis of invoices submitted by HLC's subcontractors. Among other things, the Architect determined that the amount sought by Payment Application #18 was the result of HLC overbilling in the amount of \$929,885.79.

65. Because the Architect determined that no amounts were due and owing to HLC under Payment Application #18, the Architect neither approved nor sent Payment Application #18 to Delaware for payment.

66. HLC never submitted notice of a claim challenging the Architect's decision under the terms of the HUD Agreement. [See Exhibit 2, § 15.1.2].

67. On June 14, 2017, and notwithstanding the Architect's determination that no amounts were currently due and owing to HLC, HLC sent a letter to Delaware asserting that Delaware was in default for not paying Payment Application #18.

68. By June 21, 2017, HLC had discontinued all substantive work on the Project and was demobilizing from the Project site.

69. On June 21, 2017, and in accordance with the provisions of the HUD Contract, the Architect certified that HLC was in material breach of the HUD Contract and sufficient cause therefore existed for Delaware to terminate HLC for default.

70. On June 23, 2017, Delaware sent a letter to HLC which forwarded a copy of the Architect's certification and notified HLC of its termination for default.

71. At the time of HLC's termination, ADG and Delaware were forecasting the Project would be more than 18 months behind schedule and millions of dollars over budget.

Western Fails to Acknowledge and Honor Its Duties Under the Performance Bond

72. On or about June 30, 2017, Delaware made a formal demand on Western to take all necessary action to complete the work and save Delaware from all loss, cost or expense associated with the default of HLC.

73. On August 1, 2017, Delaware informed Western that it had received notices of intent to file liens from various subcontractors and that the Project's title company was refusing to attest to good title based on the notices of intent, thus bringing the Project to a standstill. Delaware also informed Western that, pursuant to the Bond, Western had an obligation to see that all

legitimate claims of subcontractors and suppliers are paid, and that the filing of mechanic's liens against the property would damage Delaware.

74. On August 9, 2017, Western responded to Delaware's August 1, 2017 letter and denied the existence of any obligations under the Payment Bond. Western's letter, however, did not address its obligations under the Performance Bond.

75. On August 11, 2017, Western sent a letter to Delaware stating that it had investigated Delaware's claim and determined "there is a genuine dispute between the parties to the Contracts that precludes Western from taking a voluntary, independent action in this matter,"

76. Although Western contends it performed a full and "independent investigation," Western had never spoken to Delaware. In fact, it refused every request by Delaware to meet to discuss the merits of Delaware's claim, provide additional information and answer questions.

77. In a report summarizing Western's alleged "independent investigation":

a. Western continued to maintain the fiction (which is still being advanced by HLC) that the relationship between HLC and Delaware was governed by the IPD agreement, refusing to acknowledge that *on the first page of the IPD Agreement* it says that in case of any conflict with the HUD Contract, the HUD Contract governs;

b. Western continued to ignore the fact that every pay application from HLC was on HUD forms and submitted in accordance with the HUD process. That payment process appears *nowhere* within the IPD agreement (which was only intended to allow the parties a means of sharing the benefits of future cost-savings). The payment process which the parties followed is specified and required by the HUD form Construction Contract;

c. Western continued to ignore the contract language that required HLC to remain on the job and continue performing while the parties worked to resolve disputes;

d. Western continued to support HLC's abrupt, unjustified, and wrongful decision to abandon the Project the day after HLC was informed the Architect would not certify Payment Application #18 based on his independent analysis of the application and the documentation presented by HLC;

e. Western continued to make the argument – which was advanced by HLC – that the contract is unenforceable due to a “cardinal change,” but Western failed to provide any evidence that Delaware requested any increase in scope of work and ignored the fact that the cardinal change doctrine is not recognized in Missouri in such situations;

f. Western continued to make the argument – which was previously advanced by HLC – that there must have been a “mutual mistake” between HLC and Second Delaware in entering the HUD Contract, which would, presumably, require evidence of what both parties understood to be the facts, yet Western made no effort to speak to Delaware to independently evaluate whether this assertion was true (which it is not); and

g. Western once again refused to explain why HLC had been submitting payment applications for incorrect amounts (seemingly always requesting more than had in fact been earned) even though the HUD Contract states it could only be paid for actual costs incurred.

78. Western's “investigation” was in no sense “independent.” It parroted arguments made by HLC and ignored any fact that was at odds with HLC's positions. It asked for no input from the party who paid for the Performance Bond, Delaware, and Western would not meet with representatives of Delaware to hear its side of the story.

Western Fails to Acknowledge and Honor Its Duties Under the Payment Bond

79. Several of HLC's subcontractors have asserted that HLC failed to pay them for labor, materials, equipment and supplies furnished on the Project. Some of these unpaid subcontractors have filed mechanic's liens.

80. The claims and liens asserted by HLC's unpaid subcontractors collectively total more than \$1 million.

81. Delaware has notified Western about the claims and liens of HLC's unpaid subcontractors.

82. Delaware has demanded, multiple times, that Western honor its obligations under the Payment Bond and discharge the claims and liens of HLC's unpaid subcontractors.

83. In contravention of its obligations under the Payment Bond, and despite Delaware's repeated demands, Western has refused to take any action to discharge the claims and liens of HLC's unpaid subcontractors.

HLC's Defective Work

84. Portions of the work performed by HLC and its subcontractors, including Beutler, Inc. d/b/a George J. Shaw Construction Co. ("Shaw"), was materially defective and must be removed and/or remediated. The following are some examples:

a. Insulation on the first floor of building D moved during the pouring of the concrete, causing the wall to be structurally unsound. Consequently, portions of the first floor walls need to be removed and additional steel installed and concrete poured back.

b. Rebar protruding from the garage level to the first floor is too close to the edge of the wall. New dowels need to be drilled and epoxied into the walls before construction can continue.

85. Delaware will be forced to incur additional costs to remove and/or remediate HLC's defective work. The amount of these additional costs is presently unknown but is expected to exceed \$100,000

Cost to Complete the Project

86. In September 2017, Delaware engaged The Boldt Company ("Boldt") to evaluate the Project and provide an estimate to complete HLC's work and remediate HLC's construction defects.

87. In October 2017, Boldt sent Delaware its estimate to complete the work. Boldt's estimate was approximately \$63.7 million.

88. After Boldt submitted its estimate to Delaware, Boldt announced that it would not be able to provide a performance bond, which is a HUD requirement, because its surety – Western – would not issue a bond for the project.

89. Hence, due to Western's refusal to issue a performance bond for Boldt, Delaware was forced to discontinue negotiations with Boldt and commence discussions with other potential replacement contractors.

90. Due to the unjustified and wrongful actions of HLC and Western, Delaware has no choice but to move forward and independently arrange financing to complete the Project on its own, which it is doing.

COUNT I: BREACH OF CONTRACT
(HLC)

91. Delaware incorporates by reference and reasserts the allegations in all preceding paragraphs.

92. The HUD Contract is a valid and enforceable contract between Delaware and HLC.

93. Delaware has duly performed all duties and obligations owed to HLC under the HUD Contract.

94. HLC materially breached the HUD Contract by, among other things, improperly and unjustifiably discontinuing all work and abandoning the Project.

95. Due to HLC's breach of the HUD Contract, Delaware has been damaged in an amount in excess of \$35 million.

WHEREFORE, Delaware prays for and requests that the Court issue its judgment in its favor, and against HLC, and further award Delaware the following relief: (i) actual damages in an amount exceeding \$35 million; (ii) pre-judgment interest in an amount as provided by law; and (iii) such other and further relief this Court deems just and proper.

COUNT II: BREACH OF PERFORMANCE BOND
(HLC and Western)

96. Delaware incorporates by reference and reasserts the allegations in all preceding paragraphs.

97. In the Performance Bond, HLC and Western jointly and severally guaranteed that HLC would perform the HUD Contract and fully complete the Project.

98. Despite repeated requests and demands, both HLC and Western have failed and refused to honor and thereby breached their responsive duties under the Performance Bond.

99. Due to HLC's and Western's breach of their respective duties under the Performance Bond, Delaware has suffered and continues to suffer damages totaling in excess of \$35 million.

WHEREFORE, Delaware prays for and requests that the Court issue its judgment in its favor, and against HLC, and further award Delaware the following relief: (i) actual damages in the

amount of at least \$35 million; (ii) pre-judgment interest in an amount as provided by law; and (iii) such other and further relief this Court deems just and proper.

COUNT III: BREACH OF PAYMENT BOND
(HLC and Western)

100. Delaware incorporates by reference and reasserts the allegations in all preceding paragraphs.

101. In the Payment Bond, HLC and Western jointly and severally bound themselves and agreed “to pay for labor, materials and equipment furnished for use in the performance of the [HUD Contract]” up to the penal sum of \$48,135,123.65.

102. Despite repeated requests and demands, both HLC and Western have failed and refused to honor and thereby breached their respective duties under the Payment Bond.

103. Due to HLC’s and Western’s breach of their respective duties under the Payment Bond, Delaware has suffered and continues to suffer damages totaling in excess of \$1 million.

WHEREFORE, Delaware prays for and requests that the Court issue its judgment in its favor, and against HLC, and further award Delaware the following relief: (i) actual damages in the amount of at least \$1 million; (ii) pre-judgment interest in an amount as provided by law; and (iii) such other and further relief this Court deems just and proper.

COUNT IV: VEXATIOUS REFUSAL TO PAY
(Western)

104. Delaware incorporates by reference and reasserts the allegations in all preceding paragraphs.

105. This Count is brought against Western pursuant to RSMo §§ 375.296 and 375.420. Western is an “insurance company” as defined in these Sections.

106. Delaware made demand upon Western to honor its duties under the Performance Bond but Western has failed to do so.

107. Delaware made demand upon Western to honor its duties under the Payment Bond but Western has failed to do so

108. Western's refusal to honor its obligations under both the Performance Bond and the Payment Bond was in bad faith, vexatious, and without reasonable cause or excuse, thereby entitling Delaware to damages and attorneys' fees for vexatious refusal to pay as authorized by RSMo § 375.420.

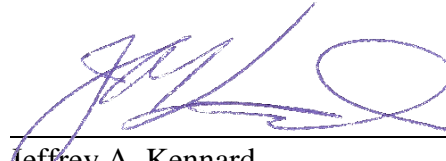
109. As a direct and proximate result of Western's vexatious refusal to make payment to Delaware pursuant to the terms of the bonds, Delaware has been damaged in an amount to be proved at trial, exceeding \$35 million, plus prejudgment interest as provided by law, plus 20 percent of the first \$1,500.00 of Delaware's loss, plus 10 percent of the amount of Delaware's loss in excess of \$1,500.00, plus Delaware's reasonable attorneys' fees incurred in the prosecution of this action.

WHEREFORE, Delaware prays for and requests that the Court issue its judgment in its favor, and against Western, and further award Delaware the following relief: (i) actual damages in the amount of at least \$35 million; (ii) pre-judgment interest in an amount as provided by law; (iii) 20 percent of the first \$1,500.00 of Delaware's loss; (iv) 10 percent of the amount of Delaware's loss in excess of \$1,500.00; (v) Delaware's reasonable attorneys' fees; and (vi) such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Delaware demand trial by jury on all claims and issues.

Respectfully submitted,



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James D. Griffin	MO #33370
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Brendan M. Quinn	MO #68338
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Andrew J. Lewis	MO #70198
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served on the following counsel of record on the 19th day of January, 2018, via ☐ United States first-class mail, postage prepaid ☐ hand delivery ☒ electronic mail ☐ facsimile ☐ overnight courier:

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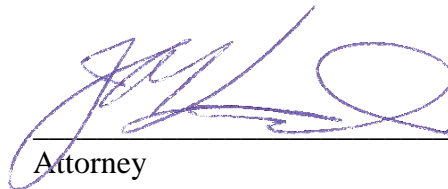
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Attorney

CONSTRUCTION CONTRACT

U.S. Department of Housing and
Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 06/30/2017)

Public Reporting Burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

HUD Project No.: 084-35387
Project Name: Second and Delaware

Cost Plus Contract X
Lump Sum Contract

THIS CONSTRUCTION CONTRACT is made this 13th day of January 2016, between Haren & Laughlin Construction Company, Inc., a Kansas corporation ("**Contractor**") and Second and Delaware, LLC, a Missouri limited liability company ("**Owner**") ("**CONTRACT**").

The definition of any capitalized term or word used herein can be found in this Contract and the General Conditions, except the term "**Project**" shall have the same definition as in the Regulatory Agreement between Borrower (Owner) and HUD, except that the term "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Contract rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site). Any HUD form referenced herein shall be the current version of that form, and shall include any successor form adopted by HUD.

The Contractor and the Owner agree as follows:

Article 1: Scope of Contract

A. The Contract between the parties is set forth in the "**Contract Documents**," which consist of this Agreement and the other documents identified in Article 2 below. Together, these form the entire Contract between Owner and Contractor, and by this reference these Contract Documents are fully incorporated herein. Any previously existing contract or understanding concerning the Work contemplated by the Contract Documents is hereby revoked. Any side agreements between Owner and Contractor shall be disclosed to HUD.

B. Except to the extent specifically indicated in the Contract Documents to be the responsibility of others, Contractor shall furnish all of the materials and perform all of the Work shown on, and in accordance with, the Drawings and Specifications.

Article 2: Identification of Contract Documents

A. The Contract Documents are identified as follows:

(1) This Construction Contract (HUD-92442M) (**Agreement**).

(2) The General Conditions of the Contract for Construction, AIA Document A201 – 2007 (“**General Conditions**”), expressly excepting those provisions mandating binding arbitration. If any of the provisions of this Agreement conflict with the terms contained in the General Conditions, the provisions in this Agreement shall control.

(3) The Supplementary Conditions of the Contract for Construction (HUD-92554M).

(4) The HUD Special Conditions, attached hereto as Exhibit **NOT APPLICABLE**.

(5) The Drawings, an index of which is attached hereto as **Exhibit A**.

Number _____ Title _____ Pages 8

(6) The Specifications, an index of which is attached hereto as **Exhibit B**.

Number ____ Title SECOND + DELAWARE APARTMENTS Pages 6

(7) The Contractor's and/or Mortgagor's Cost Breakdown (HUD-2328), approved by HUD on the date of _____, attached hereto as **Exhibit C**.

(8) ~~[Applicable for Cost Plus Contracts when an Incentive Payment Addendum is agreed to by the parties]~~ If this is designated a Cost Plus Contract and there is no Identity of Interest between Contractor and Owner, the Construction Contract Incentive Payment (HUD-92443) form is attached hereto as **Exhibit NOT APPLICABLE** (Incentive Payment Addendum).

(9) The Prevailing Wage Determination MO150045 Modification Number 10, last published/modified on (date) October 9, 2015, and attached hereto as **Exhibit D**.

(10) Completed and fully-executed document identifying Identities of

Interest among Owner, Contractor, Subcontractors, and Architect (see Appendix 8 of Handbook 4430.1 and the MAP Guide Appendices).

(11) Any change orders approved by HUD after the execution of this Contract.

(12) If applicable, the Retainage Reduction Rider attached hereto as **Exhibit E**.

B. The Drawings and Specifications were prepared by Direct Design Enterprises (**Design Architect**). The architect administering the Construction Contract is Design Architect ("**Architect**").

C. A master set of the Drawings and Specifications, identified by the signatures of Owner, Contractor, Design Architect, Architect, Lender (if applicable), and Contractor's surety or guarantor (if applicable), have been placed on file with HUD, and shall govern in all matters that arise with respect to the Contract Documents.

D. Changes in the Drawings and Specifications, or any terms of the Contract Documents, including orders for extra work, changes by altering or adding to the Work, orders that shall change the design concept, or orders extending the Project Substantial Completion Deadline (identified in Article 3) may be effected only with the prior written approval of Owner's Lender (as defined in Article 11) and HUD, and under such conditions as either Lender or HUD may establish.

Article 3: Time

A. Contractor shall commence the Work to be performed under this Contract within **TEN** days of this Agreement and shall bring the Work to Project Substantial Completion by July 13, 2017 ("**Project Substantial Completion Deadline**").

B. "**Project Substantial Completion**" shall be the date that the HUD Representative signs the final FHA Inspection Report contained in form HUD-92485 (Permission to Occupy Project Mortgages) for the Project required by the Contract Documents and Program Obligations, provided the Permission to Occupy in the same HUD-92485 is subsequently signed by the Authorized Agent of FHA. For purposes of determining any Liquidated Damages in Article 3.E below, "**Substantial Completion**" shall be the stage in the progress of the Work when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents and Program Obligations so that the Owner can occupy or utilize that designated portion of the Work for its intended use, the HUD Representative signs the FHA Inspection Report in form HUD-92485, and the Permission to Occupy in the same HUD-92485 is subsequently signed by the Authorized Agent of FHA. Notwithstanding any other provision in the Contract Documents, Contractor remains liable to complete items of incomplete construction as approved in HUD's sole discretion.

C. The Project Substantial Completion Deadline may be extended in accordance with the terms of the General Conditions only with the prior written approval of HUD

through a HUD-approved change order.

D. Contractor shall correct any defects due to faulty materials or workmanship which appear within twelve (12) months from Project Substantial Completion. Warranty for Work first performed after Project Substantial Completion or portions of the Work not specifically included in a Certificate of Substantial Completion (defined as any executed Permission to Occupy in HUD-92485) shall extend twelve (12) months from the Date of Final Completion. The **“Date of Final Completion”** shall be the date the HUD representative signs the final HUD Representative’s Trip Report (form HUD-95379) provided that the trip report is subsequently endorsed by the Construction Manager. Warranty for all Work performed after the Date of Final Completion shall extend twelve (12) months from the date all such Work is completed.

E. If Contractor does not meet the Project Substantial Completion Deadline or such date to which the Project Substantial Completion Deadline may be mutually extended by approved change order, in accordance with the Drawings and Specifications, including any authorized changes, the maximum sum stated in Article 4 (either Option 1 or Option 2) below shall be reduced by \$25.03 per unit for each day of delay until Project Substantial Completion (**“Liquidated Damages”**). Liquidated Damages, however, shall not be assessed against any of the Work that has reached Substantial Completion (if applicable) in accordance with Program Obligations. When Owner submits to HUD its Cost Certification, Actual Damages shall be calculated. The term **“Actual Damages”** is defined as the actual cost of interest, taxes, insurance and mortgage insurance premiums, less the Project’s net operating income, for the period from the Project Substantial Completion Deadline through Project Substantial Completion, the calculation of which shall be approved by HUD. The lesser of the Liquidated Damages or Actual Damages shall be applied.

~~— F. [Applicable when an Incentive Payment Addendum is agreed to by the parties] The parties have completed the appropriate blank spaces in Article 4 (Option 1 or Option 2) below with respect to **“Incentive Payment,”** providing for the payment of an additional sum to Contractor as an incentive for completing the Project earlier than the Project Substantial Completion Deadline, or by such date to which the Project Substantial Completion Deadline may be extended by approved change order. If the Work is brought to Project Substantial Completion before the Project Substantial Completion Deadline, the contract sum stated in Article 4 (Option 1 or Option 2) below shall be increased, as indicated, by an Incentive Payment calculated in accordance with the Incentive Payment Addendum, consistent with Program Obligations. In cases requiring cost certification by Contractor, Contractor shall not be entitled to any Incentive Payment resulting from early completion if HUD determines that Contractor’s cost certification is fraudulent or materially misrepresents Contractor’s Actual Cost of Construction, as defined herein.~~

Article 4: Contract Sum -- Cost Plus Contract

A. Subject to the provisions hereinafter set out, Owner shall pay to Contractor for the performance of this Contract the following items in cash:

- (1) The Actual Cost of Construction as defined in Article 13

below; plus

(2) Builder's Profit of \$ NONE.

In no event, however, shall the total cash payable pursuant to this paragraph A exceed \$45,902,000.

B. In addition to any cash fee provided for in paragraph A, Owner shall pay to Contractor, by means other than cash, the following:

(1) A promissory note in the form prescribed by HUD in the amount of \$ NONE.

(2) \$0.00 in the form of NOT APPLICABLE.

C. If Contractor shall have received cash payments in excess of (a) the Actual Cost of Construction plus (b) the Builder's Profit, plus any additional amount to be paid under the provisions of paragraph B, all such excess shall be refunded to Owner.

~~_____ D. [Applicable when an Incentive Payment Addendum is agreed to by the parties] Incentive Payment, where there is no Identity of Interest between Owner and Contractor:~~

~~(1) If the Work is completed prior to the Project Substantial Completion Deadline, Owner shall make an incentive payment to Contractor. The amount of the payment shall be determined according to Exhibit _____, attached hereto, and consisting of page 2 of HUD-92443, entitled Incentive Payment Computation. Steps 1(a) and 3(b) thereof contain blanks that are to be filled in at the time this Agreement is executed. (Insert that portion of the sum of interest, taxes, insurance, and Mortgage Insurance Premium that appears in Section G of HUD-92264 attributable to the construction period. If there has been a change in the interest rate charged for the construction period (see footnote designated "***" on page 1 of HUD-92443), the dollar amount included in Section G of HUD-92264 must be adjusted. The adjusted amount must be reflected in the savings computation.) Furthermore, the procedures set forth in footnote designated "***" on page 1 of HUD-92443 must be followed.~~

~~_____ (2) If Contractor shall have received cash payments in excess of (a) the Actual Cost of Construction plus (b) the Builder's Profit, plus any additional amount to be paid under the provisions of paragraph B, plus the incentive payment under the provisions of paragraph D(1) above, all such excess shall be refunded to Owner.~~

~~_____ (3) No incentive payment shall be allowed on savings in costs disallowed by HUD or if Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the Actual Cost of Construction.~~

~~_____ E. [Applicable when an Incentive Payment Addendum is agreed to by the parties] Incentive Payment, where there is an Identity of Interest between Owner and Contractor:~~

~~_____ (1) The cash upset figure set forth at the end of paragraph A, immediately~~

~~above is hereby increased by the amount by which \$_____ (the estimated sum of interest on the Loan, taxes, and property insurance and mortgage insurance premiums applicable to the construction period for this Project (See footnote designated "***" on page 1 of HUD-92443)) exceeds the Borrower's certified actual cost for these items through Project Substantial Completion, as approved by HUD, provided that construction is completed prior to the Project Substantial Completion Deadline, as amended by approved change order, and, further, that in no event shall the total cash payable exceed the Actual Cost of Construction as approved by HUD.~~

~~(2) If the aggregate interest rate during the construction period is determined at the time of cost certification to be less than that upon which the Note was endorsed, the estimated amount for interest, line 53 of HUD-92264, shall be adjusted accordingly and the dollar amount set forth in paragraph E(1) shall be reduced.~~

Article 5: Requisition and Payment Procedures

A. Each month after the commencement of Work hereunder, Contractor shall make a monthly request on HUD-92448 for payment by Owner for Work done during the preceding month. Each request for payment shall be filed at least 15 days before the date payment is desired. Subject to the approval of Lender and HUD, Contractor shall be entitled to payment thereon in an amount equal to (1) the total value of classes of the Work acceptably completed; plus (2) the value of materials and equipment not incorporated in the Work, but delivered to and suitably stored at the site; plus (3) the value of components stored off-site in compliance with Program Obligations; less (4) ten (10) percent holdback as this percentage may be reduced in accordance with the provisions of the Retainage Reduction Rider attached hereto, if applicable (or as reduced by HUD in writing) and less (5) prior payments. The "values" of (1), (2) and (3) shall be computed in accordance with the amounts assigned to classes of Work in HUD-92328.

B. With its final application for payment by Owner, Contractor shall disclose, on a form prescribed by HUD, all unpaid obligations contracted in connection with the Work performed under this Contract. Contractor agrees that within 15 days following receipt of final payment, it shall pay such obligations in cash and furnish satisfactory evidence of such payment to Owner.

C. The balance due to Contractor hereunder shall be payable upon the expiration of thirty (30) days after the Work hereunder is fully completed, provided the following have occurred: (1) all Work hereunder requiring inspection by Governmental Authorities having jurisdiction has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; (2) all certificates of occupancy, or other approvals, with respect to the Project have been issued by Governmental Authorities; (3) Permission(s) to Occupy (HUD-92485) for all units of the Project have been issued by HUD; (4) where applicable, HUD shall have approved Contractor's Certificate of Actual Cost; (5) as-built Drawings and Specifications, the as-built survey and all warranties shall have

been delivered to Owner; and (6) all executed final advance documents required by HUD have been submitted.

Article 6: Receipts, Releases of Liens & Payments for Materials & Equipment

A. Contractor agrees that within fifteen (15) days following receipt of each monthly payment, it shall pay in full and in cash all obligations for Work done and materials, equipment and fixtures furnished through the date covered by such monthly payment. Contractor may withhold retainage from the payment due each subcontractor, corresponding to, but not exceeding, the ten (10) percent holdback specified in item (4) of Article 5, paragraph A.

B. Owner may require Contractor to attach to each request for payment its acknowledgment of payment and all subcontractors' and material suppliers' acknowledgments of payment for Work done and materials, equipment and fixtures furnished through the date covered by the previous payment.

C. Contractor agrees that no materials or equipment required by the Specifications shall be purchased under a conditional sale contract or with the use of any security agreement or other vendor's title or lien retention instrument.

D. Concurrently with the final payment, Contractor shall execute a waiver or release of lien for all the Work performed and materials furnished hereunder, and Owner shall require Contractor to obtain similar waivers or releases from all subcontractors and material suppliers, if permitted by state law.

Article 7: Obligations of Contractor

A. Contractor shall furnish, at its own expense, all building and other permits, licenses, tools, equipment and temporary structures necessary for the construction of the Project. Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, and protective covenants, wherever applicable. Contractor shall comply with the provisions of the Occupational Safety and Health Act of 1970. Contractor shall immediately notify Owner, Lender and HUD of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to Owner, Lender and HUD upon request.

B. If Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall promptly notify Architect in writing, and any necessary changes shall be made as provided in this Contract for changes in the Drawings and Specifications. If Contractor performs any Work knowing it to be contrary to such codes, laws, ordinances, rules or regulations, or protective covenants, without giving such notice to Architect, it shall bear all costs arising therefrom.

C. Upon completion of construction, Contractor shall furnish to Owner a land

survey map prepared in accordance with Program Obligations, ALTA-ACSM standards and the HUD Surveyor's Report showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements. Such survey map shall be prepared by a licensed surveyor who shall certify that the Work is installed and erected entirely upon the land covered by the Security Instrument and within any building restriction lines on said land, and does not overhang or otherwise encroach upon any easement or right-of-way of others. To the extent such data shows that the Contractor has deviated from the Plans and Specifications, Contractor shall be responsible, at its own expense, for correcting any such deviations. In addition, Contractor shall furnish additional surveys when Owner so requires, for any improvements, including structures and utilities not theretofore located on a survey.

D. Contractor shall assume full responsibility for the maintenance of all landscaping that may be required by the Drawings and Specifications until such time as both parties to this Contract shall receive written notice from HUD that such landscaping has been finally completed. Owner hereby agrees to make available to the Contractor, for such purpose, without cost to the latter, such facilities as water, hose and sprinkler.

E. There shall be withheld from the final payment an amount satisfactory to Lender and HUD for any Work items that are incomplete at the time of such final payment.

Article 8: Assurance of Completion

Contractor shall furnish to Owner assurance of completion of the Work in the form of (specify) Performance Bond, form HUD-92452M, and Payment Bond, form HUD-92452A-M. Such assurance of completion shall run to Owner and Lender as obligees and shall contain a provision whereby the surety agrees that any claim or right of action that either Owner or Lender might have thereunder may be assigned to HUD.

Article 9: Waiver of Lien or Claim

A. In jurisdictions where permitted by law, Contractor shall not file a mechanic's or materialman's lien or maintain any claim against Owner's Land or Improvements for or on account of any Work done, labor performed or materials furnished under this Contract, and shall include in each subcontract a clause which shall impose this requirement on the subcontractor.

B. In jurisdictions where permitted by law, Owner may require Contractor to execute a waiver of liens that shall be recorded prior to the commencement of construction. Contractor for itself, subcontractors, suppliers, materialmen, and all persons acting through or under it, agrees not to file or maintain mechanics' liens or claims against the property described herein, on account of Work done, labor performed or materials provided by them.

Article 10: Right of Entry

A. At all times during construction, HUD, Lender, and their agents or assigns shall have the right of entry and free access to the Project and the right to inspect all Work done and materials, equipment and fixtures furnished, installed or stored in and about the Project. For such purpose, Contractor shall furnish such enclosed working space as Lender or HUD may require and find acceptable as to location, size, accommodations and furnishings.

Article 11: Assignments, Subcontracts and Termination

A. This Contract shall not be assigned by either party without the prior written consent of the other party, Lender and HUD, except that Owner may assign this Contract, or any rights hereunder, to Lender or HUD.

B. Contractor shall not subcontract all of the Work to be performed hereunder without the prior written consent of Owner, Lender and HUD.

C. Upon request by Owner, Lender or HUD, Contractor shall disclose the names of all persons with whom it has contracted or will contract with respect to Work to be done and materials and equipment to be furnished hereunder.

D. Contractor understands that the Work under this Contract is to be financed by a building loan to be secured by a Security Instrument and insured by HUD, and that the terms of said Loan are set forth in a Building Loan Agreement between Owner as Borrower and Oppenheimer Multifamily Housing & Healthcare Finance, Inc. as Lender.

E. Contractor further understands that said Building Loan Agreement provides that, in the event of the failure of Owner to perform its obligations to Lender thereunder, Lender may, as attorney-in-fact for Owner, undertake the completion of the Project in accordance with this Contract. In the event Lender elects not to undertake such completion, this Contract shall terminate pursuant to AIA Document A201 § 14.2 in the case of termination for cause, or AIA Document A201 § 14.4 in the case of termination for convenience.

Article 12: Roles of HUD and Lender

HUD is the insurer of Lender's Loan made to finance the construction identified herein, pursuant to the Building Loan Agreement. Nothing provided herein, no action or inaction of the parties to this Contract, or actions or inaction by any third parties, shall impute to HUD or Lender status as a party to this Agreement; HUD and Lender have no liability to Contractor or Owner under the Contract Documents.

Article 13: Certification of Actual Cost -- Cost Plus Contract

A. The **"Actual Cost of Construction"** shall include all items of cost and expense incurred by Contractor in the performance of this Contract. Allowable items of cost and expense incurred by Contractor in the performance of this Contract shall include costs and expenses of labor, materials for construction, equipment and fixtures, field engineering, sales taxes, workmen's compensation insurance, social security,

public liability insurance, general requirements and all other expenses directly connected with construction. The value of any kickbacks, rebates or discounts received or receivable in connection with the construction of the Project shall be subtracted from all items of cost and expense. Any cost or expense attributable to maintaining Contractor's working capital is not to be included within the Actual Cost of Construction.

B. Contractor shall keep accurate records of account of the Actual Cost of Construction, and shall, upon demand, make such records and invoices, receipts, subcontracts and other information pertaining to the construction of the Project available for inspection by Owner, Lender and HUD.

C. With its final application for payment, Contractor shall furnish to Owner a completed "**Contractor's Certificate of Actual Cost**" that shall be accompanied and supported by an independent public accountant's or independent certified public accountant's certificate as to actual cost in form acceptable to HUD.

D. Contractor shall include in all subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its costs incurred in connection with the Project, in the event HUD determines there is an Identity of Interest between either Owner or Contractor and any such subcontractor, equipment lessor or supplier.

Article 14: Designation of Representatives

A. Owner hereby designates Jonathan Arnold as its representative for all communications involving Work performed pursuant to this Contract.

B. Contractor hereby designates Travis Huffmam as its representative for all communications involving Work to be performed pursuant to this Contract.

Article 15: Mediation and Non-binding Arbitration

Any mediated settlement agreement or non-binding arbitration agreement made pursuant to the General Conditions must be approved by HUD in writing before it will be effective.



Article 16: Headings and Titles

Any heading, section title, paragraph or part of this Agreement is intended for convenience only, and is not intended, and shall not be construed, to enlarge, restrict, limit or affect in any way the construction, meaning, or application of the provisions thereunder, or under any other heading or title.

Article 17: Severability

The invalidity of any provision of this Contract shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in counterparts, each of which shall be deemed an original.

<p>Owner:</p> <p>Second and Delaware, LLC, a Missouri limited liability company</p> <p>By: Second and Delaware Manager, LLC, a Missouri limited liability company, its managing member</p> <p>By:  Jonathan Arnold Executive Director</p>	<p>Contractor:</p> <p>Haren & Laughlin Construction Company, Inc., a Kansas corporation</p> <p>By:  C. Wells Haren III, President</p>
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SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 06/30/2017)

Public Reporting Burden for this collection of information is estimated to average 0.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Article 1: Labor Standards

A. Applicability. The Project or program to which the construction work covered by this Contract pertains is being assisted or insured by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance. Any statute or regulation contained herein shall also include any subsequent amendment or successor statute or regulation.

B. Minimum Wages. Pursuant to Section 212 of the National Housing Act, as amended, 12 U.S.C. 1715c, the minimum wage provisions contained in this paragraph B do not apply to those projects with Security Instruments insured under Section 221(h)(1) designed for less than 9 families and they do not apply to those projects with Security Instruments insured under either Section 220 or 233 designed for less than 12 families.

1. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project) shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each

classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under this Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 ("**Administrator**"). The Administrator, or an authorized representative, shall approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise HUD or its designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, shall issue a determination within thirty (30) days of receipt and so advise HUD or its designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs B.1.(ii)(b) or (c) of this Article, shall be paid to all workers

performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit that is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Payrolls, records, and certifications.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii))), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii)(a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor shall submit the payrolls to the applicant, sponsor, or Owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or Owner, as the case may be, for transmission to HUD or its designee, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph B.3.(ii)(b) of this Article.

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Sections 3801 et seq of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under subparagraph B.3.(i) of this Article available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices shall be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by such Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in

any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship, or a State Apprenticeship Agency recognized by such Office, withdraws approval of an apprenticeship program, the Contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees shall not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws

approval of a training program, the Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

6. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 10 of this paragraph B and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage determination, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all Contract clauses referenced in this subparagraph.

7. Contract termination and debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor or a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act (40

U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined under this title or imprisoned not more than two years, or both."

C. Contract Work Hours and Safety Standards Act.

1. Applicability and Definitions. This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc., and is applicable only where the prime contract is in an amount greater than \$100,000. As used in this paragraph C, the terms "laborers" and "mechanics" include watchmen and guards.

2. Overtime requirements. No contractor or subcontractor contracting for any part of the Contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

3. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the immediately preceding subparagraph C.2, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of such subparagraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in such subparagraph.

4. Withholding for unpaid wages and liquidated damages. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or under any other Federal contract with the same prime contractor, or under any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph 3 of this paragraph C.

5. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 5 of this paragraph C and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such subparagraphs 1 through 5.

D. Certification.

For projects with Security Instruments insured under the National Housing Act, as amended, that are subject to paragraph B of this Article 1, the Contractor is required to execute the Contractor's Prevailing Wage Certificate within HUD-92448 as a condition precedent to insurance by HUD of the Loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the Project.

Article 2: Equal Employment Opportunity

A. **Applicability.** This Article 2 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

B. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

D. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor shall include the provisions of paragraphs A through H of this Article 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as HUD or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Article 3: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

A. This Article 3 is applicable to projects covered by Section 3, as defined in 24 CFR Part 135.

B. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by HUD in which the Project is located and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan county) as the Project.

Article 4: Health and Safety

A. This Article 4 is applicable only where the prime contract is in an amount greater than \$100,000.

B. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

C. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

D. The Contractor shall include the provisions of this Article 4 in every subcontract so that such provisions shall be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as HUD or the Secretary of Labor shall direct as a means of enforcing such provisions.

Exhibit A
to
Construction Contract
Index to Drawings

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Exhibit B
to
Construction Contract
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SECOND + DELAWARE APARTMENTS

Kansas City, MO
HUD # 0084-35387

December 15th, 2015 Submission

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Exhibit C
to
Construction Contract

Contractor's and/or Mortgagor's Cost Breakdown (HUD-2328)

This exhibit begins on the next page

Contractor's and/or Mortgagor's Cost Breakdown

Schedule of Values

U.S Department of Housing and
Urban Development
Office of Housing
Federal Housing Commissioner

MB No. 2502-0044 (exp 12/31/2009)

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Section 227 of the National Housing Act (Section 126 of the Housing Act of 1954, Public Law 560, 12 U.S.C., 1715r), authorizes the collection of this information is required for a general contractor when an identity of interest exists between the general contractor and the mortgagor or when the mortgagor is a profit entity and a cost plus contract has been used. The information is used by HUD to facilitate the advances of mortgage proceeds and their monitoring.

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Date 12/11/2015 Sponsor

Arnold Development Group

Project No.

Building Identification

084-35387

Master: Building, Sitework and Fees

Name of Project

Location

Second + Delaware Apartments

East 2nd Street and Delaware Street, Kansas City, MO

This form represents the Contractor's and/or Mortgagor's firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div.	Trade Item	Cost	Trade Description
1	3	Concrete	\$13,627,937	L&M Concrete Structure, Foundations, Slab & Thermomass Insulation
2	4	Masonry	\$996,785	L&M Thin Brick Veneer
3	5	Metals	\$1,531,081	L&M Structural Steel, Metal Fabrications
4	6	Rough Carpentry	\$388,935	L&M Blocking for Trim, Casework, Specialties and Roof Blocking
5	6	Finish Carpentry	\$686,834	L&M Architectural Millwork: L for Doors, Frames, Hardware and Specialties
6	7	Waterproofing	\$380,002	L&M Foundation Waterproofing / Joint Sealants
7	7	Insulation	\$0	Included in Line 1
8	7	Roofing	\$1,536,366	L&M Single Ply Membrane, Courtyard Green Roof & Pavers
9	7	Sheetmetal	\$75,253	L&M Fascia, Roof and Wall Panels
10	8	Doors	\$587,361	L&M Sectional Doors; M Doors, Frames, Hardware and Access Panels
11	8	Windows	\$1,760,741	L&M Windows
12	8	Glass	\$0	None
13	9	Lath and Plaster	\$323,718	L&M EIFS
14	9	Drywall	\$3,290,604	L&M Gypsum Board and Metal Framing
15	9	Tile Work	\$0	None
16	9	Acoustical	\$0	None
17	9	Wood Flooring	\$0	None
18	9	Resilient Flooring	\$0	None
19	9	Painting and Decorating	\$1,103,604	L&M Painting & Mineral Paint Concrete Finish
20	10	Specialties	\$108,388	L&M Signage and Site furnishings, M Accessories, Fire Ext. and Closet Shelving
21	11	Special Equipment	\$15,000	L&M Parking Garage Access Control
22	11	Cabinets	\$893,875	M Residential Cabinets and Counters
23	11	Appliances	\$963,841	L&M Appliances
24	12	Blinds and Shades, Artwork	\$136,836	L&M Window Treatments
25	12	Carpets	\$229,790	L&M Resilient Base & Concrete Sealer Floor Protection
26	13	Special Construction	\$1,721,503	L&M Swimming Pool & Fire Suppression
27	14	Elevators	\$536,000	L&M Elevators
28	15	Plumbing and Hot Water	\$2,731,856	L&M Plumbing / MicroTurbine
29	15	Heat and Ventilation	\$2,602,679	L&M HVAC
30	15	Air Conditioning	\$0	AC included in Line 29
31	16	Electrical	\$4,198,030	L&M Electrical
32		Subtotal (Structures)	\$40,427,019	
33		Accessory Structures	\$0	None
34		Total (Lines 32 and 33)	\$40,427,019	

Line	Div	Trade Item	Cost	Trade Description	
35	2	Earthwork	\$1,189,671	L&M Excavation, Grading & Ground Improvement	
36	2	Site Utilities	\$531,284	L&M Wet and Dry Utilities	
37	2	Roads and Walks	\$314,041	L&M Curbs, Sidewalks and Paving	
38	2	Site Improvements	\$54,216	L&M Retaining Wall and Fencing	
39	2	Lawns and Plantings	\$62,100	L&M Streetscape Landscaping and Irrigation	
40	2	Unusual Site Conditions	\$0	Nonresidential and Special Exterior Land Improvements	
41		Total Land Improvements	\$2,151,313	(costs included in trade item breakdown)	
42		Total Struct. & Land Imprvts.	\$42,578,331	(costs not included in trade item breakdown)	
43	1	General Requirements	\$2,084,142	Description	Est. Cost
44		Subtotal (Lines 42 and 43)	\$44,662,473	Description	Est. Cost
45		Builder's Overhead	\$843,049		
46		Builder's Profit (BSPRA)	\$0	Total	\$
47		Subtotal (Lines 44 thru 46)	\$45,505,522	Other Fees	Total
48				DESCRIPTION	EST. COST
49		Other Fees	\$206,238	Building Permit	\$142,184
50		Bond Premium	\$190,240	Street Closure	\$60,539
51		Total for All Improvements	\$45,902,000	Utility Tap Fees	\$3,515
52		Builders Profit Paid by Means Other Than Cash	\$0		
53		Total for All Improvements	\$45,902,000		
		Less Line 52		Total \$	\$206,238
				Total \$	

I hereby certify that all the information stated herein, as well as any information provided in the accompanying narrative, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

Mortgagor: _____ By: *[Signature]* Date: 12/11/2015

Contractor: _____ By: *[Signature]* Date: 12/11/2015

FHA (Processing Analyst) _____ Date: _____

FHA (Chief Underwriter) _____ Date: _____

Instructions for Completing Form HUD-2328

This form is prepared by the contractor and/or mortgagor as a requirement for the issuance of a firm commitment. The firm replacement cost of the project also serves as a basis for the disbursement of dollar amounts when insured advances are requested. A detailed breakdown of trade items is provided along with spaces to enter dollar amounts and trade descriptions.

A separate form is prepared through line 32 for each **structure type**. A summation of these structure costs are entered on line 32 of a master form. Land improvements, General Requirements and Fees are completed through line 53 on the master 2328 **only**.

Date—Date form was prepared.

Sponsor—Name of sponsor or sponsoring organization.

Project No.—Eight-digit assigned project number.

Building Identification—Number(s) or Letter(s) of each building as designated on plans.

Name of Project—Sponsors designated name of project.

Location—Street address, city and state.

Division—Division numbers and trade items have been developed from the cost accounting section of the uniform system.

Accessory Structures—This item reflects structures, such as: community, storage, maintenance, mechanical, laundry and project office buildings. Also included are garages and carports or other buildings. When the amount shown on line 33 is \$20,000.00 or 2% of line 32 whichever is the lesser, a separate form HUD-2328 will be prepared through line 32 for Accessory Structures.

Unusual Site Conditions—This trade item reflects rock excavation, high water table, excessive cut and fill, retaining walls, erosion, poor drainage and other on-site conditions considered unusual.

Cost—Enter the cost being submitted by the Contractor or bids submitted by a qualified subcontractor for each trade item. These costs will include, as a minimum, prevailing wage rates as determined by the Secretary of Labor.

Trade Description—Enter a brief description of the work included in each trade item.

Other Fees—Includable are fees to be paid by the Contractor, such as sewer tap fees not included in the plumbing contract. Fees paid or to be paid by the Mortgagor are not to be included on this form.

Total For All Improvements—This is the sum of lines 1 through 50 and is to include the total builder's profit (line 46).

Contractor's and/or Mortgagor's Cost Breakdown

Schedule of Values

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Section 227 of the National Housing Act (Section 126 of the Housing Act of 1954, Public Law 560, 12 U.S.C., 1715r), authorizes the collection of this information is required for a general contractor when an identity of interest exists between the general contractor and the mortgagor or when the mortgagor profit entity and a cost plus contract has been used. The information is used by HUD to facilitate the advances of mortgage proceeds and their monitoring.

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Date Sponsor

12/11/2015

Arnold Development Group

Project No.

Building Identification

084-35387

Master: Building, Sitework and Fees

Name of Project

Location

Second + Delaware Apartments

East 2nd Street and Delaware Street, Kansas City, MO

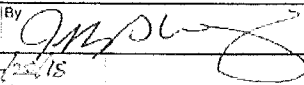
This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div.	Trade Item	Cost	Trade Description
1	3	Concrete	\$13,627,937	L&M Concrete Structure, Foundations, Slab & Thermomass Insulation
2	4	Masonry	\$996,785	L&M Thin Brick Veneer
3	5	Metals	\$1,531,081	L&M Structural Steel, Metal Fabrications
4	6	Rough Carpentry	\$388,935	L&M Blocking for Trim, Casework, Specialties and Roof Blocking
5	6	Finish Carpentry	\$686,834	L&M Architectural Millwork; L for Doors, Frames, Hardware and Specialties
6	7	Waterproofing	\$380,002	L&M Foundation Waterproofing / Joint Sealants
7	7	Insulation	\$0	Included in Line 1
8	7	Roofing	\$1,536,366	L&M Single Ply Membrane, Courtyard Green Roof & Pavers
9	7	Sheetmetal	\$75,253	L&M Fascia, Roof and Wall Panels
10	8	Doors	\$587,361	L&M Sectional Doors; M Doors, Frames, Hardware and Access Panels
11	8	Windows	\$1,760,741	L&M Windows
12	8	Glass	\$0	None
13	9	Lath and Plaster	\$323,718	L&M EIFS
14	9	Drywall	\$3,290,604	L&M Gypsum Board and Metal Framing
15	9	Tile Work	\$0	None
16	9	Acoustical	\$0	None
17	9	Wood Flooring	\$0	None
18	9	Resilient Flooring	\$0	None
19	9	Painting and Decorating	\$1,103,804	L&M Painting & Mineral Paint Concrete Finish
20	10	Specialties	\$108,388	L&M Signage and Site furnishings, M Accessories, Fire Ext. and Closet Shelving
21	11	Special Equipment	\$15,000	L&M Parking Garage Access Control
22	11	Cabinets	\$893,875	M Residential Cabinets and Counters
23	11	Appliances	\$963,841	L&M Appliances
24	12	Blinds and Shades, Artwork	\$136,836	L&M Window Treatments
25	12	Carpets	\$229,790	L&M Resilient Base & Concrete Sealer Floor Protection
26	13	Special Construction	\$1,721,503	L&M Swimming Pool & Fire Suppression
27	14	Elevators	\$536,000	L&M Elevators
28	15	Plumbing and Hot Water	\$2,731,856	L&M Plumbing / MicroTurbine
29	15	Heat and Ventilation	\$2,602,679	L&M HVAC
30	15	Air Conditioning	\$0	AC included in Line 29
31	16	Electrical	\$4,198,030	L&M Electrical
32		Subtotal (Structures)	\$40,427,019	
33		Accessory Structures	\$0	None
34		Total (Lines 32 and 33)	\$40,427,019	

Line	Div.	Trade Item	Cost	Trade Description
35	2	Earthwork	\$1,189,671	L&M Excavation, Grading & Ground Improvement
36	2	Site Utilities	\$531,284	L&M Wet and Dry Utilities
37	2	Roads and Walks	\$314,041	L&M Curbs, Sidewalks and Paving
38	2	Site Improvements	\$54,216	L&M Retaining Wall and Fencing
39	2	Lawns and Plantings	\$62,100	L&M Streetscape Landscaping and Irrigation
40	2	Unusual Site Conditions	\$0	Nonresidential and Special Exterior Land Improvements
41		Total Land Improvements	\$2,151,312	(costs included in trade item breakdown)
42		Total Struct. & Land Imprvts.	\$42,578,331	(costs not included in trade item breakdown)
43	1	General Requirements	\$2,084,142	Description Est. Cost
44		Subtotal (Lines 42 and 43)	\$44,662,473	
45		Builder's Overhead	\$843,049	
46		Builder's Profit (BSPRA)	\$0	Total \$
47		Subtotal (Lines 44 thru 46)	\$45,505,522	Other Fees
48				DESCRIPTION EST. COST
49		Other Fees	\$206,238	Building Permit \$142,184
50		Bond Premium	\$190,240	Street Closure \$60,539
51		Total for All Improvements	\$45,902,000	Utility Tap Fees \$3,515
52		Builders Profit Paid by Means Other Than Cash	\$0	Description Est. Cost
53		Total for All Improvements	\$45,902,000	
		Less Line 52		Total \$ \$206,238 Total \$

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3/29, 3802)

Mortgagor	By	Date
Second and Delaware LLC		
Contractor	By	Date
Haren Laughlin Construction		12/11/2015
FHA (Processing Analyst)	Date	
FHA (Chief Underwriter)	Date	

Instructions for Completing Form HUD-2328

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Exhibit D
to
Construction Contract
Prevailing Wage Determination

This exhibit begins on the next page

36.D. Wage Decision - Initial Closing week of 12 14 2015
General Decision Number: MO150045 10/09/2015 MO45

Superseded General Decision Number: MO20140045

State: Missouri

Construction Type: Building

County: Jackson County in Missouri.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015
1	02/06/2015
2	02/20/2015
3	03/20/2015
4	04/17/2015
5	04/24/2015
6	06/12/2015
7	06/26/2015
8	07/17/2015
9	08/28/2015
10	10/09/2015

ASBE0027-004 10/01/2014

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 32.77	24.48

BOIL0083-005 01/01/2015

	Rates	Fringes
BOILERMAKER.....	\$ 34.76	27.06

BRMO0015-006 04/01/2015

	Rates	Fringes
BRICKLAYER.....	\$ 34.06	17.50

CARP0005-016 05/01/2015

	Rates	Fringes
CARPENTER (Including		

36.D. Wage Decision - Initial Closing week of 12 14 2015

Acoustical Ceiling
Installation, Drywall
Hanging, Form work, Metal
Stud Installation, Scaffold
Building & Batt Insulation).....\$ 36.55 15.55

* ELEC0124-002 08/31/2015

	Rates	Fringes
ELECTRICIAN.....	\$ 36.69	20.62

ENGI0101-018 04/01/2015

	Rates	Fringes
OPERATOR: Crane		
Boom 150 Feet & Over.....	\$ 39.20	15.51
Boom 225 Feet & Over.....	\$ 40.45	15.51
Boom 300 Feet & Over.....	\$ 41.45	15.51
Boom 350 Feet & Over.....	\$ 42.45	15.51
Boom Less Than 150 Feet.....	\$ 37.85	15.51
POWER EQUIPMENT OPERATOR:		
Backhoe/Excavator.....	\$ 37.04	15.51
Bobcat/Skid Loader.....	\$ 37.04	15.51
Forklift.....	\$ 35.70	15.51
Grader/Blade.....	\$ 37.04	15.51
Loader.....	\$ 37.04	15.51
Paver.....	\$ 37.04	15.51
Roller.....	\$ 37.04	15.51

IRON0010-017 04/01/2015

	Rates	Fringes
IRONWORKER, ORNAMENTAL, REINFORCING AND STRUCTURAL.....	\$ 31.25	27.60

LAB00264-001 04/01/2015

	Rates	Fringes
LABORER		
Brick & Cement/Concrete		
Mason Tender.....	\$ 27.10	15.10
Common or General; Asphalt		
Shoveler; Pipelayer.....	\$ 26.70	15.10

PAIN0003-001 04/01/2015

	Rates	Fringes
PAINTER		
Brush & Roller.....	\$ 27.71	15.94
Drywall Finishing/Taping....	\$ 27.93	15.94

PAIN0558-008 04/01/2015

	Rates	Fringes
GLAZIER.....	\$ 33.12	12.63

PLUM0008-001 06/01/2015

36.D. Wage Decision - Initial Closing week of 12 14 2015

	Rates	Fringes
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 41.64	20.34

* PLUM0533-005 06/01/2015

	Rates	Fringes
PIPEFITTER, Includes HVAC Pipe Installation.....	\$ 43.33	19.32

ROOF0020-001 06/01/2015

	Rates	Fringes
ROOFER.....	\$ 32.55	16.24

SFMO0314-004 07/01/2012

PORTION OF COUNTY WITHIN A 30 MILE RADIUS OF THE INTERSECTION
OF PERSHING & BROADWAY IN KANSAS CITY, MO

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 34.45	17.60

SFMO0669-005 04/01/2015

REMAINDER OF COUNTY

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 32.39	19.03

SHEE0002-027 07/01/2012

	Rates	Fringes
SHEET METAL WORKER: Includes HVAC Unit Installation (Excludes HVAC Duct Installation).....	\$ 38.39	17.70

TEAM0541-007 04/01/2015

	Rates	Fringes
TRUCK DRIVER, Includes Dump Truck.....	\$ 31.54	13.41

SUMO2010-044 06/14/2010

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 22.34	7.23
OPERATOR: Hoist.....	\$ 26.02	13.01

36.D. Wage Decision - Initial Closing week of 12 14 2015

PAINTER: Spray.....\$ 17.78 0.00

SHEET METAL WORKER (HVAC Duct
Installation Only).....\$ 15.86 2.08

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is a union rate (current union negotiated rate for local),
a survey rate (weighted average rate) or a union average rate
(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed
in dotted lines beginning with characters other than "SU" or
"UAVG" denotes that the union classification and rate were
prevailing for that classification in the survey. Example:
PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of
the union which prevailed in the survey for this
classification, which in this example would be Plumbers. 0198
indicates the local union number or district council number
where applicable, i.e., Plumbers Local 0198. The next number,
005 in the example, is an internal number used in processing
the wage determination. 07/01/2014 is the effective date of the
most current negotiated rate, which in this example is July 1,
2014.

Union prevailing wage rates are updated to reflect all rate
changes in the collective bargaining agreement (CBA) governing
this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that
no one rate prevailed for this classification in the survey and
the published rate is derived by computing a weighted average
rate based on all the rates reported in the survey for that
classification. As this weighted average rate includes all
rates reported in the survey, it may include both union and
non-union rates. Example: SULA2012-007 5/13/2014. SU indicates
the rates are survey rates based on a weighted average
calculation of rates and are not majority rates. LA indicates
the State of Louisiana. 2012 is the year of survey on which
these classifications and rates are based. The next number, 007

36.D. Wage Decision - Initial Closing week of 12 14 2015
in the example, is an internal number used in producing the
wage determination. 5/13/2014 indicates the survey completion
date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a
new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate
that no single majority rate prevailed for those
classifications; however, 100% of the data reported for the
classifications was union data. EXAMPLE: UAVG-OH-0010
08/29/2014. UAVG indicates that the rate is a weighted union
average rate. OH indicates the state. The next number, 0010 in
the example, is an internal number used in producing the wage
determination. 08/29/2014 indicates the survey completion date
for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of
each year, to reflect a weighted average of the current
negotiated/CBA rate of the union locals from which the rate is
based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can
be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on
a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests
for summaries of surveys, should be with the Wage and Hour
Regional Office for the area in which the survey was conducted
because those Regional Offices have responsibility for the
Davis-Bacon survey program. If the response from this initial
contact is not satisfactory, then the process described in 2.)
and 3.) should be followed.

With regard to any other matter not yet ripe for the formal
process described here, initial contact should be with the
Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an
interested party (those affected by the action) can request
review and reconsideration from the Wage and Hour Administrator
(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

36.D. Wage Decision - Initial Closing week of 12 14 2015
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

Exhibit E
to
Construction Contract
Retainage Reduction Rider

“Holdback,” as that term is defined in section 5.E. of this Contract (and in subsection 4(a) of the Building Loan Agreement) will allow for the possibility of a reduced holdback amount as set forth in this Retainage Reduction Rider when the project reaches 50% completion. This Contract also provides for a 10% holdback from the Contractor's monthly payments for acceptably completed work, acceptably stored materials, and where applicable, components acceptably stored offsite. The requirements for reduction of the retainage after 50% completion are as follows:

- a. The Contractor has no identity of interest with the Owner that is greater than a 5% equity interest in the ownership entity,
- b. If applicable, prior written consent from the Surety must be obtained and attached to the request for reduction, and
- c. There can be no questions regarding the contractor's performance concerning the quality of work, compliance with the contract and with any change orders or work in progress. The appropriate official of HUD's Office of Healthcare Programs must make the decision to reduce the retainage based on the recommendation of HUD's construction inspector.
- d. Assuming the above conditions are met, the existing standard of 10% retainage will be required only until 50% completion. After 50% completion, the retainage may be reduced to 5% until 75% completion, and then may be reduced to 2.5% retainage until the loan reaches Final Endorsement.

**Amendment to the Construction Contract to Identify
Identities of Interest Between Owner/ Contractor/
Subcontractors/ Architect**

Project Name: Second and Delaware

Project Number: 084-35387

1. Definition of terms used in this Amendment.
 - a. Architect. Architect administering the Construction Contract.
 - b. HUD. The U.S. Department of Housing and Urban Development.
 - c. Owner. The Mortgagor/Owner.
 - d. Subcontractor. Any Project subcontractor, materials supplier, equipment lessor, or industrialized housing manufacturer/supplier.
2. The undersigned hereby certify that all identities of interest known to exist between the Owner and the Contractor, and/or between the Owner and/or the Contractor and the Architect and/or any Project subcontractor are listed herein. The Owner and the Contractor shall each inform HUD in writing within 5 working days of its knowledge of any identity of interest that develops after execution of this Contract.

List all Identities of Interest:

- The General Contractor is a .01% member of the Borrower.


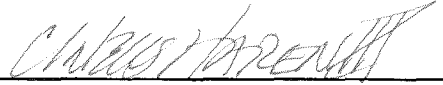
3. An Identity of Interest is construed to exist where:
 - a. The Contractor, Architect and/or any subcontractor take any financial interest in the Project and/or Owner as part of the consideration to be paid.
 - b. The Contractor advances any funds to the Owner or Architect; or the Architect advances any funds to the Owner, contractor and/or any subcontractor; or any subcontractor advances any funds to the Owner, Contractor and/or Architect.
 - c. The Owner has any financial interest in the Contractor, Architect and/or any subcontractor; or the contractor has any financial interest in the Owner, Architect and/or any subcontractor; or the Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or any subcontractor has any financial interest in the Owner, Contractor and/or Architect.
 - d. Any officer, director, stockholder or partner of the Owner has any financial interest in the Contractor, Architect and/or any subcontractor; or any officer, director, stockholder or partner of the Contractor, has any financial interest in the Owner, Architect and/or any subcontractor; or any officer, director, stockholder or partner of the Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or any officer, director, stockholder or partner of any subcontractor has any financial interest in the Owner, Contractor and/or Architect.
 - e. Any officer, director, stockholder or partner of the Owner is also an officer, director, stockholder or partner of the Contractor, Architect and/or any subcontractor; or any officer, director, stockholder or partner of the Contractor

is also an officer, director, stockholder or partner of the Owner, Architect and/or any subcontractor; or any officer, director stockholder or partner of the Architect is also an officer, director, stockholder or partner of the Owner, Contractor, and/or any subcontractor; or any officer, director, stockholder or partner of any subcontractor is also an officer, director, stockholder or partner of the Owner, Contractor and/or Architect.

f. The Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor provides any of the required architectural services; or where the Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor, while not directly providing an architectural service, acts as a consultant to the Architect.

g. Any family relationships between the officers, directors, stockholders or partners of the Owner and officers, directors, stockholders or partners of the Contractor, Architect and/or any subcontractor; or between the officers, directors, stockholders or partners of the Contractor and officers, directors, stockholders or partners of the Owner, Architect and/or any subcontractor; or between any officers, directors, stockholders, or partners of the Architect and officers, directors, stockholders or partners of the Owner, Contractor and/or any subcontractor; or between any officers, directors, stockholders or partners of any subcontractor and the officers, directors, stockholders or partners of the Owner, Contractor and/or Architect which could cause or results in control or influence over prices paid and/or work accepted.

Any side deal, agreement, contract or undertaking, thereby altering, amending, or canceling any of the required closing documents, except as approved by HUD.

<p>Owner:</p> <p>Second and Delaware, LLC, a Missouri limited liability company</p> <p>By: Second and Delaware Manager, LLC, a Missouri limited liability company, its managing member</p> <p>By:  Jonathan Arnold Executive Director</p>	<p>Contractor:</p> <p>Haren & Laughlin Construction Company, Inc., a Kansas corporation</p> <p>By:  C. Wells Haren III, President</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

WARNING: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years or both.



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Second + Delaware Apartments

122 Delaware Street

Kansas City, Missouri 64105

THE OWNER:

(Name, legal status and address)

Second & Delaware, LLC, Limited Liability Company

c/o Arnold Development

210 West 5th Street

Suite 102

Kansas City, Missouri 64105

THE ARCHITECT:

(Name, legal status and address)

Direct Design Enterprises

Jeffrey M. White RA, NCARB

42 Laurel Mountain Road

Pawling, New York 12564

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- | | |
|----|--------------------------------------------------|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
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| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |

Init.

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User Notes:

(1315779434)

13	MISCELLANEOUS PROVISIONS
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 PROGRESS AND COMPLETION

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

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

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding

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

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

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

extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the

Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

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

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct

nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

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

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Melissa S Morrow, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 14:19:04 on 10/27/2015 under Order No. 6162885906_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

**Performance Bond -
Dual Oblige**U.S. Department of Housing
and Urban Development
Office of HousingOMB Approval No. 2502-0598
(Exp. 06/30/2017)

Public Reporting Burden for this collection of information is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

CONTRACTOR/PRINCIPAL (Name and Address):

Haren & Laughlin Construction Company, Inc.
8035 Nieman Road
Lenexa, Kansas 66214

LENDER (Name and Address):

Oppenheimer Multifamily Housing & Healthcare Finance, Inc.
1180 Welsh Road, Suite 210
North Wales, Pennsylvania 19454

OWNER (Name and Address):

Second and Delaware, LLC
210 West 5th Street, Suite 102
Kansas City, Missouri 64105

SURETY (Name and Principal Place of Business):

Western Surety Company
333 S. Wabash Avenue
Chicago, Illinois 60604

PROJECT (Name, HUD Project Number and Location):

Second and Delaware
FHA Project No. 084-35387
2nd Street & Delaware Street
Kansas City, Missouri

CONSTRUCTION CONTRACT:

Date: January 13, 2016
Amount: \$45,902,000

BOND:

Date: January 13, 2016
Amount: \$48,135,123.65

RIDERS TO THIS BOND: X Yes No

This Performance Bond-Dual Oblige is issued simultaneously with a Payment Bond ("**Payment Bond**") issued with respect to the Project. As used herein,

"Obligees" shall mean Owner, Lender, Secretary of Housing and Urban Development (**"HUD"**) and the additional obligee(s), if any, identified in a Rider to this Bond and **"Obligee"** shall mean any of the Obligees.

1. Contractor has entered into a Construction Contract with Owner for the construction of the Project (**"Contract"**). The Contract (as the same may be now or hereafter amended by change order or otherwise) is made a part hereof by reference.

2. Lender has agreed to lend to Owner a sum of money to be secured by a mortgage between Owner and Lender (**"Security Instrument"**) on the Project that provides for advances under that certain note executed by Owner and payable to Lender (**"Note"**), in part, to make payment under the Contract, and desires protection as its interest appears, in event of default by Contractor under the Contract.

3. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, to Owner and to Lender, its successors and assigns, as their respective interests appear, as Obligees, in the sum of Forty-eight Million One Hundred Thirty-five Thousand One Hundred Twenty-three and 65/100 Dollars (\$48,135,123.65), for the performance of the Contract. Any approved increase in the total Contract price shall increase the obligation of Obligors accordingly.

4. If the Contractor performs the Contract and fully indemnifies and saves harmless Obligees from all costs and damages which they may suffer by reason of failure to do so, and fully reimburse and repay Obligees all expenses which any Obligor may incur in making good any such default, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

5. Surety shall not be liable under this Performance Bond to Obligees, or any of them, unless Obligees make payments to Contractor in accordance with the terms of the Contract as to payments, and/or perform any of the other obligations under the Contract. However, Surety shall not assert a failure by Obligees to make payments or perform obligations under the Contract unless each Obligor has been given written notice by Surety of any such failure and a reasonable period of time (but in no event less than thirty (30) days from receipt of said notice), in which to cure such failure.

6. Surety agrees that any right of action that any of Obligees herein may have under this Performance Bond may be assigned, without the consent of Contractor or Surety, to HUD, and that such assignment will in no manner invalidate or qualify this instrument.

7. The aggregate liability of Surety hereunder to Obligees or their assigns is limited to the penal sum above stated, and Surety, upon making any payment hereunder, shall be subrogated to, and shall be entitled to an assignment of, all rights of the payee, either against Contractor or against any other party liable to the payee in connection with the loss which is the subject of the payment. Notwithstanding the

foregoing, no amounts paid to Owner without the written consent of Lender shall reduce the liability of Surety to Lender under this Performance Bond.

8. Any suit, action or proceeding by reason of any default whatever shall be instituted within two years after the date Owner declares Contractor in default under the Contract. If this limitation is deemed to be in contravention of any controlling law, this Performance Bond is deemed amended so as to substitute the minimum period of limitation permitted by such controlling law for the above limitation.

9. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

10. Notice to Surety, Owner, or Contractor shall be served by mailing the same by registered mail or certified mail, postage prepaid, to the address shown on this Performance Bond or to such other address as may have been previously specified by the recipient in a notice given in accordance herewith.

SIGNED and SEALED this 13th day of January 2016.

Witness as to Contractor:



CONTRACTOR:

**Haren & Laughlin Construction Company,
Inc., a Kansas corporation**


By:


C. Wells Haren III, President

SURETY:

**Western Surety Company, a South Dakota
corporation**

By:


David S. Salavitch
Attorney in Fact

Project Name: Second and DelawareProject Number: 084-35387**ADDITIONAL OBLIGEE RIDER**

(Additional obligee only allowed with prior HUD approval.)

1. This Additional Obligor Rider is attached to and made a part of that certain Performance Bond, dated January 13, 2016, executed and delivered by Haren & Laughlin Construction Company, Inc., as Contractor, and Western Surety Company, as Surety, in favor of Obligees, in the sum of Forty-eight Million One Hundred Thirty-five Thousand One Hundred Twenty-three and 65/100 Dollars (\$48,135,123.65), with respect to the Project referenced above.

2. All of the terms, conditions and provisions of the Performance Bond are hereby incorporated herein by this reference as if fully set forth herein.

3. All defined terms as set forth in the Performance Bond shall have the same meanings herein.

4. Government National Mortgage Association, Second and Delaware, LLC, Affordable Housing Partners, Inc., AHP Housing Fund 123, LLC, and AHP State Housing Fund 4, LLC are hereby added to the Performance Bond as additional named Obligees.

5. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Performance Bond, including especially but without limitation, the aggregate liability of Surety as described in paragraph 3 of the Performance Bond.

SIGNED and SEALED this 13th day of January 2016.

<p>Witness as to Contractor:</p> <p><u>Chris Kline</u></p>	<p>Contractor:</p> <p>Haren & Laughlin Construction Company, Inc., a Kansas corporation</p> <p>By: <u>C. Wells Haren III, President</u></p>
	<p>Surety:</p> <p>Western Surety Company, a South Dakota corporation</p> <p>By: <u>David S. Salavitch</u> David S. Salavitch Attorney in Fact</p>

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

David S Salavitch, Individually

of Lees Summit, MO, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 9th day of June, 2015.



WESTERN SURETY COMPANY

Paul T. Bruflat

Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 9th day of June, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

February 12, 2021



S. Eich

S. Eich, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 13th day of January, 2016.



WESTERN SURETY COMPANY

L. Nelson

L. Nelson, Assistant Secretary

Payment BondU.S. Department of Housing
and Urban Development
Office of HousingOMB Approval No. 2502-0598
(Exp. 06/30/2017)

Public Reporting Burden for this collection of information is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

CONTRACTOR/PRINCIPAL (Name and Address):

Haren & Laughlin Construction Company, Inc.
8035 Nieman Road
Lenexa, Kansas 66214

LENDER (Name and Address):

Oppenheimer Multifamily Housing & Healthcare Finance, Inc.
1180 Welsh Road, Suite 210
North Wales, Pennsylvania 19454

OWNER (Name and Address):

Second and Delaware, LLC
210 West 5th Street, Suite 102
Kansas City, Missouri 64105

SURETY (Name and Principal Place of Business):

Western Surety Company
333 S. Wabash Avenue
Chicago, Illinois 60604

PROJECT (Name, HUD Project Number and Location):

Second and Delaware
FHA Project No. 084-35387
2nd Street & Delaware Street
Kansas City, Missouri

CONSTRUCTION CONTRACT:

Date: January 13, 2016
Amount: \$45,902,000

BOND:

Date: January 13, 2016
Amount: \$48,135,123.65

RIDERS TO THIS BOND: X Yes No

This Payment Bond is issued simultaneously with a Performance Bond-Dual Obligee (**Performance Bond**) issued in connection with the Project. As used herein, "**Obligees**" shall mean Owner, Lender, Secretary of Housing and Urban Development ("**HUD**") and the additional obligee(s), if any, identified in a Rider to this Bond and "**Obligee**" shall mean any of the Obligees.

1. Contractor has entered into a Construction Contract with Owner for the construction of the Project ("**Contract**"), which as the same may now or hereafter be amended by change order or otherwise, is made a part hereof by reference.

2. Contractor and Surety, jointly and severally ("**Obligors**"), bind themselves, their heirs, executors, administrators, successors and assigns, to Obligees, for the use and benefit of Claimants as hereinafter defined in paragraph 3, in the sum of Forty-eight Million One Hundred Thirty-five Thousand One Hundred Twenty-three and 65/100 Dollars (\$48,135,123.65), to pay for labor, materials and equipment furnished for use in the performance of the Contract. Any approved increase in the total Contract price shall increase the monetary obligation of Obligors accordingly.

3. A Claimant ("**Claimant**") is defined as one having a direct contract with Contractor or with a subcontractor of Contractor for labor, materials or equipment used in the performance of the Contract, including without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract, architectural and engineering services required for performance of the work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment was furnished.

4. This obligation shall be null and void if Contractor promptly makes payment to all Claimants for all labor, material, or equipment used in the performance of the Contract.

5. Contractor and Surety hereby jointly and severally agree with Obligees that every Claimant, who has not been paid in full before the expiration of a period of ninety (90) days after having last performed labor or last furnished materials or equipment, may sue on this Payment Bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. No Obligee shall be liable for the payment of any costs or expenses of any such suit.

6. Surety shall have no obligation to Claimants under this Payment Bond unless:

a. Claimants, who do not have a direct contract with Contractor, have given notice to any two (2) of the above-named parties, those being Contractor, Owner or Surety, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the claim, stating that a claim is being made under this Payment Bond and, with substantial accuracy, the amount

claimed and the name of the party to whom the materials or equipment were furnished, or for whom the work or labor was done or performed.

b. Any suit, action or proceeding brought by Claimants under this Payment Bond shall be instituted within one (1) year from the later of the date on which (i) Claimants gave the notice required by Paragraph 6a, or (ii) the later of the date that Claimants either perform the last labor and/or service or furnish the last materials or equipment under the Contract. If this limitation is deemed to be in contravention of any controlling law, this provision of the Payment Bond is deemed amended so as to substitute the minimum period of limitation permitted by such controlling law for the above limitation.

7. The amount of this Payment Bond shall be reduced by any payment(s) made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens that may be filed of record against Project, whether or not the claim for the amount of such lien is presented under and against this Payment Bond. Notwithstanding the foregoing, no amounts paid without the written consent of Lender shall reduce the liability of Surety to Lender under this Payment Bond.

8. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Notice to Surety, Owner, or Contractor shall be served by mailing the same by registered mail or certified mail, postage prepaid, to the address shown on this Payment Bond or to such other address as may have been previously specified by the recipient in a notice given in accordance herewith.

SIGNED and SEALED this 13th day of January 2016.

<p>Witness as to Contractor:</p> <p><u>Chris Khe</u></p>	<p>Contractor:</p> <p>Haren & Laughlin Construction Company, Inc., a Kansas corporation</p> <p>By: <u>[Signature]</u> C. Wells Haren III, President</p>
	<p>Surety:</p> <p>Western Surety Company, a South Dakota corporation</p> <p>By: <u>[Signature]</u> David S. Salavitch Attorney in Fact</p>

Project Name: Second and Delaware
Project No.: 084-35387

ADDITIONAL OBLIGEE RIDER

(Additional obligee only allowed with prior HUD approval.)

1. This Additional Obligee Rider is attached to and made a part of that certain Payment Bond, dated January 13, 2016 executed and delivered by Haren & Laughlin Construction Company, Inc., as Contractor, and Western Surety Company, as Surety, in favor of Obligees, in the sum of Forty-eight Million One Hundred Thirty-five Thousand One Hundred Twenty-three and 65/100 Dollars (\$48,135,123.65) with respect to the Project referenced above.

2. All of the terms, conditions and provisions of the Payment Bond are hereby incorporated herein by this reference as if fully set forth herein.

3. All defined terms as set forth in the Payment Bond shall have the same meaning herein.

4. Second and Delaware, LLC, Affordable Housing Partners, Inc., AHP Housing Fund 123, LLC, and AHP State Housing Fund 4, LLC are hereby added to the Payment Bond as additional named Obligees.

5. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Payment Bond, including especially but without limitation, the aggregate liability of Surety as described in paragraph 2 of the Payment Bond.

Signed and sealed this 13th day of January 2016.

Witness as to Contractor:

Chris Kline

CONTRACTOR:

**Haren & Laughlin Construction Company,
Inc.**, a Kansas corporation

By: C. Wells Haren III
C. Wells Haren III, President

SURETY:

Western Surety Company, a South Dakota
corporation

By: David S. Salavitch
David S. Salavitch
Attorney in Fact

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

David S Salavitch, Individually

of Lees Summit, MO, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 9th day of June, 2015.



WESTERN SURETY COMPANY

Paul T. Bruflat

Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 9th day of June, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

February 12, 2021



S. Eich

S. Eich, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 13th day of January, 2016.



WESTERN SURETY COMPANY

L. Nelson

L. Nelson, Assistant Secretary

**Builder Sponsor Profit
Risk Allowance**

AGREEMENT

This Builder Sponsor Profit Risk Allowance Agreement ("**Agreement**") is made and entered into as of the 13th day of January, 2016, by and between **Second and Delaware Manager LLC**, a Missouri limited liability company, with offices at 210 West 5th Street, Suite 102, Kansas City, MO 64105 (herein "**Company**"), **Arnold Development Group LLC**, a Missouri limited liability company ("**Developer**") and **Haren & Laughlin Construction Company, Inc.**, a Kansas corporation with offices at 8035 Nieman Road, Lenexa, Kansas 66214 (herein "**Contractor**").

WITNESSETH:

WHEREAS **Second and Delaware LLC**, a Missouri limited liability company ("**Owner**"), intends to develop a multifamily apartment project in Kansas City, Missouri, FHA Project No. 084-35387, located at the corner of Second and Delaware Streets in Kansas City Missouri and presently numbered as 122 Delaware Street, known as Second and Delaware Apartments (the "**Project**") using the proceeds of a deed of trust loan from Oppenheimer Multifamily Housing & Healthcare Finance, Inc. which loan is or will be insured by the U.S. Department of Housing and Urban Development pursuant to Section 221(d)(4) of the National Housing Act (the "**HUD Insured Loan**");

WHEREAS, Company is the managing member in the Owner, and Company will benefit directly and indirectly from the development of the Project; and

WHEREAS, Developer is the developer of Project and has a significant financial interest, directly or indirectly in the Project; and

WHEREAS, the Project will be built on land legally described below as:

A tract of land containing portions of Blocks 10 and 14 of "OLD TOWN" and Block 10 of "KING & BOUTON'S RESURVEY" all being subdivisions of land in Kansas City, Jackson County, Missouri, and portions of vacated rights-of way as vacated per Ordinance Number B-472659, passed by Kansas City, Missouri, on January 24, 1964, recorded in Book B5671 at page 706, and per Ordinance Number 050822, passed by Kansas City, Missouri, on July 28, 2005, recorded as Document number 2005K0068463, and as amended by Ordinance number 061014, passed by Kansas City, Missouri, on September 21, 2006, recorded as Document number 2006E0138503, as further amended by Ordinance number 080037 passed by Kansas City, Missouri, on January 10, 2008, recorded as Document number 2008E0017193, and all lying in Fractional Section 32, Township 50 North, Range 33 West, and being more particularly described as follows:

Commencing at the Northwest corner of Lot 10, of said Block 10, "KING & BOUTON'S RESURVEY"; thence South 14 degrees 13 minutes 25 seconds East along the Westerly line of said Lot 10, block 10, a distance of 50.00 feet; thence North 75 degrees 38 minutes 42 seconds East along a line that is parallel with and 50.00 feet Southerly of the Northerly line of said Block 10, "KING & BOUTON'S RESURVEY", a distance of 102.42 feet to the Point of Beginning; thence North 14 degrees 15 minutes 27 seconds West, a distance of 110.00 feet to a point on the Northerly right-of-way line of vacated Second Street, also being a point on the Southerly line of Lot 145, of said Block 14, "OLD TOWN"; thence South 75 degrees 38 minutes 42 seconds West, along said Southerly line of Lot 145, Block 14, "OLD TOWN", and along said Northerly right-of-way line of vacated Second Street, a distance of 60.00 feet; thence North 14 degrees 15 minutes 27 seconds West, a distance of 260.83 feet; thence North 62 degrees 22 minutes 00 seconds East, a distance of 64.00 feet to a point on the centerline of vacated Elm Street as now established; thence South 52 degrees 27 minutes 23 seconds East, along the centerline of said vacated Elm Street, a distance of 311.46 feet to the Westerly right-of-way line of Delaware Street, as now established; thence South 14 degrees 13 minutes 25 seconds East, along the Westerly right-of-way line of said Delaware Street, a distance of 60.44 feet to the intersection of the Westerly right-of-way line of said Delaware Street and the Centerline of said vacated Second Street; thence South 75 degrees 38 minutes 42 seconds West, along the centerline of said vacated Second Street, a distance of 10.07 feet; thence South 14 degrees 21 minutes 18 seconds East, a distance of 30.00 feet to a point on the Southerly right-of-way line of said vacated Second Street and the northerly line of Lot 101, Block 10 of said "OLD TOWN", said point being 10.00 feet Westerly of the Northeasterly corner of Lot 101, Block 10 of said "OLD TOWN", as measured along the Northerly line of said Lot 101; thence South 58 degrees 47 minutes 56 seconds West, a distance of 109.51 feet; thence South 59 degrees 36 minutes 27 seconds West, a distance of 14.14 feet; thence Southwesterly along a non-tangent curve to the left, having an initial tangent bearing of South 15 degrees 29 minutes 42 seconds West, a central angle of 22 degrees 22 minutes 30 seconds and a radius of 120.66 feet, for an arc distance of 47.12 feet; thence South 75 degrees 46 minutes 35 seconds West, a distance of 1.00 foot to a point on the Westerly line of Lot 100, Block 10 of said "OLD TOWN"; thence North 14 degrees 13 minutes 25 seconds West, along the Westerly line of Lots 100 and 101, Block 10 of said "OLD TOWN", a distance of 30.00 feet to a point that is 50.00 feet Southerly of the Northerly line of Block 10 of said "OLD TOWN"; thence South 75 degrees 38 minutes 42 seconds West, 50.00 feet Southerly and parallel to the Northerly line of Block 10 of said "KING & BOUTON'S RESURVEY" and its Easterly extension, a distance of 50.58 feet to the Point of Beginning."

WHEREAS, Contractor is a member of the Owner owning a one hundredth of one percent (0.01%) interest in the Owner and, accordingly, an "Identity of Interest" (as defined in HUD regulations) exists between Owner and Contractor; and

WHEREAS, Owner intends to enter into a Construction Contract-Cost Plus, HUD Form

92442M with a HUD supplement and AIA 201 General Conditions and Plans and Specifications dated on or about January 13, 2016 (collectively, the "**Construction Contract**") with Contractor whereby Contractor will agree to construct the Project for and in consideration of the payment to Contractor of the lesser of: (i) Contractor's actual certified cost of construction without any allowance or payment of any fee or profit to Contractor; or (ii) \$45,902,000 ("**Target Cost**") which amount will not include any allowance or payment of any fee or profit to Contractor; and

WHEREAS, HUD will allow Owner or Company to earn a "Builder's and Sponsor's Risk Allowance" (hereinafter referred to as the "**BSPRA**"). The BSPRA will be divided into two (2) portions: one portion is fixed in the amount of \$421,525.00 (the "**Fixed BSPRA**") and one portion estimated to be \$421,525.00 and this second portion ("**Risk Pool Profit**") will be at risk and adjusted upwards or downwards based on the final cost of constructing the Project in accordance with the Construction Contract ("**Cost of Work**"); and

WHEREAS, Company, Developer and Contractor desire to provide for the allocation of the BSPRA and Risk Pool Profit to be earned in connection with the scheduled construction/development of the Project; and

WHEREAS, Company and Developer desire to pay (or cause the Owner to pay) the BSPRA and Risk Pool Profit to Contractor according to the attached Schedule 1.

NOW THEREFORE, in consideration of the premises and mutual undertakings hereinafter set forth, the parties agree as follows:

1. **Payment of BSPRA to Contractor.** Company and Developer, jointly and severally, shall pay (or cause the Owner to pay) to Contractor, the Fixed BSPRA to be earned in connection with the development of the Project and the construction of the Project, in the total sum of **Four Hundred Twenty-One Thousand Five Hundred Twenty-Five and no/100 Dollars (\$421,525.00)**, to be paid in accordance with the Schedule of payments set forth on Schedule 1 attached hereto and incorporated herein by reference.
2. **IPD Contingency.** Company shall make available a contingency in the amount of **Eight Hundred Thousand Dollars and no/100 Dollars (\$800,000.00)** to fund increases in the cost of work in excess of the Target Cost. The IPD Contingency shall be the first source of funds to cover increases in the Cost of Work in excess of the Target Cost.
3. **Risk Pool Profit.** Company and Developer, jointly and severally, shall pay to Contractor, as Risk Pool Profit, in addition to any overhead set forth in the Construction Contract, to be earned in connection with the development of the Project and the construction of the Project, one percent of total amount of the Construction Contract estimated to be the total sum of **Four Hundred Twenty-One Thousand**

Five Hundred Twenty-Five and no/100 Dollars (\$421,525.00) but adjusted downward by the amount that the Cost of the Work exceeds the Target Cost or upward by Seventy Five Percent (75%) of the amount the Cost of Work is less than the Target Cost, to be paid in accordance with the Schedule of payments set forth on Schedule 1 attached hereto and incorporated herein by reference. The Risk Pool Profit shall be used to fund increases in the Cost of Work in excess of the Target Cost plus the IPD Contingency until the Risk Pool Profit is exhausted. In the event the Cost of Work is less than the Target Cost, the maximum Risk Pool Profit due to the Contractor shall be double the original Risk Pool Profit or **Eight Hundred Forty-Three Thousand Fifty Dollars and no/100 Dollars (\$843,050.00)**.

4. **Developer Contingency.** Company shall make (or cause Developer to make) available a contingency in the amount **Eight Hundred Thousand Dollars and no/100 Dollars (\$800,000.00)** to fund increases in the Cost of Work in excess of the Target Cost plus IPD Contingency plus Risk Pool Profit
5. **Increases in Cost of Work in Excess of IPD Contingency, Risk Pool Profit, and Developer Contingency.** Costs of Work, not including any change orders or amendments to the Construction Contract, in excess of the Target Cost, plus the IPD Contingency, plus the Risk Pool Profit, plus Developer Contingency will be paid for by the Contractor.
6. **Availability of Funds for IPD Contingency, BSPRA, Risk Pool Profit and Owner Contingency.** Company and Developer shall (or cause the Owner to) make the funds necessary to fund the BSPRA, Contingencies and Risk Pool Profit available during the construction period and will not pledge them to other uses until Contractor and Company agree that the contingencies will not be needed to fund the Cost of Work.
7. **Company Default and Guaranties.** In the event of a default by Company hereunder, Contractor agrees not to assert a claim or lien against the Project, the proceeds of the HUD insured loan or the income of the Project. Developer hereby absolutely, unconditionally and irrevocably guarantees the punctual payment and performance of the obligations of Company hereunder, including payment of the BSPRA and Risk Pool Profit, as and when such payment or performance shall respectively become due, payable and/or performable in accordance with the terms of the obligations. This is a guaranty of payment and performance and not a guaranty of collection.
8. **Termination of Agreement.** If Owner terminates the Construction Contract due to Contractor's default in the performance of its obligations thereunder, this Agreement shall be terminated and neither party shall thereafter have any further obligation hereunder and Contractor shall thereafter have no right nor claim to any of the Risk Allowance if any, earned or to be earned by Owner or Company from the development of the Project.

9. **Redemption of Membership Interest.** Upon either of (i) Company full and complete performance of its obligations hereunder or (ii) the termination of this Agreement pursuant to the provisions of paragraph 3 above, Contractor shall transfer the membership interest in Owner held by Contractor by the payment to Contractor by the Company the sum of Ten Dollars (\$10.00). Contractor hereby agrees to accept the aforesaid payment in full and complete transfer of the membership interest in Owner now held by Contractor and, upon receipt of said payment, agrees to deliver to Owner the certificate(s), if any, evidencing said membership interest.
10. **Attorney Fees.** In the event of any litigation between the parties to declare or enforce any provision of this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties, in addition to any other recovery and costs, reasonable attorney fees incurred in such litigation, in both the trial and in all appellate courts.
11. **Law Governing.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.
12. **Titles and Captions.** All paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.
13. **Pronouns and Plurals.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.
14. **Entire Agreement.** This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.
15. **Agreement Binding.** This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.
16. **Further Action.** The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.
17. **Parties in Interest.** Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.
18. **Presumption.** This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

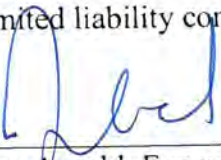
19. **Savings Clause.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
20. **Counterparts.** This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

The remainder of this page has been left blank. Signatures appear on following pages.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first written above.

COMPANY:

Second And Delaware Manager, LLC, a
Missouri limited liability company

By: 
Jonathan Arnold, Executive Director

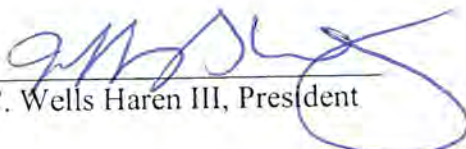
DEVELOPER:

Arnold Development Group LLC, a
Missouri limited liability company

By: 
Jonathan Arnold, Member

CONTRACTOR:

Haren & Laughlin Construction Company, Inc.,
a Kansas Corporation

By: 
C. Wells Haren III, President

Schedule 1

Company Agrees to pay Contractor its Share of the BSPRA of \$421,525 in the following Manner:

Initial Draw from Construction Contract	none
Second Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Third Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Fourth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Fifth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Sixth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Seventh Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Eighth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Ninth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Tenth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Eleventh Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid

Twelfth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Thirteenth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Fourteenth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Fifteenth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Sixteenth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Seventeenth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Eighteenth Draw from Construction Contract	Percentage Completion multiplied by \$421,525 less amounts previously paid
Final Draw from Construction Contract	plus or minus any amounts remaining due

Company Agrees to pay Contractor its Share of the Risk Pool Profit in the following Manner:

Initial Draw from Construction Contract	none
Second Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Third Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Fourth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Fifth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Sixth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Seventh Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Eighth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Ninth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Tenth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts

	previously paid
Eleventh Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Twelfth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Thirteenth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Fourteenth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Fifteenth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Sixteenth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Seventeenth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Contractor's Share of Risk Pool Profit less amounts previously paid
Eighteenth Draw from Construction Contract	Percentage Completion multiplied by Contractor's Share of Risk Pool Profit less amounts previously paid
Final Draw from Construction Contract	plus or minus any amounts remaining due after risk pool calculations



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CONSENSUSDOCS 300 STANDARD MULTI-PARTY INTEGRATED PROJECT DELIVERY (IPD) AGREEMENT

ENDORSEMENT. This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. The organizations endorsing this document believe it represents a fair allocation of risk and responsibilities of all project participants.

TABLE OF ARTICLES

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5. VALIDATION PHASE
6. PRECONSTRUCTION PHASE—TARGET VALUE DESIGN
7. DESIGN PROFESSIONAL'S AND CONSTRUCTOR'S COMPENSATION
8. BASIS OF COST BENCHMARKS
9. PAYABLE COSTS
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11. ESTIMATED MAXIMUM PRICE
12. RISK IDENTIFICATION, MANAGEMENT, AND ALLOCATION
13. CONSTRUCTION PHASE
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ARTICLE 1 AGREEMENT

Job Number: 004

Account Code: 2+D

This Agreement is made as of this [25th] day of [February] in the year [2016] by and between the

DEVELOPER, [Arnold Development Group]

and DESIGN PROFESSIONAL, [Direct Design Enterprises]

Tax identification number (TIN) []

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EXHIBIT

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and CONSTRUCTOR, [Haren Laughlin Construction]
Tax identification number (TIN) []

for the following PROJECT: [Second and Delaware Apartments]

WORKSITE Location: [114 Delaware Street, Kansas City, Missouri 64105]

Notice to the parties shall be given at the above addresses.

This Agreement is ancillary to the terms of Construction Contract HUD-92442M between Developer and Constructor for the Project ("HUD Construction Contract") pursuant to the terms of a loan by the U.S. Department of Housing and Urban Development ("HUD") for the construction of the Project, and all related HUD documents ("Loan Documents"). None of the terms of this Agreement shall require Developer or Constructor to violate the terms of the HUD Construction Contract or the Loan Documents. In the event of a conflict, the terms of the HUD Construction Contract and Loan Documents shall govern over the terms of this Agreement. Further, Developer cannot make any payments except as authorized in the HUD Construction Contract and Loan Documents, or from Surplus Cash as that term is defined in the Regulatory Agreement for Multifamily Projects entered into between the Developer and HUD dated November 1, 2015. This Agreement is ancillary to the terms of the BSPRA Agreement between Second and Delaware Manager LLC, Developer and Contractor. In the event of a conflict, the terms of the BSPRA shall govern over the terms of this Agreement and executed EMP Amendment.

ARTICLE 2 IPD METHOD AND LEAN CONSTRUCTION PRINCIPLES

2.1 INTEGRATED PROJECT DELIVERY (IPD) The Parties agree that the Project objectives can be best achieved through an IPD method and principles that incorporate Lean Construction principles and tools. The IPD method is based on trust, shared risk and reward, collaborative decision-making, early involvement of the IPD Team, early definition of Project goals, intensified planning, and open communication. The Parties agree to adhere to an IPD method that incorporates Lean Construction principles and acknowledge that each Party's success is tied directly to the success of all other members of the IPD Team. Therefore, according to the terms of this Agreement, each Party pledges to:

- (a) Organize and integrate their respective roles, responsibilities, and expertise;
- (b) Identify and align their respective expectations and objectives;
- (c) Commit to open communication, transparent decision-making, proactive and non-adversarial interaction, problem-solving, and sharing of ideas;
- (d) Continuously seek to improve the Project planning, design, and construction processes; and
- (e) Share both the risks and rewards associated with achieving the Project objectives.

2.2 IPD TEAM The Parties and Joining Parties shall perform as an Integrated Project Delivery Team for the design, construction, and commissioning of the Project. Except as otherwise determined by the Core Group, the Parties shall contractually require, through the execution of a Joining Agreement, their respective consultants and Subcontractors (and require each to bind their respective Subsubcontractors, Suppliers, or consultants) (a) to comply with all the provisions of this Agreement, Contract Documents applicable to consultants or Subcontractors and (b) to adhere to the principles of collaboration, management, and Target Value Design (TVD) set forth in this Agreement. Also, certain Joining Parties will be designated as Risk Pool Members in their Joining Agreements.



2.3 RELATIONSHIP Each IPD Team member accepts the relationship of mutual trust, good faith, and fair dealings established by this Agreement, and agrees to cooperate and to exercise its skill and judgment to further the interests of the Project. However, no IPD Team member shall be a made a fiduciary of another IPD Team member by the terms of this Agreement. The IPD Team will promote harmony and collaboration on the Project. Design Professional and Constructor each represents that it possesses the requisite skill, expertise, and licensing to perform its Work or Services.

2.4 GOAL The IPD Team will seek to maximize efficiencies and minimize waste throughout the design and construction process, improve Project quality and value, increase safety, decrease claims, all while increasing the return on investment for the IPD Team.

2.5 RELIABLE COMMITMENTS IPD Team members will make and secure reliable commitments as the basis for planning and executing the Project. A reliable commitment is one in which the conditions necessary for the satisfaction of the commitment are clear to all involved IPD Team members and the IPD Team member making the commitment:

- (a) Is competent and able to perform the task or has retained individuals or entities with the competence or ability to perform the task;
- (b) Has estimated the time to perform the task, has allocated adequate resources to perform the task, and has properly scheduled time to perform the task;
- (c) Has no current basis for believing that the commitment will not be fulfilled; and
- (d) Is prepared to be accountable if the commitment cannot be performed as promised and shall promptly advise the IPD Team if it believes the task may not be performed as committed.

2.6 PULL PLANNING The IPD Team shall employ a pull scheduling approach to planning and scheduling, which provides that preceding activities are not started sooner than is needed to assure the continuous performance of subsequent activities. Where the work of one IPD Team member is dependent upon the prior performance of another IPD Team member, the IPD Team member whose work follows shall request of, and receive from, the prior performer a commitment as to when the work to be handed-off will be finished. Applicable IPD Team members shall agree upon criteria for the hand-off of items of work.

ARTICLE 3 COLLABORATIVE PROJECT MANAGEMENT

3.1 CORE GROUP The Core Group shall manage and serve as the decision-making body for delivery of the Project employing collaborative methods for achieving the highest value and most efficient and economical delivery of the Project. The Core Group shall be comprised, at a minimum, of an authorized representative of each of Developer, Design Professional, and Constructor. The Core Group may unanimously invite other critical Joining Parties to appoint members of the Core Group, either for a specific duration or until Project completion, for purposes of advancing the overall collaborative approach and the best interests of the Project. Any Joining Party representative added as an additional Core Group member shall be entitled to participate in all Core Group functions and decision-making on an equal basis. The Developer, Design Professional, and Constructor members of the Core Group may unanimously remove any other Core Group member from the Core Group.

3.1.1 CORE GROUP REPRESENTATIVES

Developer's authorized Core Group representative is Jonathon Arnold.



Developer's alternative Core Group representative is [_____].

Design Professional's authorized Core Group representative is [Jeffrey M. White_____].
Design Professional's alternative Core Group representative is [_____].

Constructor's authorized Core Group representative is [Jeff Wasinger_____].
Constructor's alternative Core Group representative is [Mike Mannino_____].

A Party's Core Group representative shall possess authority to bind that Party in all matters requiring the Party's approval, authorization, or written notice.

3.1.2 JOINING PARTY REPRESENTATIVE Each Joining Party shall identify in writing a representative who shall possess authority to bind that Joining Party in all Project matters, and who, if applicable, will be that Joining Party's Core Group representative.

3.1.3 REPLACEMENT OF A CORE GROUP REPRESENTATIVE Any company represented on the Core Group may, upon seven (7) Days' written notice, appoint a new authorized representative or alternative representative to the Core Group, provided no other Core Group member has a reasonable objection to the proposed replacement.

3.2 SELECTION AND REPLACEMENT OF BUILDERS AND CONSULTANTS Constructor and Design Professional shall develop consultant, Precon Trade, Subcontractor, and Supplier interest in the Project and, in collaboration with the other IPD Team members, develop a list of potential consultants, Precon Trades, Subcontractors, and Suppliers from whom proposals shall be requested. Proposed consultants, Precon Trades, Subcontractors, and Suppliers must possess the qualifications, experience and financial resources to complete the Work or Services for which they are being proposed. The Core Group's approval of the inclusion of any consultant, Precon Trade, Subcontractor, or Supplier on the list of potential participants shall not waive the Core Group's right later to object to or reject any proposed consultant, Precon Trade, Subcontractor, or Supplier. Any replacement of a consultant, Precon Trade, Subcontractor, or Supplier removed by an IPD Team member requires Core Group approval. The Core Group may direct an IPD Team member to replace any consultant, Precon Trade, Subcontractor, or Supplier to whom the Core Group has reasonable objection. All fees and other charges of consultants, Subcontractors, or Suppliers retained by Design Professional or Constructor are included in their respective compensation. The Core Group has the right to approve the terms and conditions of the agreements with consultants, Precon Trades, Subcontractors, and Suppliers.

3.3 SELF-PERFORMED WORK If Constructor proposes to self-perform a particular scope of Work, it shall provide the Core Group with its qualifications to perform the Work. If requested by the Core Group, Constructor shall obtain at least two bona fide price proposals for Work that it proposes to self-perform.

3.4 Intentionally omitted.

3.5 MANAGEMENT OF THE IPD TEAM The Core Group may appoint such intermediate project managers of the IPD Team that it deems necessary for effectively managing the Project. The Core Group will assess the experience of the IPD Team with IPD and Lean Construction principles and tools and will retain experts to educate, familiarize, train, and assist the IPD Team to implement them, as needed.

3.6 PROJECT PERSONNEL The Core Group shall designate key Project personnel for the IPD Team in a Project roster. Key personnel shall include those individuals authorized to bind an IPD Team member and those having primary responsibility for the Work or Services to be performed



by their respective IPD Team member. No IPD Team Member shall augment, remove, or replace any of its key Project personnel without the Core Group's prior written consent, except in the case of death, disability, or discontinuance of such person from employment, provided that Core Group written approval must be obtained for the replacement. Any replacement personnel shall have substantially equivalent or better qualifications than the individual being replaced.

3.7 SUPERVISION The Core Group shall not have any duties of supervision over or control of any person employed or retained on the Project. All Parties, Joining Parties, consultants, Subcontractors, and Suppliers providing labor, services, materials, or equipment to the Project are independent contractors. Each IPD Team member is alone responsible for supervising its own employees.

3.8 OBJECTION TO PERSONNEL Design Professional, Constructor, and Joining Parties shall each remove from the Project any employee, person or entity retained by it for the Project to which Developer or the Core Group has a reasonable objection.

3.9 DECISION-MAKING Consistent with IPD principles of collaboration and to the greatest extent possible, the Core Group shall diligently seek to make unanimous actions and decisions. The Core Group shall act in the best interest of the Project as a whole and consistent with Laws.

3.10 FAILURE TO REACH UNANIMITY To the extent unanimity cannot be reached among the Core Group, any member of the Core Group may refer the matter to the Senior Executive Team for further consideration.

3.11 SENIOR EXECUTIVE TEAM The Senior Executive Team is responsible for providing executive support and mentoring to the Core Group and for resolving Core Group impasses. Each Party's Senior Executive Team representative shall stay abreast of Project developments, gain a deep familiarity with the Project, communicate regularly with that Party's Core Group representative, and possess authority to bind that Party in all matters requiring that Party's approval, authorization, or written notice. If a Party's Senior Executive Team representative changes, that Party shall immediately notify the other Parties in writing.

3.11.1 Developer's authorized Senior Executive Team representative is [Christian Arnold_____].

3.11.2 Design Professional's authorized Senior Executive Team representative is [_____].

3.11.3 Constructor's authorized Senior Executive Team representative is [Wells Haren_____].

3.11.4 MEETINGS Each Senior Executive Team member is responsible to periodically attend Core Group meetings. Additionally, upon request of any Core Group member, the Senior Executive Team may be required to attend other meetings or to render decisions in cases where the Core Group reaches an impasse under Section 3.10.

3.11.5 DECISIONS The Senior Executive Team will endeavor to resolve Core Group impasses or disputes through unanimous decision or action, in the best interests of the Project. If the Senior Executive Team is unable to reach a unanimous decision or action, Developer shall make a decision in the best interest of the Project. However, decisions implicating life, health, property, and public welfare that are required by Law to be made by a licensed design professional shall be made by Design Professional. If the decision is made by Developer (or Design Professional for



decisions described in the previous sentence) following an impasse, Design Professional or Constructor may, if the decision affects the Developer's Program, Expected Cost, Target Cost, Estimated Maximum Price (EMP), or Contract Time, request a Change Order under ARTICLE 15.

3.12 PROJECT MEETINGS

3.12.1 CORE GROUP MEETINGS The Core Group shall establish a schedule for regular meetings to review and discuss the Project status and any issues impacting its progress, including conflicts, delays, and their causes and potential claims.

3.12.2 SPECIAL CORE GROUP MEETINGS If a Project matter arises requiring immediate attention, any member of the Core Group may call for a meeting on one (1) Day's written notice. Such notice shall include a thorough description of the issues to be addressed. Special Core Group meetings may be conducted through any medium the Core Group members mutually agree upon, including telephone, video, or web-conferencing.

3.12.3 IPD TEAM MEETINGS The Core Group shall establish a matrix for regular meetings of the IPD Team. This matrix shall include meetings for overall Project planning and weekly Project scheduling and coordination, variance meetings, as well as the record-keeping and reporting requirements for such meetings.

3.12.4 PRECONSTRUCTION MEETINGS During the Preconstruction Phase, the Core Group shall meet regularly (at least every other week) and shall schedule regular meetings for the IPD Team to facilitate collaboration regarding all Project elements, including but not limited to Worksite use and improvements, the selection of materials, building systems, and equipment.

3.13 OPEN COMMUNICATIONS Each IPD Team Member shall communicate in an open, honest, and clear manner that accurately conveys the relevant Project issues, conflicts, deliverables, or reliable commitments.

3.13.1 PROJECT COMMUNICATIONS PROTOCOL After executing this Agreement, the Core Group shall promptly agree on a Communications Protocol. The Communications Protocol shall: (a) identify critical Project personnel and their contact information; (b) provide a detailed Project meeting matrix with meeting frequency and attendance requirements; (c) allow for direct communication between and among IPD Team members, as necessary, and identify when contemporaneous notification of the content of such communication should be made to the other IPD Team members; (d) establish the exchange of documents and data in electronic form, using the ConsensusDocs 200.2 Electronic Communications Protocol Addendum or a separate addendum; (e) determine the necessary equipment, software, and services; (f) determine acceptable formats, transmission methods and verification procedures; (g) establish methods for maintaining version control; (h) set forth privacy and security requirements; and (i) set forth storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the Communications Protocol. Absent a written protocol, use of documents and data in electronic form shall be at the sole risk of the recipient.

3.13.2 The Core Group will notify an IPD Team member in writing with any difficulty resulting from the member's failure to comply with the Communications Protocol. Failure of an IPD Team member to timely cure a breach of the Communications Protocol shall be a material breach of this Agreement and grounds for withholding payment.



ARTICLE 4 PROJECT OBJECTIVES AND PARTIES' RESPONSIBILITIES

4.1 PROJECT OBJECTIVES Project objectives are to design and construct the Project within the: (a) requirements of the Project Business Case in Exhibit A; (b) Developer's Program and Construction Documents, when approved; (c) Allowable Cost; and (d) the Project Schedule.

4.2 DEVELOPER'S PROGRAM Developer's Program includes an initial description of the Project and Developer's objectives, a description of the physical characteristics of the Worksite, and disclosure of all available of the following: surveys; Worksite evaluations; legal descriptions; data or drawings depicting existing conditions; subsurface conditions and environmental studies; reports and investigations, tests, inspections, and other reports dealing with environmental matters; and Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests known to Developer.

4.3 ALLOWABLE COST Developer has established an Allowable Cost for Developer's Program. The Allowable Cost is set forth in Exhibit A and cannot be revised without Developer's approval in Developer's sole discretion.

4.4 DEVELOPER RESPONSIBILITIES Developer shall work with the IPD Team to identify the Project objectives, including budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and Worksite requirements. Developer shall provide full information in a timely manner regarding requirements for the Project, including Developer's Program and other relevant information.

4.4.1 DEVELOPER'S FINANCING Developer shall, at the written request of another Party, furnish reasonable evidence of Project financing to the other Parties. Furnishing of such evidence is a condition precedent to commencement or continuation of the Work or Services. After such evidence has been furnished, Developer shall not materially vary such financial arrangements without prior notice to the other Parties.

4.4.2 DEVELOPER'S SEPARATE CONTRACTORS AND CONSULTANTS Developer is responsible for the timeliness and quality of the work and services of Others engaged by Developer. The Core Group will coordinate the Work and Services with the work and services of the Others. IPD Team members will participate with the Core Group and Others in reviewing and coordinating plans and schedules for their respective work or services upon request. As directed by the Core Group, Constructor will include Others in scheduling, conflict resolution, and site safety programs. Developer shall be liable to the IPD Team for all third party claims and safety violations arising from the work or services of Others engaged by Developer.

4.5 DESIGN PROFESSIONAL'S RESPONSIBILITIES Design Professional shall furnish all design and engineering Services necessary to design the Project and provide construction administration in accordance with Project objectives and the DP Work Plan (when approved), except for any design services awarded to design-build trades engaged by the Constructor. Consistent with the collaborative approach set forth in this Agreement, Design Professional shall draw upon the assistance of Constructor and other IPD Team members in developing the Project design, but Design Professional shall retain overall responsibility for all design decisions as required by Laws. Cost and schedule are design criteria and Design Professional, in collaboration with the IPD Team, shall create Design Documents that fully consider cost and schedule implications. In all of its Services, Design Professional shall collaborate with the IPD Team. Design Professional represents that it is an independent contractor and that it shall act as such in performing the



Services. Design Professional's duties, responsibilities, and limitations of authority shall not be restricted, modified, or extended without written consent of the Core Group.

4.5.1 DESIGN PROFESSIONAL'S CONTINUING RESPONSIBILITY The Core Group's acceptance of the credentials of any Design Professional's consultant shall not in any way relieve Design Professional of any duty, responsibility, or liability for Services provided by Design Professional or any Design Professional's consultant. Design Professional shall coordinate and be responsible for the Services provided by all Design Professional's consultants.

4.6 CONSTRUCTOR'S RESPONSIBILITIES Constructor shall furnish preconstruction and construction administration and management services, collaborate with the IPD Team, and use diligent efforts to promote the delivery of the Project in an expeditious manner. Consistent with the collaborative approach set forth in this Agreement, Constructor shall assist Design Professional in the development of the Project design, but shall not provide professional services which constitute the practice of architecture or engineering unless (a) Constructor needs to provide such services in order to carry out its responsibilities for construction means, methods, techniques, sequences, and procedures, or (b) such services are specifically called for by the Contract Documents. Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with, and as reasonably inferable from, the Contract Documents. Constructor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. Constructor represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor. Constructor's duties, responsibilities, and limitations of authority shall not be restricted, modified, or extended without written consent of the Core Group.

4.7 DEVELOPER APPROVAL All approvals required from Developer shall be in writing. Developer approval shall not constitute a waiver by Developer of any of its rights under this Agreement, nor shall it relieve Design Professional or Design Professional's consultants from any of their obligations or liability for the technical or professional adequacy of their Services, nor Constructor, its Subcontractors, or Suppliers from any of their respective obligations or liability for the performance of the Work.

ARTICLE 5 VALIDATION PHASE

5.1 INITIAL MEETING Following execution of this Agreement, the Core Group shall have an initial meeting to review Developer's Program, to establish the Core Group's goals for the Project, and to begin initial Project planning. If Developer's Program has not been sufficiently established, the Core Group shall meet for the purpose of assisting Developer in the further development of Developer's Program. Developer shall provide any other information or services that the Core Group deems necessary for a fully developed Developer's Program.

5.1.1 Design Professional and Constructor shall each review Developer's Program to ascertain the requirements of the Project, and, together with any other IPD Team members then retained, shall meet to confer on and verify such requirements. The IPD Team shall provide to the Core Group for its written approval a joint preliminary evaluation of Developer's Program and the Project requirements. This evaluation shall address issues bearing upon Project success, including the need for additional study or of testing the Worksite with regard to access, traffic, drainage, parking, building placement, utilities, environmental factors, and other considerations affecting the building, the environment, energy use, as well as information regarding Laws. The joint preliminary evaluation shall also propose alternative



architectural, civil, structural, mechanical, electrical, and other systems for review by the Core Group, to determine the most desirable approaches on the basis of cost, technology, quality, and speed of delivery. The IPD Team shall review existing test reports, but shall not undertake any independent testing, unless the Contract Documents expressly provide otherwise. The joint preliminary evaluation shall identify any deviations from Developer's Program.

5.1.2 JOINT WORKSITE INVESTIGATION The Core Group shall review whether additional information or joint investigations are needed concerning the Worksite or reasonably required to validate Developer's Program. The Core Group shall identify in writing any apparent deficiencies or discrepancies in the information Developer provides. Developer shall provide required information in a timely manner and in reasonable detail describing the physical and legal characteristics of the Worksite, including surveys; Worksite evaluations; legal descriptions; data or drawings depicting existing conditions, subsurface conditions, utilities, benchmarks, and adjacent property; and environmental studies, reports, and investigations. The IPD Team members shall suggest options for investigation of existing conditions for Core Group consideration, including the cost and potential benefit of the differing levels of investigation during the Validation Phase. Based on the Core Group's review of the available information and the level of investigation approved by the Core Group, the IPD Team members will conduct Validation Phase joint investigations at or concerning the Worksite. The Core Group will prepare a report of the IPD Team's findings and recommendations from the Joint Worksite Investigation.

5.1.3 VALIDATION STUDY AND EXPECTED COST When Developer's Program is sufficiently defined, the IPD Team shall undertake to confirm and validate whether the Project can be completed for the Allowable Cost and other Project Business Case criteria. The IPD Team shall present a Validation Study to Developer upon Core Group approval. As part of the Validation Study, the Core Group shall develop and approve an estimate of the Expected Cost, which shall include a proposed Project budget including the Payable Costs, all IPD Team compensation and contingencies (including an IPD Team Contingency), a proposed Risk Pool Plan showing participants and their respective risk pool amounts, and a proposed Project Schedule including major milestone dates. After receiving and reviewing the Validation Study, Developer shall provide written notice to the Core Group indicating whether or not it accepts the Validation Study and the Expected Cost set out in that study. Upon Developer's approval of the final Validation Study, the Risk Pool Plan in that Validation Study will become effective.

5.1.4 IPD TEAM CONTINGENCY The IPD Team Contingency is available to cover Payable Costs from unanticipated events or issues such as design development or refinement, coverage for scope gaps during procurement of subcontractors, correction of defects or omissions in the design or in the installed Work that are not covered by applicable professional liability insurance, variations in market conditions, unanticipated field conditions that do not constitute a Change Order, and re-sequencing of the Work or acceleration of the Project schedule for improvement in the Project outcome. The IPD Team Contingency is established as a shared resource in lieu of each Risk Pool Member controlling separate contingency line items in their budgets. The IPD Team Contingency and any other established contingencies are not separate funds, but will be tracked as separate line items in the cost model and used as a cost management tool. The Core Group will determine when and how the IPD Team Contingency or other established contingencies will be used or allocated among cost model line items. However, Developer may not require the IPD Team Contingency to be used for any of the Change Order conditions set forth in Section 15.2.



5.2. If, at any time during validation of Developer's Program, it appears that the Expected Cost will exceed the Allowable Cost:

5.2.1 Developer may give written approval to increase the Allowable Cost;

5.2.2 The Core Group may direct the IPD Team to collaborate on revising the scope of Developer's Program or other criteria of the Project Business Case to bring it within the Allowable Cost, and Design Professional, as necessary, shall revise the drawings and specifications to allow the Expected Cost to be reduced to be equal or less than the Allowable Cost; or

5.2.3 Developer may elect to terminate the Agreement pursuant to Section 17.4.

5.3 The Validation Phase shall conclude when the IPD Team confirms in the approved Validation Study that it is able to commit to design and construct the current Developer's Program for an Expected Cost that does not exceed the current Allowable Cost and in a way that meets the other current criteria of the Project Business Case. Once confirmed, the IPD Team shall commence the Preconstruction Phase and diligently strive to design the Project so that it may be constructed without exceeding the Expected Cost approved by Developer in the final approved Validation Study.

ARTICLE 6 PRECONSTRUCTION PHASE—TARGET VALUE DESIGN

6.1 **PROJECT SCHEDULE** Early in the Preconstruction Phase, Design Professional and Constructor, based on input from other IPD Team members, shall update for the Core Group's review and approval the Project Schedule included in the approved Validation Study. The updated Project Schedule shall be consistent with the Validation Study and show the timing and sequencing of the design and construction required to meet the time criteria set forth in Developer's Program. The Project Schedule shall be updated for the Core Group's review and approval at appropriate intervals and as the Core Group directs. If any Project Schedule update shows an adverse deviation from a previously approved Project Schedule, Design Professional and Constructor shall make appropriate recommendations to the Core Group.

6.2 RESPONSIBILITY MATRIX

6.2.1 Early in the Preconstruction Phase, the Core Group will prepare a Responsibility Matrix, which the Core Group may update to reflect the status of the Project and assign necessary tasks to the most qualified IPD Team members. IPD Team members shall perform the responsibilities designated to them in the most current Responsibility Matrix.

6.3 DESIGN PROCESS

6.3.1 **GOAL** The extensive preconstruction involvement of Constructor and Precon Trades is aimed to (a) maximize all IPD Team members' understanding of the design requirements, including the design intent and all technical requirements of the Project, prior to field construction, and (b) virtually eliminate requests for information or clarifications ("RFIs") after construction is commenced.

6.3.2 **TARGET VALUE DESIGN PROCESS** The Parties acknowledge that value, cost, schedule, and constructability (including work structuring) are basic components of the design criteria. The intent is to design the Project so it may be completed within the



Developer's Program for less than the approved Expected Cost. Target Value Design begins upon conclusion of the Validation Phase and continues through the completion of design.

6.3.3 INTEGRATED DESIGN PRINCIPLES In order to achieve the Project objectives, the design process will proceed in a collaborative manner, informed by a free-flow of accurate information concerning program, quality, cost, and schedule. While retaining overall responsibility for the Project design, Design Professional must work collaboratively with the other members of the IPD Team, drawing on their respective expertise in order to achieve the Project objectives.

6.3.4 PULL-BASED DESIGN PRODUCTION The IPD Team shall use "pull-based" planning in pursuing TVD and producing the Design Documents.

6.3.5 SCOPE OF DESIGN SERVICES The Core Group shall oversee development of the Design Documents for the Project. Design Professional shall prepare a DP Work Plan for the Core Group's review and approval at the time the Validation Study is submitted to Developer for approval. Design Professional shall update the DP Work Plan for any changes in the Validation Study prior to Developer's approval or as a result of any approved changes in the Services.

6.3.6 DESIGN DOCUMENTATION STANDARDS The Core Group shall specify the documentation standards with which all Design Documents shall comply.

6.3.7 BUILDING INFORMATION MODELING APPROACH To the extent directed by the Core Group, the IPD Team shall use building information modeling ("BIM") to design and construct the Project in order to provide continuous, immediate, and reliable information regarding design, scope, schedule, and cost for integration and coordination by the IPD Team. The Core Group shall establish, as applicable, the BIM parameters, standards, and technological requirements by executing and attaching the ConsensusDocs 301 BIM Addendum or other addendum to this Agreement as well as requiring the same addendum on applicable subcontracts and consultant agreements.

6.3.8 LAWS AND REGULATIONS Within the applicable standard of care, all Services shall comply with Laws in effect during the preparation of the Contract Documents and the requirements of any governmental authority from whom permits, approvals, or other consents for the Project must be obtained. Each Responsible Design Professional shall, for the portion of the Work it is designing, identify and determine the meaning and effect of all applicable building code provisions and other Laws and requirements and take such measures as may be necessary to meet such Laws and requirements, including filing or revising any required applications, drawings, specifications, calculations, or other documents to the extent necessary to secure any required permits, approvals, or other consents for construction of the Project at the Worksite. Design Professional shall have overall responsibility for coordinating the efforts required to obtain all necessary governmental authority approvals and permits for the Work. Developer shall pay all third party costs and fees required to secure approvals and permits.

6.3.9 DESIGN-BUILD WORK The Core Group shall designate any Work that is to be performed on a design-build basis. Design Professional shall specify all applicable performance and design criteria for any of the Work being performed by Constructor or a Precon Trade on a design-build basis. Constructor or Precon Trades shall retain appropriately licensed design professionals to provide design services related to the design-build Work. Unless otherwise approved by the Core Group, Work to be performed on a



design-build basis shall be fully designed during preconstruction. Design Professional shall coordinate any design-build Design Documents with the other Design Documents and shall fully integrate any design-build Design Documents with the Construction Document submitted for permit or governmental approvals.

6.3.9.1 Design Professional shall be responsible for coordinating and integrating the information provided by Developer, Developer's Consultants, Design Professional's consultants, Constructor, Precon Trades, Subcontractors, and Others to prepare complete, coordinated and integrated Design Documents.

6.3.10 DOCUMENT REVIEW Throughout all phases of the Project, the IPD Team shall carefully study and compare the Design Documents with each other, with the report of the Joint Worksite Investigation, and with any information furnished by Developer as provided elsewhere in the Contract Documents and shall immediately report to the Core Group, in writing, any errors, inconsistencies or omissions discovered.

6.3.11 With reasonable promptness and without a cost, IPD Team members shall have access to the information described in Section 6.3.10. IPD Team members shall review the information furnished with reasonable care and advise the Core Group in writing of any errors, inconsistencies, inaccuracies, or incompleteness which would prompt Constructor, Precon Trades, or Subcontractors to include additional contingency in their estimates or require a Responsible Design Professional to make a design assumption that might prove wasteful if additional investigation was performed. The IPD Team members shall also suggest options for additional preconstruction investigation of existing conditions for Core Group consideration, including the cost and potential benefit of the differing levels of preconstruction investigation.

6.4 VALUE ANALYSIS STRATEGY The Core Group shall develop strategies for value analysis and for avoiding the waste of re-drawing as part of its TVD efforts, including early involvement of Precon Trades who possess information essential to the TVD process, carrying multiple design options forward, and deferring decisions until the last responsible moment.

6.5 COST MODELING Throughout the TVD process and construction of the Project, Constructor shall provide cost modeling on a continuous basis. Constructor shall generate cost model reports at appropriate milestones as designated by the Core Group. Constructor, Precon Trades, and other Subcontractors shall provide cost information and estimates of portions of the Work, systems under consideration, and such other cost information as required by the Core Group.

6.5.1 The Core Group shall establish milestones for updating and reconciling the cost model to assure that the overall cost is trending toward the Target Cost.

6.5.2 CONTINGENCIES IN COST MODEL The Expected Cost, Target Cost, subsequent cost models, and EMP will contain line items for the IPD Team Contingency and an escalation allowance, each in an amount to be agreed upon by the Core Group. Constructor and IPD Team members shall not include separate contingencies to address refinement of designs, materials, or equipment; instead, IPD Team members shall include realistic pricing based upon listed assumptions and understandings concerning the scope of work, labor, materials, and equipment required by the pending design.

6.5.3 COST MODEL RECONCILIATION If at any time cost models exceed the Target Cost, Expected Cost, or Allowable Cost, the Core Group shall give direction on what actions shall be taken by the IPD Team.



6.6 TARGET VALUE PRICING

6.6.1 TARGET COST Using the Target Value Design process, the IPD Team shall diligently strive to design the Project so that it can be constructed for the Expected Cost or less, and with a further goal of delivering the Project for the Target Cost through innovation and collaboration. The Core Group shall establish the Target Cost in the Risk Pool Plan. The Core Group shall jointly manage the budget to further the Project objectives. Once established, a decision that would cause the Target Cost to be exceeded may only be made with the express approval of the Core Group.

6.6.2 Target value pricing is a continuing refinement of the Expected Cost established in the Validation Study and the Target Cost, once established. Depending on the stage of document development, the scope and nature of this ongoing effort may change. Cost analysis shall not be deferred until documents reach a certain stage of development, but rather shall be the by-product of the continuous TVD process. Constructor and Precon Trades shall provide ongoing cost information and estimates of portions of the Work, systems, and details as they are developed or considered. IPD Team members shall participate in all cost exercises that the Core Group deems advisable. The estimates, Expected Cost, Target Cost and EMP shall each include an allowance amount for escalation in labor and material prices only as provided by the Core Group in an escalation management plan. Escalation in labor and material prices on a unit cost basis beyond the unit costs shown in the Contract Documents or escalation management plan will be initially charged to the escalation allowance. At Final Completion, the Expected Cost, Target Cost, and EMP will be adjusted to reflect the difference between the escalation allowance and actual escalation/de-escalation in labor and material prices.

6.6.3 The Core Group shall develop written protocols for TVD, including items such as the following:

- 6.6.3.1 Method to establish initial target costs for major components and systems;
- 6.6.3.2 Method for determining targets for other cost elements;
- 6.6.3.3 Schedule for selection of Precon Trades during design;
- 6.6.3.4 Method for forming and meeting structure for TVD Clusters for major Project components, processes, systems, or IPD Team deliverables;
- 6.6.3.5 Method to assure continuous cost analysis and reporting procedures within the TVD Clusters for monitoring estimated costs against components of the Expected Cost and Target Cost;
- 6.6.3.6 Protocols for set-based design;
- 6.6.3.7 Creation of a target value team comprised of the leaders of applicable TVD Clusters to meet regularly and frequently, with responsibility for evaluating TVD tradeoffs and opportunities (including function/cost trade-offs) and authority to direct value analysis and adjustments of the component/system costs up or down to maintain or improve on the Target Cost; and
- 6.6.3.8 The frequency of preparing the milestone roll-up estimates.

6.6.4 If in performing their respective obligations, Constructor, Precon Trades, or Subcontractors discover an error, omission, or inconsistency in the Design Documents, the applicable team member shall promptly notify the Core Group for action by Design Professional. It is recognized that, in their review of the design, Constructor, Precon Trades, and Subcontractors (other than design-build IPD Team members with regard to their own design obligations) are not acting in the capacity of licensed design professionals or assuming any design liability.



6.7 VALUE AND CONSTRUCTABILITY ANALYSES

6.7.1 VALUE ANALYSIS Throughout the Preconstruction Phase and especially during early design, the IPD Team shall identify options for reducing capital or life cycle costs, improving constructability and functionality, and enhancing operational flexibility consistent with Developer's objectives. The IPD Team shall bring forward value analysis proposals ("VAPs") within TVD Clusters, including alternative systems, means, methods, configurations, worksite locations, finishes, equipment, and the like that satisfy the general design criteria of the Project. The VAPs shall (a) create savings of time or money in designing, constructing, or operating and maintaining the Project, or (b) increase quality, constructability, or other measures of values that are cost effective.

6.7.2 The Parties shall use the TVD Clusters to break the work into smaller components for maximizing the benefits of the TVD process. VAPs shall be a primary focus of the TVD Clusters and should be a basis for set-based design. Each VAP shall (a) examine the proposed alternative, (b) identify all aspects of the Project directly or indirectly affected by the alternative, (c) specify the value to be achieved if the VAP is accepted, and (d) detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design, or safety standards. Each VAP shall be documented using an A-3 Report format that evaluates the VAP's specifics in relation to the value elements identified in the initial value identification report prepared as part of the TVD process. TVD Clusters and the IPD Team shall initially review and consider whether to carry a VAP as a set during design. In case of disagreement concerning whether to carry a VAP, the Core Group shall determine which VAPs to pursue. For each VAP that is carried forward, Design Professional shall ascertain design feasibility, satisfaction of the design concept, and compatibility and compliance with Laws and professional standards of care.

6.7.3 IPD TEAM CONSTRUCTABILITY ANALYSES The IPD Team shall continually review the Design Documents for clarity, consistency, constructability, and coordination among the construction trades and collaborate with the IPD Team in developing solutions to any identified issues. The IPD Team's constructability analysis aims (a) to determine that the design is progressing in a manner that will result in complete, accurate, and coordinated drawings that are sufficiently complete and coordinated for construction, and (b) to reduce the risk of disruption, delay, and changes. Constructor and Precon Trades will focus on accuracy, completeness, sequencing, and coordination. Nothing in this section shall relieve any Design Professional, Constructor, or any Subcontractor, Supplier, or Design Professional's consultant from its obligation to perform its Services or Work in accordance with the terms of this Agreement and the applicable standard of care. Precon Trades shall participate in preparing coordination drawings to identify routing and eliminate conflicts among the Work of various Precon Trades, Subcontractors, and Suppliers. Precon Trade coordination drawings shall be provided to Design Professional, together with other information that should be included in the Design Documents.

6.7.4 CONSTRUCTOR CONSTRUCTABILITY REVIEWS In order to reduce the risk of disruption, delay, rework, or inefficiencies, Constructor shall conduct constructability reviews in collaboration with Design Professional throughout the Project design. The purpose of these reviews is to assure that the Design Documents will result in Construction Documents that are sufficiently complete, accurate, and coordinated. The findings of these reviews shall be recorded and distributed to each IPD Team member. Design Professional shall evaluate the findings of these reviews, incorporate appropriate changes in the Design Documents, and provide notations on the Construction Documents or explain why such action is unnecessary.



Constructor and its Subcontractors shall be responsible for determining whether something is constructible. In conducting constructability reviews, Constructor shall not provide professional services which constitute the practice of architecture or engineering. Design Professional is responsible for the completeness and accuracy of the design. Notwithstanding the foregoing, consistent with the collaborative approach in this Agreement, Constructor shall advise Design Professional if Constructor has actual knowledge that the design does not comply with Laws. Nothing in this section shall relieve any Party from their respective obligations to perform in accordance with the terms of their respective duties under this Agreement and the applicable standard of care.

6.8 QUALITY ASSURANCE AND QUALITY PLANNING

6.8.1 QUALITY The IPD Team will work diligently throughout the Project to assure quality in the first instance, avoid defects, and proactively and collaboratively mitigate the impact of any defects that do occur.

6.8.2 BUILT-IN QUALITY PLAN Design Professional and Constructor, in collaboration with the other IPD Team Members, shall develop a plan that addresses issues such as the following:

- A) Confirming that the Contract Documents clearly communicate to Project participants the conditions necessary for the satisfaction of their commitments;
- B) Training workers on the benefits of standardized work practices, the continuous improvement of work practices and the negative impact upon the Project of failing to achieve commitments;
- C) Using mockups, first run studies, early completion of standard work units, and similar efforts to demonstrate and document agreed-upon levels of quality;
- D) Providing task-based quality checklists for use by trade persons to self-evaluate quality performance, establish benchmarks, and promote continuous improvement;
- E) Developing methods for onsite managers and others providing quality assurance to review early work product and assure quality performance;
- F) Integrating quality review and Project planning and scheduling pursuant to Section 13.1;
- G) Developing protocols for trade persons to discuss and assure quality when Work is being handed off to another;
- H) Identifying procedures for immediately addressing quality failures by workers originally performing Work to assure minimum cost impact and continuous improvement;
- I) Developing procedures for recognizing outstanding performance and quality by individual trade persons and the IPD Team members; and
- J) Creating standards by which to measure and track quality performance.

6.8.3 OPERATIONS QUALITY PLAN Constructor, Precon Trades, and Subcontractors shall submit to the Core Group for its approval a construction operations quality plan that addresses the following:

- A) The removal of clutter and all unnecessary items from the work environment;
- B) Placing items that will be used during construction so as to facilitate their efficient and responsible use;
- C) Creating an orderly and clean workspace with continuous inspection and clean-up;
- D) Standardizing and constantly improving construction operation practices; and
- E) Creating a culture of discipline and continuous improvement.

ARTICLE 7 DESIGN PROFESSIONAL'S AND CONSTRUCTOR'S COMPENSATION



7.1 DESIGN PROFESSIONAL'S COMPENSATION

7.1.1 Developer shall pay Design Professional pursuant to the terms of a separate agreement entered into between Developer and Design Professional, who is not part of the Risk Pool Plan.

7.2 CONSTRUCTOR'S COMPENSATION

7.2.1 Developer shall pay Constructor its Payable Costs for the Work, plus Constructor's Profit, subject to the incentive and risk-sharing provisions of ARTICLE 10 and the EMP. Payments will be as provided in the HUD Construction Contract and the Builder Sponsor Profit Risk Allowance entered into between the Developer and Constructor on the same date as the HUD Construction Contract ("BSPRA").

7.2.2 Constructor's Profit shall be comprised solely of its profit set forth in the Risk Pool Plan, as adjusted per ARTICLE 15, and BSPRA. Constructor's Profit shall be established as a fixed sum at the time of the establishment of the Target Cost and shown in the Risk Pool Plan.

ARTICLE 8 BASIS OF COST BENCHMARKS

8.1 COMPONENTS OF COST BENCHMARKS

8.1.1 Unless the Parties mutually agree otherwise, each of the Expected Cost, Target Cost and EMP shall be the sum of:

8.1.1.1 Design Professional's estimated Payable Costs and Design Professional's Profit;

8.1.1.2 Constructor's charges plus the contingencies and allowances included in the Expected Cost, consisting of:

- (a) Constructor's estimated Payable Costs;
- (b) The current balance of the IPD Team Contingency;
- (c) Any other contingencies established in the Expected Cost and determined by the Core Group to be carried forward;
- (d) Any remaining allowances that have not previously been reconciled; and
- (e) Constructor's Profit.

8.1.2 FURTHER DESIGN DEVELOPMENT If the Construction Documents are not complete at the time the EMP is developed and submitted to the Core Group, the EMP shall provide for final development of the Design Documents. Such further development does not include the cost of changes in scope, systems, kinds and quality of materials, finishes, or equipment in excess of the remaining balance of any Developer-controlled contingency established for design changes or quality enhancements.

8.2 DOCUMENTING THE BASES OF COST BENCHMARKS The Expected Cost, Target Cost and EMP shall each have a written statement of its basis, which shall include:

8.2.1 A list of the drawings, specifications and other bases for design, including all addenda used in preparing the cost estimate;



- 8.2.2 A list of allowances and a statement of their basis;
- 8.2.3 A description of the assumptions, deviations from Developer's Program, and clarifications upon which the benchmark is based;
- 8.2.4 The date of Substantial Completion and the date of Final Completion upon which the benchmark is based;
- 8.2.5 The schedule of the Work and Services prepared by the Design Professional and the Constructor and approved by the Core Group and upon which the date of Substantial Completion and the date of Final Completion are based;
- 8.2.6 A schedule of applicable alternate prices;
- 8.2.7 A schedule of applicable unit prices;
- 8.2.8 The current balance of the IPD Team Contingency;
- 8.2.9 Any other contingencies determined by the Core Group to be carried forward;
- 8.2.10 A statement identifying any known patented or copyrighted materials, methods, or systems incorporated in the Work that are likely to require the payment of royalties or license fees;
- 8.2.11 A schedule of values organized by IPD Team member and trade categories, allowances, contingencies permitted by this Agreement, self-performed Work, and any other items that comprise the benchmark; and
- 8.2.12 A detailed budget and breakdown of all general conditions and jobsite management expenses included within the benchmark.

ARTICLE 9 PAYABLE COSTS

9.1 Subject to the Risk Pool Plan and the EMP, Developer agrees to pay Design Professional and Constructor for their respective Payable Costs and to be responsible for its own Payable Costs. Payment of Payable Costs shall be in addition to Design Professional's Profit and Constructor's Profit. The compensable costs to Design Professional and Constructor, subject to the Risk Pool Plan and the EMP, shall be the "Actual Costs" as defined in Article 13, Paragraph A of the HUD Construction Contract.

9.2 COST ITEMS The compensable costs to Design Professional and Constructor, subject to the Risk Pool Plan and the EMP, shall be the "Actual Costs" as defined in Article 13, Paragraph A of the HUD Construction Contract and as described in the following section:

9.2.1.1 Constructor's labor shall be compensated on the basis selected below: [x]
Actual wages or salaries, as follows:

(a) Wages paid for field labor in the direct employ of Constructor in the performance of the Work;

(b) Salaries of Constructor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material



and equipment, and employees from the principal or branch office, wherever stationed, performing the functions listed below: ☐ Senior Project Manager

Assistant Project Manager

Superintendents

Assistant Superintendents

BIM Coordinator

Project Administration

Trade Foremen

Project Executive

Safety Director

Lean/Last Planner – Scheduler (by owner)

]

(c) Cost of all employee benefits and payroll taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by Laws, labor agreements, or paid under Constructor's standard personnel policy, insofar as such costs are paid to employees who are included in the Payable Costs pursuant to subsections (a) or (b) immediately above; 9.2.1.4 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, and their transportation, storage, and handling;

9.2.1.5 The expenses of printing, reproductions, postage, express delivery charges, and handling and delivery of drawings and specifications;

9.2.1.7 Payments made by Constructor to Precon Trades, Subcontractors, Suppliers, or consultants for Work performed under this Agreement. 9.2.1.8

Costs for Constructor's self-performed trade Work 9.2.1.9 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are not incorporated in the Work but are used or consumed in the performance of the Work, less salvage value or residual value; 9.2.1.10 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Constructor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost.

Rentals from Constructor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the fair market value of the piece of equipment at the time placed in service; 9.2.1.11 Cost for required insurance shall be compensated on the basis selected below[] Actual cost of insurance required under the Contract Documents; 9.2.1.13 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work or Services for which Constructor is liable;

9.2.1.14 Permits, fees, licenses, tests, royalties, or damages for infringement of patents or copyrights; 9.2.1.15 Losses or damages to the Work to the extent not compensated by insurance or other third parties, and the cost of corrective Work during the Construction Phase;

9.2.1.16 Photographs, videography, mobile phone service, and internet service at the Worksite and reasonable petty cash expenses at the field office; 9.2.1.17 All costs associated with a BIM approach, as required by and approved by the Core Group;



9.2.1.18 All water, power and fuel costs necessary for the Work; 9.2.1.19 Cost of removal or recycling of all non-hazardous substances, debris, and waste materials; 9.2.1.20 Costs incurred due to an emergency affecting the safety of persons or property;

9.2.1.21 Mediation, arbitration, and legal fees and costs, including attorneys' fees, other than those arising from disputes among IPD Team members, reasonably and properly resulting from performance of the Work or Services;

9.2.1.22 Additional costs resulting from Laws, including taxes, enacted after the date of this Agreement;

9.2.1.23 All other costs directly incurred in the performance of the Work or in connection with the Project, and not included in Design Professional's Profit and Constructor's Profit as set forth in ARTICLE 7, to the extent approved by the Core Group;

9.2.1.24 Normal, non-Project overhead of Constructor, Design Professional, and Subcontractors and consultants that are being compensated for their portion of the Work or Services on a cost-reimbursable basis as provided below:

9.2.1.24.1 Constructor's non-Project overhead shall be compensated on the basis selected below: [x] A stipulated sum for overhead set forth in the Risk Pool Plan and billed on a percentage completion basis. 9.2.1.24.3 Subcontractors compensated on a cost-reimbursable basis shall be compensated for their non-Project overhead on the basis selected below: [] A stipulated sum for its overhead set forth in the Risk Pool Plan and billed on a percentage completion basis. 9.2.2 All costs incurred by Owner that are either: (1) in the performance of another Party's duties under this Agreement which the other Party does not timely perform; or (2) provided elsewhere in this Agreement as an Owner cost counted toward the Expected Cost, Target Cost or EMP. However, prior to incurring any such Payable Costs, Owner shall notify the Core Group at least five (5) Days beforehand describing the situation and the amount(s) Owner intends to pay.

9.3 DISCOUNTS All discounts, rebates, and refunds on amounts included in the Payable Costs, and all returns from sale of surplus materials and equipment purchased for the Work, shall be credited to the Payable Costs.

ARTICLE 10 RISK POOL

10.1 RISK POOL The Core Group shall develop a financial incentive program as part of the Risk Pool Plan to encourage superior performance based upon Project objectives and to reward the Risk Pool Members for successfully achieving superior performance and successfully exceeding the Core Group's established expectations and benchmarks. Upon approval by the Core Group, the Risk Pool Plan shall be included in the approved Validation Study and may be amended by Change Order.

10.1.1 The incentive program shall provide a basis for continually monitoring and reviewing the IPD Team's performance. This process will provide the IPD Team with periodic performance information to allow corrections or modifications so as to improve the quality of the Work and Services. The incentive program shall be funded with shared savings as evidenced by contingency preservation and reduction in the Payable Costs or as otherwise agreed among the Developer and Risk Pool Members.



10.2 ESTABLISHMENT OF RISK POOL The "Risk Pool" is the collective pool of the profits put at risk by Risk Pool Members if the Project is delivered for more than the EMP or otherwise fails to achieve established criteria, as more particularly addressed in the Risk Pool Plan. Profit shall be as defined in this Agreement and the Risk Pool Plan. Amounts earned by the Risk Pool Members under the financial incentive program will augment the Risk Pool.

10.3 The Risk Pool Plan will be developed through consensus by Developer and the Risk Pool Members, but the Core Group shall have final authority to determine the basis for participation and percent participation by each Risk Pool Member. Prior to finalization of the Risk Pool Plan, any Precon Trade or consultant proposed to be a Risk Pool Member may refuse participation in the Risk Pool Plan. Such Precon Trade or consultant will instead be compensated on a cost-plus-fee basis, subject to a guaranteed maximum price as set forth in the subcontract, or else replaced, at the discretion of the Core Group.

10.4 The Risk Pool Plan shall identify (a) the Risk Pool Members; (b) the incentive amounts and amount of profit that is at risk in the Risk Pool; (c) each Risk Pool Member's interest in the Risk Pool; (d) the Target Cost; (e) any Project success metrics or conditions of satisfaction that must be achieved by the Risk Pool Members as a condition to payment of some or all of the Risk Pool; (f) the manner of sharing savings realized in the final Actual Cost relative to the Expected Cost, Target Cost, and/or EMP; (g) how the Risk Pool shall be augmented and disbursed, including the effect of escalation, Change Orders, and warranty Work on Risk Pool amounts and distributions; (h) provisions for retainage, if any; (i) the impact of termination on the Risk Pool and Risk Pool Members; and (j) the terms and conditions of any other incentives included in the Risk Pool Plan. A major purpose of the Risk Pool Plan is to establish incentives for participants to collectively achieve savings in the Payable Costs relative to the Expected Cost, and to place the Risk Pool Members' profits at risk to fund certain potential cost overruns.

10.5 Each Risk Pool Member shall have the following maximum by which it can exceed its individual Expected Cost (excluding profit at risk), which is set forth as follows:

<u>Risk Pool Member</u>	<u>Maximum Excess Payable Costs</u>
John Rohrer Contracting Company	\$402,558.00
KAT Excavation, Inc.	\$575,273.00
Western Forms	\$ 76,734.00
Nebel Construction Services, Inc.	\$261,117.00
Green Field Energy Group	\$407,016.00
Palmer Electric Company	\$334,000.00
Haren & Laughlin Construction Company, Inc.	\$365,188.00
Haren & Laughlin Construction Company, Inc.	\$487,445.00
(for non-Risk Pool Member Subcontractors @ 50% allocation)	

If during the performance of the Work or Services the total Payable Costs incurred by a Risk Pool Member exceed the amount budgeted for such Risk Pool Member in the current EMP (excluding IPD Team Contingency), the overrun shall be paid up to the Maximum Excess Payable Cost set forth above as follows: (1st) from that portion of any amounts recovered from insurance or responsible third parties in reimbursement of Payable Costs until such amounts are fully depleted – see Section 10.5.1; (2nd) from the IPD Team Contingency until the Maximum Excess Payable Cost for such Risk Pool Member is reached, or the IPD Team Contingency is fully depleted;



(3rd) from undistributed amounts of the Risk Pool until the Maximum Excess Payable Cost for such Risk Pool Member is reached, or the undistributed amounts of the Risk Pool are fully depleted; (4th) from previously distributed amounts of the Risk Pool, which shall be returned to Developer by the Risk Pool Members until the Maximum Excess Payable Cost for such Risk Pool Member is reached, or the previously distributed returned amounts of the Risk Pool are fully depleted; and (5th) from the Developer Contingency until the Maximum Excess Payable Cost for such Risk Pool Member is reached, or the Developer Contingency is fully depleted. Any Payable Costs which exceed the EMP of an individual Risk Pool Member shall be paid by such Risk Pool Member per ARTICLE 9. As part of the process of determining final payment, the Core Group shall determine the total Payable Costs for the Project. The final value of the Risk Pool (including any shared savings) shall be determined as part of final payment in accordance with the Risk Pool Plan and this Agreement.

10.5.1 If at the time for final payment, recoveries of Payable Costs are reasonably anticipated from insurance or third parties, Developer shall make final payment based on the Core Group-approved estimate of the amount of the recovery of Payable Costs. As mutually agreed, the Party receiving the recovery shall either make distribution of the recovery of Payable Costs among the Parties on behalf of Developer or else reimburse the Developer in the amount of the recovery of Payable Costs. To the extent the actual recovery differs from the estimated recovery, the Developer and Risk Pool Members shall reconcile and adjust past payments to reflect the actual recovery of Payable Costs.

10.5.2 KAT Excavation, Inc. and John Rohrer Contracting Company have deferred 1% of their overhead. The values are as follows:

- KAT Excavation, Inc.	\$39,643.00
- John Rohrer Contracting Company	\$39,444.00

The deferred overhead shall be paid back to both respective companies if any of the following conditions apply and in this order: (1st) the structural design change estimate validation allows the total deferred overhead values to be included without exceeding the 12/19/2015 estimates; (2nd) if savings are recognized at the end of the project and before distribution per the terms of the 2/22/2016 Risk Pool Plan, deferred overhead will be distributed; and (3rd) there is (change to are) no savings recognized, but there is enough IPD Team Contingency remaining at the end of the project to fund both deferred overheads. The deferred overheads will not be paid if none of the above conditions apply.

ARTICLE 11 ESTIMATED MAXIMUM PRICE

11.1 ESTIMATED MAXIMUM PRICE The Core Group shall propose the Estimated Maximum Price for each Risk Pool Member based on the Project requirements when it determines that the Design Documents are sufficiently advanced for that purpose. If the Developer agrees to the EMP, the parties shall execute the EMP Amendment. Upon execution of the EMP Amendment, the Developer's Program will be superseded by the Design Documents defined in the EMP Amendment as the basis for the EMP.

11.2 The EMP shall be adjusted, with consent of the Core Group, for the reasons, and in the same manner, provided in ARTICLE 15 of the Agreement relating to adjustments in the Expected Cost and Target Cost.



11.3 The EMP shall be as determined by the Core Group and is independent of the Expected Cost or the Target Cost. The EMP Amendment shall determine whether the EMP is a maximum price guaranteed by the Risk Pool Members.

ARTICLE 12 RISK IDENTIFICATION, MANAGEMENT, AND ALLOCATION

12.1 RISK IDENTIFICATION

12.1.1 **RISK WORKSHOP** Early in the Preconstruction Phase, the IPD Team shall identify material project risks through one or more workshop sessions involving relevant participants. The Core Group shall select a facilitator to lead the risk workshop. The Core Group may choose to employ an independent risk facilitator or utilize an employee of an IPD Team member.

12.1.2 **RISK IDENTIFICATION PROCESS** The workshop participants shall identify material project risks through a risk matrix/mapping process utilizing brainstorming, checklist, and other appropriate techniques. The risk facilitator shall record and prepare a risk identification report based upon the collective assessment of the risk workshop participants. The Core Group shall, at agreed-upon intervals, update the risk identification report in light of any relevant additional information.

12.1.3 **RISK EVALUATION AND ASSESSMENT** The IPD Team shall assess and rank identified risk in such a way that attention may be focused on those risks assigned a high priority. The IPD Team shall adopt an appropriate scoring system identifying the likelihood of occurrence and impact, paying particular attention to potential cost and time impacts to the Project. Once Project risks have been ranked and scored, the IPD Team shall prepare a risk register identifying the principal Project risks and the team member assigned to lead IPD Team efforts at monitoring and managing each risk.

12.2 **RISK MANAGEMENT PLAN** Once the IPD Team has identified material Project risks, it shall develop a risk management plan for addressing the identified risks, subject to Core Group approval. The risk management plan shall (a) set forth contingency plans for addressing identified risks; (b) assign primary responsibility for the management of specific risks; and (c) address the role of others in managing risks.

12.3 **RISK ALLOCATION** Any costs or savings resulting from the occurrence or non-occurrence of identified risks shall be addressed pursuant to the terms of this Agreement.

12.4 INDEMNIFICATION

12.4.1 **DEVELOPER'S INDEMNITY** To the fullest extent permitted by law, Developer shall indemnify and hold Constructor and Design Professional harmless from all loss due to bodily injury and property damage other than to the Work itself or other property insured pursuant to this Agreement, including attorneys' fees and legal costs, but only to the extent caused by the negligent acts or omissions of Developer or anyone for whose acts or omissions Developer may be liable. Developer shall be entitled to reimbursement by the indemnitee of any defense costs paid above Developer's percentage of liability for the underlying claim to the extent provided for in subsections 12.4.2 and 12.4.3. This does not create a duty to defend any professional liability claim.



12.4.1.1 If in accordance with Developer's direction, Constructor or a Subcontractor claims an exemption for taxes, Developer shall indemnify and hold Constructor and Subcontractors harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Constructor or the Subcontractor as a result of any such action.

12.4.2 CONSTRUCTOR'S INDEMNITY To the fullest extent permitted by law, but subject to the limitations set forth in Section 12.6, Constructor shall indemnify and hold Developer and Design Professional harmless from all loss due to bodily injury and property damage, other than to the Work itself or other property insured pursuant to this Agreement, including attorneys' fees and legal costs, but only to the extent caused by the negligent acts or omissions of Constructor or anyone for whose acts or omissions Constructor may be liable. Constructor shall be entitled to reimbursement by the indemnitee of any defense costs paid above Constructor's percentage of liability for the underlying claim to the extent provided for in the subsections 12.4.1 and 12.4.3. This does not create a duty to defend any professional liability claim.

12.4.3 DESIGN PROFESSIONAL'S INDEMNITY To the fullest extent permitted by Law, but subject to the limitations set forth in Section 12.6, Design Professional shall indemnify and hold Developer and Constructor harmless from all loss due to bodily injury and property damage, other than to the Work itself or other property insured pursuant to this Agreement, including attorneys' fees and legal costs, but only to the extent of the negligent acts or omissions of Design Professional, or anyone for whose acts or omissions any of them may be liable. Design Professional shall be entitled to reimbursement by the indemnitee of any defense costs paid above Design Professional's percentage of liability for the underlying claim to the extent provided for in subsections 12.4.1 and 12.4.2. This does not create a duty to defend any professional liability claim.

12.4.3.1 Without limiting any professional liability of the Design Professional in its obligation to coordinate and integrate the Services and Design Documents, the professional liability for a design error or omission is allocated to the IPD Team member that had the responsible charge under its professional license for the design element(s) associated with such error or omission. However, if any IPD Team member is obligated by Law to overstamp the Design Documents prepared by or for a design-build trade, then the professional liability for such design error or omission is allocated to the applicable design-build trade that was responsible for drafting the applicable Design Documents.

12.4.4 ROYALTIES, PATENTS, AND COPYRIGHTS Constructor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Constructor and incorporated in the Work. Subject to the limitations set forth in Section 12.6, Constructor shall indemnify and hold Developer and Design Professional harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Developer agrees to indemnify and hold Constructor and Design Professional harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Developer. Subject to the limitations set forth in Section 12.6, Design Professional agrees to indemnify and hold Constructor and Developer harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any



patented or copyrighted materials, methods, or systems specified by Design Professional.

12.4.5 JOINT DEFENSE OF THIRD-PARTY CLAIMS Because the Parties and Joining Parties are agreeing to jointly manage the Project's risks, the Parties and Joining Parties will use good faith efforts to resolve any third-party claims affecting multiple parties (including subcontractor and consultant claims) under a joint defense agreement establishing the procedures and rights of the Parties and Joining Parties in which the affected parties will endeavor to jointly address, investigate, manage, defend, settle, or otherwise resolve such third-party claims arising from or related to the Project, subject to applicable legal and ethical considerations, including whether one or more parties require independent legal counsel.

12.5 INSURANCE

12.5.1 EVALUATION OF COORDINATED INSURANCE PROGRAM OPPORTUNITIES. At their earliest opportunity, but in no event later than the Preconstruction Phase described at ARTICLE 6, the Core Group shall evaluate coordinated insurance approaches for design and construction of the Project, and they may engage a knowledgeable consultant to advise them. If cost effective, the Parties shall endeavor to develop a coordinated insurance program consistent with the risk allocation set forth in this Agreement and providing, at a minimum, the coverages set forth in this Section 12.5. These coverages shall be procured and maintained as specified if the parties do not proceed with a coordinated insurance program. If a coordinated insurance program is instituted by the Parties and Joining Parties, this Section 12.5 shall be amended to be consistent with such insurance program.

12.5.2

12.5.2.2 DESIGN PROFESSIONAL'S INSURANCE Before commencing its Services, Design Professional shall purchase and maintain the following insurance: professional liability, CGL, workers' compensation, employer's liability, and automobile liability. The professional liability insurance shall protect Design Professional from claims arising out of the performance of its Services under this Agreement, whether such services are provided by Design Professional or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

12.5.2.3 Constructor and Design Professional shall, at a minimum, maintain limits of liability and such policy terms, conditions, and endorsements in a company or companies satisfactory to the IPD Team and as set forth in Exhibit C.

12.5.2.4 DEVELOPER'S LIABILITY INSURANCE Developer shall provide and maintain its own general liability insurance as more specifically set forth in Exhibit C.

12.5.2.5 The insurance required under this subsection 12.5.2 shall be continuously maintained until 4 years after Substantial Completion or as set forth in Exhibit C.

12.5.3 PROPERTY INSURANCE Before commencement of Construction Phase, the Developer shall obtain and maintain a builder's risk policy upon the entire Project for



the full cost of replacement at the time of loss ("Builder's Risk Provider"). If the Project involves the remodeling or refurbishing of an existing structure or the construction of an addition to an existing structure, the Developer shall ensure that the existing structure is insured against the perils identified below without limitation or exception due to the construction of the Project. The builder's risk insurance shall include Developer, Constructor, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as named insureds. This insurance shall be written as a builder's risk policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure against at least: (a) the perils of fire, lightning, explosion, windstorm, and hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Constructor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind, terrorism, testing if applicable, collapse however caused; and (b) ensuing damage from defective design, workmanship, or material. Developer shall be solely responsible for any deductible amounts or coinsurance penalties, provided that only \$ [] of them shall be deemed Payable Costs. Moreover, this policy shall provide for a waiver of subrogation in favor of Developer, Constructor, Subcontractors, Subsubcontractors, Suppliers, and Design Professional. This insurance shall remain in effect until final payment has been made or until no person or entity other than Developer has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Project shall not commence until Developer has secured the consent of the insurance company or companies providing the coverage required by this subsection 12.5.3. The Core Group shall review and approve all sub-limits and special inclusions or exclusions. The Builder's Risk Provider shall provide to the other Parties a copy of the property policy or policies obtained in compliance with this subsection 12.5.3 prior to commencement of construction. The Builder's Risk Provider shall be responsible for all costs and liability reasonably attributed to its failure or neglect in purchasing or maintaining the coverage described herein.

12.5.3.1 BUSINESS INCOME INSURANCE Developer shall procure and maintain insurance against loss of use of Developer's property caused by fire or other casualty loss.

12.5.3.2 If Developer is the Builder's Risk Provider and does not intend to purchase the property insurance required by this Agreement prior to commencement of construction, Developer shall give written notice to Constructor before commencement of the Construction Phase. In such case, Constructor shall provide insurance to protect its interests and the interests of Design Professional, Subcontractors, and Subsubcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to Developer and result in an automatic adjustment of the Expected Cost, Target Cost, and EMP in the amount of such cost.

12.5.3.3 The Parties waive all rights against each other and their respective employees, agents, contractors, consultants, subcontractors, and subsubcontractors for damages caused by risks to the extent covered by applicable property insurance except such rights as they may have to the proceeds of the insurance and such rights as they may have for any failure of the Builder's Risk Provider to obtain and maintain property insurance in compliance with this Agreement.

12.6 LIMITATIONS OF LIABILITY



12.6.1 Subject to the exceptions in subsection 12.6.2, notwithstanding anything to the contrary in the Contract Documents a Risk Pool Member's liability under any legal theory or cause of action to Developer or any other Risk Pool Member, alone or in the aggregate, for any claims, loss, expense, damages, or other liability arising out of or related to this Agreement, the Risk Pool Member's work, or the Project, shall not exceed an amount equal to the sum of: (a) that Risk Pool Member's share of the sums distributed or available for distribution from the Risk Pool; and (b) savings paid or due the Risk Pool Member under the Risk Pool Plan.

12.6.2 The exceptions to limitation of liability in the subsection immediately above are the following: (a) liability arising from the Risk Pool Member's fraud or willful misconduct; (b) liability for which proceeds from insurance required under this Agreement are recovered or would have been recovered but for the Risk Pool Member's failure to secure the required insurance; (c) liability for which recovery is secured from the Risk Pool Member's subcontractors, suppliers or consultants where such entities are not Risk Pool Members or otherwise expressly included within the scope of this limitation of liability; (d) liability for fines or penalties assessed by a governmental authority having jurisdiction over the Project that result from an act or omission of the Risk Pool Member or those for whom it is liable; (e) liability arising from the Risk Pool Member's failure to pay sums due under this Agreement for Work or Services; and (f) direct remediation costs arising from Constructor's or Subcontractor's failure to comply with its correction of work obligation under subsections 12.7.4 and 12.7.5.

12.7 WARRANTIES AND CORRECTION OF THE WORK

12.7.1 Constructor warrants that all materials and equipment shall be new (unless otherwise specified), of good quality, and in conformance with the Contract Documents. At Developer's request, Constructor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Constructor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal or excessive usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Developer or Others, or abuse. Constructor's warranty pursuant to this Section 12.7 shall commence on the date of Substantial Completion.

12.7.2 With respect to any portion of Work first performed after Substantial Completion, Constructor's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective Work performed by Constructor.

12.7.3 Constructor shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Constructor's liability for such warranties shall be limited to the one-year correction period. After that period Constructor shall assign them to Developer and provide reasonable assistance to Developer in enforcing the obligations of Subcontractors and Suppliers.

12.7.4 If any Defective Work is found during the one year after the date of Substantial Completion, Developer shall promptly notify Constructor in writing and no later than the first anniversary of the date of Substantial Completion. Unless Developer provides written acceptance of the condition, Constructor shall promptly correct such Defective Work at its



own cost and bear the expense of additional Services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Developer discovers and does not promptly notify Constructor of, and give Constructor an opportunity to test or correct, Defective Work, Developer waives Constructor's obligation to correct that Defective Work and its right to claim a breach of warranty for that Defective Work.

12.7.5 If Constructor fails to correct Defective Work within a reasonable time after receipt of Developer's written notice under subsection 12.7.4, Developer may correct it. If Developer's correction of such Defective Work occurs prior to final payment, an appropriate Change Order shall be issued deducting Developer's reasonable cost of correcting that Defective Work from payments then or thereafter due Constructor. In any event, if payments then or thereafter due Constructor, if any, are not sufficient to cover such amounts, Constructor shall pay the difference to Developer.

12.7.6 If, after the one-year correction period but before the applicable limitation period has expired, Developer discovers any Work that Developer considers Defective Work, Developer shall, unless the Defective Work requires emergency correction, promptly notify Constructor and allow Constructor an opportunity to correct the Work. If Constructor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Developer and shall complete the correction of Work within a mutually agreed timeframe. If Constructor does not elect to correct the Work, Developer may have the Work corrected by itself or Others. If Developer intends to seek recovery of a reasonable amount of those costs from Constructor, subject to the limitations of Section 12.6, Developer shall promptly provide Constructor with an accounting of the correction costs it reasonably incurred.

12.7.7 If Constructor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, Constructor shall be responsible for the cost of correcting the destroyed or damaged construction.

12.7.8 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Constructor's other obligations under the Contract Documents.

12.7.9 Prior to final payment, at Developer's option and with Constructor's agreement, Developer may elect to accept Defective Work rather than require its removal and correction. In such case the amount due Constructor shall be equitably adjusted.

12.8 SAFETY

12.8.1 SAFETY PRECAUTIONS AND PROGRAMS Constructor shall have overall responsibility for safety precautions and programs in the performance of the Work. This section does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with Laws.

12.8.2 Constructor shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

12.8.2.1 Its employees and other persons at the Worksite;

12.8.2.2 Materials and equipment stored at the Worksite or other locations for use in the Work; and



12.8.2.3 Property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

12.8.3 Constructor will use diligent efforts to maintain work, materials and equipment free from injury or damage from rain, wind, storms, frost, or heat. If adverse weather makes it unreasonable to continue operations safely in spite of weather precautions, Constructor shall cease work and notify the Core Group.

12.8.4 Constructor will erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Developers and users of adjacent sites and utilities.

12.8.5 At least forty-eight (48) hours before Constructor breaks ground, Constructor will give written notice to all persons who have an interest on or immediately adjacent to the Worksite. Such persons include utility companies, adjacent property Developers, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads, or otherwise who may be affected by Constructor's operation. Notice is given so they may remove any obstruction for which they are responsible, and so they can have a representative on the Worksite to see that their property is properly protected.

12.8.6 CONSTRUCTOR'S SAFETY REPRESENTATIVE Constructor's Worksite safety representative is [Stephen Reynolds] who shall act as Constructor's authorized safety representative with a duty to prevent accidents in accordance with subsection 12.8.2. If no individual is identified in this subsection 12.8.6, the authorized safety representative shall be Constructor's superintendent. Constructor shall report immediately in writing to Developer all recordable accidents and injuries occurring at the Worksite. When Constructor is required to file an accident report with a public authority, Constructor shall furnish a copy of the report to Developer.

12.8.7 Constructor shall promptly report in writing to the Core Group all accidents arising out of or related to the Work which result in death, personal injury, or property damage. Constructor shall comply with all Laws regarding accidents, including required notices. Constructor shall provide Core Group with copies of such notices.

12.8.8 Constructor shall promptly remedy damage or loss not insured under property insurance which may arise from the Work, to the extent of the negligence attributed to acts or omissions of Constructor, or anyone for whose acts Constructor may be liable.

12.8.9 Constructor will protect the Worksite, its employees, and others from any harmful substances that are brought onto the Worksite by Constructor or any Subcontractor. Constructor will remove and replace any soil or vegetation contaminated by such substances with soil or vegetation of equal quality prior to contamination. When use or storage of Hazardous Materials or equipment or unusual methods are necessary for execution of the Work, Constructor will exercise utmost care and carry on such activities under supervision of qualified personnel.

12.8.10 If Developer deems any part of the Work or Worksite unsafe, Developer, without assuming responsibility for Constructor's safety program, may require



Constructor to stop performance of the Work or take corrective safety measures satisfactory to Developer, or both. If Constructor does not adopt corrective measures, Developer may perform them and deduct their cost from the amounts due Constructor. If no amounts are due, Constructor shall reimburse Developer. Constructor agrees to make no claim for damages, for an increase in the Expected Cost or EMP, or for a change in the Contract Time, based on Constructor's compliance with Developer's reasonable request for corrective safety measures.

12.9 EMERGENCIES

12.9.1 In an emergency, Constructor shall act in a reasonable manner to prevent personal injury or property damage.

12.9.2 Constructor will promptly remedy damage and loss to property of Developer or third parties caused in whole or in part by Constructor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Constructor is responsible under this Agreement. Except to the extent such damage or loss results from Constructor's fraud or willful misconduct, all costs and expenses incurred by Constructor in connection with such remedial work are reimbursable as Payable Costs but will not increase or decrease the EMP, Target Cost, Expected Cost, or Allowable Cost.

12.10 HAZARDOUS MATERIALS

12.10.1 Constructor shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement. If during construction suspected Hazardous Material is discovered at the Worksite, Constructor shall be entitled to immediately stop Work in the affected area. Constructor shall report the condition to Core Group and as required by Law. Constructor shall not be obligated to commence or continue Work until such suspected Hazardous Material has been removed or rendered or determined to be harmless by Developer as certified by an independent testing laboratory and approved by a government agency.

12.10.2 Developer shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures. Such measures shall be the sole responsibility of Developer and shall be performed in a manner minimizing any adverse effects upon the Work. Constructor shall resume Work in the area affected by any suspected Hazardous Material only upon written agreement between the Parties after (a) the suspected Hazardous Material has been removed or rendered or determined to be harmless, and (b) any necessary approval from a governmental agency.

12.10.3 If a Risk Pool Member incurs additional costs or is delayed due to the presence or remediation of suspected Hazardous Material, the Risk Pool Member shall be entitled to an equitable adjustment in the Expected Cost, Target Cost, EMP, and/or the Contract Time.

12.10.4 To the extent not caused by the negligent acts or omissions of Constructor, its Subcontractors, and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Developer shall defend, indemnify, and hold harmless Constructor, its Subcontractors, and Subsubcontractors, Design Professional, and the agents, officers, directors, and employees of each of them, from and against any and all



direct claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, arising out of or relating to Hazardous Materials at the Worksite that were not brought to the Worksite by Constructor.

12.11 MATERIALS BROUGHT TO THE WORKSITE

12.11.1 Constructor shall maintain at the Worksite Safety Data Sheets (SDS) required by Law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Constructor, Subcontractors, Developer, or Others. Constructor shall make SDS available to Developer, Subcontractors, and Others.

12.11.2 Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor in accordance with the Contract Documents and used or consumed in the performance of the Work.

12.11.3 To the extent not caused by the negligent acts or omissions of Developer, its agents, officers, directors, and employees, but subject to the limitations of liability set forth in Section 12.6, Constructor shall defend, indemnify and hold harmless Developer, its agents, officers, directors, and employees, from and against any and all direct claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor in accordance with the Contract Documents.

12.12 CONCEALED OR UNKNOWN WORKSITE CONDITIONS If there are (a) subsurface or other concealed physical conditions at the Worksite which are materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions at the Worksite which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Constructor shall stop Work and give prompt written notice of the condition to Core Group. Constructor shall not be required to perform any Work relating to the differing condition without the written mutual agreement of the Parties. The Expected Cost, Target Cost, EMP and Contract Time shall be adjusted as provided in ARTICLE 15. Constructor shall provide Developer with written notice of any claim as a result of such conditions within the time period set forth in Section 15.3.

12.13 DELAYS

12.13.1 If Constructor or Design Professional is delayed in the commencement or progress of the Work or Services by any cause beyond its control, the Contract Time shall be extended by Change Order to the extent of the delay to the critical path of the Project. Examples of causes beyond the control of Constructor or Design Professional include, but are not limited to, the following: (a) acts or omissions of Developer or Others; (b) changes in the Work or Services or the sequencing of the Work or Services ordered by Developer or arising from decisions of Developer or changes in Law; (c) encountering Hazardous Materials or concealed or unknown Worksite conditions; (d) delay authorized by Developer pending dispute resolution or suspension by Developer; (e) adverse actions or delays by governmental agencies not caused by Constructor or Design Professional; (f) transportation delays not reasonably foreseeable; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) terrorism; (j) epidemics;



(k) unavoidable accidents; and (l) adverse weather conditions not reasonably anticipated. Constructor or Design Professional shall process any requests for extensions of Contract Time in accordance with this Agreement.

12.13.2 In addition, if Constructor or Design Professional incurs additional costs as a result of a delay described in subsection 12.3.1, the Expected Cost, Target Cost, and EMP shall be increased by Change Order to the extent of the additional Payable Costs, but there shall be no increase in the Profit of Risk Pool Members.

12.13.3 NOTICE OF DELAYS If delays to the Work or Services are encountered for any reason, Constructor or Design Professional, as applicable, shall provide prompt written notice to the Core Group of the cause of such delays after it first recognizes the delay. The IPD Team shall take reasonable steps to mitigate the effect of such delays.

12.13.3.1 NOTICE OF DELAY CLAIMS If Constructor or Design Professional requests an extension of Contract Time or an increase in the Expected Cost, Target Cost, and EMP as a result of a delay described in subsection 12.13.1, it shall give the Core Group written notice of such claim for a Change Order as required by Section 15.3. If Constructor or Design Professional causes delay in the completion of the Work or Services, Developer shall be entitled to recover its additional costs subject to Section 12.6.

12.13.4 MITIGATION If delays to the Project are encountered for any reason, the IPD Team shall take reasonable steps to mitigate the effect of such delays. The Core Group may require a Risk Pool Member to accelerate its Work or Services by increasing workers and equipment, working overtime, or scheduling additional shifts. If a Risk Pool Member is behind schedule for reasons other than delays excusable under subsection 12.13.1, the acceleration costs will be borne by that Risk Pool Member, which may request the Core Group, at the Core Group discretion, to allocate IPD Team Contingency in payment of such costs. If a Risk Pool Member is directed to accelerate to overcome a delay that would otherwise entitle a Party to an extension of the Contract Time, then the Risk Pool Member's Payable Costs due to the acceleration will result in a corresponding increase to the Expected Cost, Target Cost, and EMP.

12.14 MEANS AND METHODS Developer and Design Professional shall not have control over, be in charge of, or be liable for, the construction means, methods, techniques, sequences, procedures, or safety precautions and programs utilized in the Work. Developer and Design Professional shall not be liable for Constructor's failure to perform the Work in accordance with the requirements of the Contract Documents. Furthermore, Developer and Design Professional shall not have control over, be in charge of, or be liable for, acts or omissions of Constructor, Precon Trades, Subcontractors, or their agents or employees, or of any other persons performing the Work. Notwithstanding the foregoing, if Design Professional or Developer observes any Defective Work, it shall immediately notify the Core Group.

ARTICLE 13 CONSTRUCTION PHASE

13.1 PROJECT PLANNING AND SCHEDULE

13.1.1 PROJECT PLANNING SYSTEM The IPD Team shall employ a system of Project planning that includes the collaborative development of a milestone schedule, phase or



progression schedules, "make-ready" look ahead plans, weekly work plans, and methods for recording, measuring, and improving the reliability of Project planning.

13.1.2 PHASE PLANNING Phase planning shall be based on the collaborative efforts of all those performing work during a given period and shall indicate when work will be done to meet milestone dates.

13.1.3 MAKE-READY LOOK AHEAD PLAN Make-ready look ahead plans shall be developed by the IPD Team, identifying (a) each item of work to be performed and completed during the given planning period; (b) whether factors exist that would impede performance and completion; and (c) the actions to be taken to negate or mitigate any such impediments.

13.1.4 WEEKLY WORK PLANS Weekly work plans will be developed by the IPD Team members on a weekly basis and show the day on which assignments shall be completed. The weekly work plans shall provide an indication as to whether an assignment has been completed as scheduled and, if not, a reason shall be assigned. Unless otherwise agreed upon by the Core Group, the IPD Team will record the current Plan Percent Complete (PPC) for the Project and display this for management review.

13.1.5 CONSTRUCTION SCHEDULE When Project requirements have been sufficiently identified, Constructor shall prepare a preliminary Construction Schedule consistent with the Contract Time and Project Schedule for the review and approval of the Core Group. The Construction Schedule shall coordinate and integrate the services and activities of Developer, Constructor, Design Professional, Subcontractors and the requirements of governmental entities. As design proceeds and at appropriate intervals, Constructor shall update the Construction Schedule for the Core Group's approval to indicate (a) proposed activity sequences and durations; (b) proposed milestone dates for such activities as receipt and approval of pertinent information; (c) issuance of the Construction Documents; (d) the preparation and processing of shop drawings and samples; (e) delivery of materials or equipment requiring long-lead-time procurement; (f) Developer's occupancy requirements; and (g) estimated date of Substantial Completion of the Project. If Construction Schedules will not be met, Constructor shall notify and make recommendations to the Core Group. If the Project is to be completed in phases, Design Professional and Constructor shall make recommendations to the Core Group regarding the phased issuance of Construction Documents.

13.1.5.1 Constructor shall monitor the performance of Subcontractors as it relates to the Construction Schedule; update the Construction Schedule; and if required, recommend corrective alternatives or adjustments to the Core Group.

13.2 CONSTRUCTION OPERATIONS

13.2.1 Constructor shall provide competent supervision of the Subcontractors and the performance of the Work. Before commencing the Work, Constructor shall notify Developer in writing of the name and qualifications of its proposed superintendent(s) and project manager so Developer may review the individual's qualifications. If, for reasonable cause, Developer refuses to approve the individual, or withdraws its approval after once giving it, Constructor shall name a different superintendent or project manager for Developer's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.



13.2.2 Constructor shall be responsible to Developer for acts or omissions of entities performing portions of the Work for or on behalf of Constructor or any of its Subcontractors.

13.2.3 Constructor shall permit only skilled persons to perform the Work. Constructor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If Developer determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Constructor shall immediately reassign the person on receipt of Developer's written notice.

13.2.4 Constructor shall give public authorities all notices required by Law and, except for permits and fees which are the responsibility of Developer, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Constructor shall provide to Developer copies of all notices, permits, licenses, and renewals required under this Agreement.

13.2.5 Risk Pool Members shall pay all taxes applicable to their Work.

13.2.6 **QUALITY OF WORK** The Work shall be executed in accordance with the Contract Documents in a skillful manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new, except as otherwise expressly provided in the Contract Documents.

13.2.7 **MATERIALS FURNISHED BY DEVELOPER OR OTHERS** If the Work includes installation of materials or equipment furnished by Developer or Others, it shall be Constructor's responsibility to examine the items so provided and handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Constructor shall be the responsibility of Constructor and may be deducted from any amounts due or to become due to Constructor. Any defects discovered in materials or equipment provided by Others shall be reported at once to Developer. Following receipt of written notice from Constructor of defects in the materials or equipment provided by Others, Developer shall promptly inform Constructor what action, if any, Constructor shall take with regard to the defects.

13.3 REQUESTS FOR INFORMATION (RFIs)

13.3.1 **PROCESS** The integrated preconstruction process minimizes the need for RFIs. However, to the extent that the need for information or clarification through an RFI does arise, the party seeking clarification should first raise the issue either in a face-to-face conversation or via telephone in accordance with the Communication Protocols. The initial conversation shall describe the issue, identify the area affected, and request the clarification needed. If the parties to that conversation are able to resolve the issue, they shall also agree on how the clarification shall be documented and reported to the Core Group. If the parties to that conversation are not able to resolve the issue, they shall agree on how the issue will be resolved (who, will do what, by when) and shall agree which of them will notify the Core Group concerning the issue and the plan for resolution. It is the IPD Team's goal that RFIs will only be issued to document solutions, rather than raise questions that have not previously been the subject of a conversation. To the extent that resolution of the issue may affect progress of the Work, the issue shall be included in the planning system. The Core Group shall establish a process for distributing resolved RFIs to the IPD Team.



13.3.2 TIME LIMITS If the requesting and corresponding parties are unable to reach agreement on the time for a response, they shall notify the Core Group. A phone call shall be scheduled within two (2) business days between the Core Group and the requesting and responding parties to arrive at a mutually agreeable time period.

13.3.3 BASIS Interpretations and decisions of the Responsible Design Professional 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.

13.4 SUBMITTALS

13.4.1 Constructor shall submit to Developer and Design Professional, for review and approval, all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals shall be submitted in electronic form if required. Constructor shall be responsible to Developer and Design Professional for the accuracy and conformity of its submittals to the Contract Documents. Constructor shall prepare and deliver its submittals to Developer and Design Professional in a manner consistent with the Project Schedule and in such time and sequence so as not to delay the performance of the Work or the work of Developer and Others. When Constructor delivers its submittals to Developer and Design Professional, Constructor shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any submittal shall not authorize changes, deviations, or substitutions from the requirements of the Contract Documents without express written approval from Developer. Such approval shall be promptly memorialized in a Change Order and, if applicable, provide for an equitable adjustment in the EMP or Contract Time. Developer shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Constructor. If the Contract Documents do not contain submittal requirements, Constructor agrees to timely submit for the review and approval of Developer and Design Professional any shop drawings, samples, product data, manufacturers' literature, or similar submittals reasonably required by Developer.

13.4.2 Developer and Design Professional shall be responsible for review and approval of submittals within the time frames mutually agreed with the submitter or else with reasonable promptness to avoid causing delay.

13.4.3 Constructor shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not authorization to Constructor to perform a change in the Work, unless the procedures of ARTICLE 15 are followed. Approval does not relieve Constructor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

13.4.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Developer or Design Professional upon request: drawings, specifications, addenda, Change Orders and other modifications, and required submittals, including product data, samples, and shop drawings.

13.4.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after Constructor obtains any required approvals.

13.4.6 Constructor shall prepare and submit to Developer the items selected below:



☐ final marked up as-built drawings, or
☐ updated electronic data, or
☒ such documentation as defined by the Parties by attachment to this Agreement, in general documenting how the various elements of the Work were actually constructed or installed.

13.5 CUTTING AND PATCHING

13.5.1 Constructor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Developer or Others.

13.5.2 Cutting, patching, or altering the work of Developer or Others shall be done with the prior written approval of Developer. Such approval shall not be unreasonably withheld.

13.6 CLEANUP

13.6.1 Constructor shall regularly remove debris at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Constructor shall clean the area and remove all debris and its construction equipment, tools, machinery, and surplus materials. Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Constructor shall remove from the Worksite all debris and its construction equipment, tools, and surplus materials.

13.6.2 If Constructor fails to commence compliance with cleanup duties within two (2) business Days after written notification from Developer of non-compliance, Developer may implement appropriate cleanup measures without further notice.

13.7 TESTING

13.7.1 Constructor shall schedule all required tests, approvals, and inspections of the Work at times that do not delay the progress of the Work or other work related to the Project. Constructor shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, Developer and Others may observe the tests at the normal place of testing. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Constructor and promptly delivered to Developer.

13.7.2 If Developer or appropriate authorities determine that additional tests, inspections, or approvals beyond those required by the Contract Documents will be necessary, Constructor shall arrange for the procedures and give timely notice to Developer and Others who may observe the procedures. The Expected Cost, Target Cost, and EMP will be equitably adjusted as determined by the Core Group.

13.8 ACCESS TO WORK Constructor shall facilitate the access of Developer, Design Professional, and Others approved by Developer to the Work in progress.

13.9 DESIGNER'S CONTRACT ADMINISTRATION RESPONSIBILITIES

13.9.1 CONSTRUCTION ADMINISTRATION Design Professional shall provide construction administration as set forth in the Contract Documents and the DP Work Plan until final



payment is due. Design Professional shall have authority to act on behalf of Developer only to the extent provided in the Contract Documents.

13.9.2 WORKSITE VISITS Design Professional shall visit the Worksite at intervals appropriate to the stage of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. However, Design Professional shall not be required to make exhaustive or continuous on-Worksite inspections to check quality or quantity of the Work. On the basis of such Worksite observations, Design Professional shall report to the Core Group on the progress and quality of the Work, and promptly alert the Core Group of any observed nonconformance or condition that might adversely affect the Work or the Payable Costs. Design Professional shall submit a written report as required in the Communications Protocol.

13.9.3 ON-WORKSITE REPRESENTATIVE As required by the Core Group, Design Professional shall provide on-Worksite Project representatives to assist in carrying out Design Professional's responsibilities. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

13.10 COMMISSIONING Except to the extent otherwise set forth in the Contract Documents or directed by the Core Group, Design Professional shall provide all Construction Documents (including commissioning manuals and instructions for any systems that are part of the Work) necessary for the commissioning of the Work. In addition, the IPD Team shall collaborate and coordinate with any commissioning authority designated by Developer, as well as with Developer's maintenance personnel, in connection with the commissioning of the Work (including set-up, adjustment, balancing and testing of systems and operating equipment and training of all elements of the Project).

ARTICLE 14 Intentionally omitted.

ARTICLE 15 CHANGES

15.1 CHANGES Changes in the Work or Services that are within the general scope of this Agreement shall be implemented, without invalidating this Agreement, by Change Order, or Interim Directed Change.

15.2 LIMITATION ON BENCHMARK CHANGES The Expected Cost, Target Cost, and EMP, as well as the Profit of Risk Pool Members may only be adjusted in the following circumstances: (a) changes in scope, systems, kinds and quality of materials, finishes, or equipment the costs of which exceed the remaining balance of any Developer-controlled contingency established within the Expected Cost for design changes or quality enhancements; (b) changes in Law affecting Project costs that were enacted subsequent to the effective date of the Agreement; (c) concealed or unknown Worksite conditions, including the discovery of Hazardous Materials, pursuant to the terms of Sections 12.10 and 12.12; (d) to reconcile allowances, including the escalation allowance; and (e) any other circumstance expressly provided in this Agreement as adjusting the Expected Cost, Target Cost, or EMP.

15.3 CLAIMS FOR CHANGES Any Party making a request for a Change Order shall notify the Core Group of the request within fourteen (14) Days after the Party first recognizes the condition



or event giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work or Services.

15.4 CHANGE ORDER

15.4.1 Any change to the Work or Services that impacts the Expected Cost, Target Cost, EMP, or Contract Time shall be formalized in a Change Order. The Expected Cost and Target Cost shall be adjusted on the same basis as the EMP under this Agreement.

15.4.2 The Parties shall negotiate in good faith to agree on changes to the Contract Documents, including, without limitation, adjustment to the Developer's Program, Construction Documents, Expected Cost, Target Cost, EMP, Contract Time, or any combination of the foregoing. Adjustments to Profit shall be as provided in the Risk Pool Plan. The Parties shall conclude these negotiations as expeditiously as possible after a Change Request is made, and acceptance of the Change Order shall not be unreasonably withheld. The Core Group shall make all necessary adjustments to the Risk Pool, if any, that result from a Change Order.

15.4.3 INCIDENTAL CHANGES Developer or Core Group may direct Constructor to perform incidental changes in the Work, upon concurrence with Constructor that such changes do not involve adjustments in the Expected Cost, the Target Cost, the EMP, or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Developer or Core Group shall initiate an incidental change in the Work by issuing a written order to Constructor. Such written notice shall be carried out promptly and is binding on the Parties.

15.4.4 ALLOWANCE WORK When allowance items are actually incurred or are reasonably subject to construction pricing, such items will be reconciled by Change Order, increasing the Expected Cost, Target Cost, and EMP to the extent the reconciled amount exceeds the allowance amount or decreasing those benchmarks to the extent the reconciled amount is less than the allowance amount. Unspent allowances accrue to the Developer upon reconciliation.

15.5 INTERIM DIRECTED CHANGES

15.5.1 Developer may issue a written Interim Directed Change directing a change in the Work or Services prior to reaching agreement on a Change Order.

15.5.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, if any, to the Expected Cost, Target Cost, EMP, Profit of Risk Pool Members, or Contract Time arising out of Interim Directed Changes and such agreement shall be documented in a Change Order.

15.5.3 If the Parties do not agree on the increase or decrease pursuant to subsection 15.5.2 and Developer issues an Interim Directed Change, the cost of the change in the Work or Services shall be determined by the reasonable actual Payable Costs incurred and savings realized in the performance of the Work or Services resulting from the change. If there is a net increase in the Payable Costs, the Profit of Risk Pool Members, as applicable, shall be adjusted in accordance with the Contract Documents. In case of a net decrease in the Payable Costs, the applicable Profit amount shall not be adjusted unless ten percent (10%) or more of the Project (by value) is deleted.



ARTICLE 16 PAYMENTS AND FINAL ACCOUNTING

16.1 Should there be any claim, obligation or lien asserted by those alleging to have provided labor or materials to the Project before or after final payment is made in support of Design Professional's Services, Design Professional shall reimburse Developer for any costs and expenses, including attorneys' fees, costs and expenses, incurred by Developer in satisfying, discharging or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided Developer has made payments to Design Professional in accordance with the terms of this Agreement.

16.2 Subject to Section 12.6, should Design Professional or its consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, Developer shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect Developer from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

16.3 SCHEDULE OF VALUES Before the first payment application for Work during the Preconstruction Phase, Constructor shall submit a schedule of values allocated to various portions of the Work to the Core Group for approval. This schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Core Group may require. The approved schedule shall be used in conjunction with the Risk Pool Plan as a basis for reviewing Constructor's applications for payment. Each payment application shall be reviewed using the most recent schedule of values approved by the Core Group. The schedule of values will be a management tool only – payments will be made on the basis of actual incurred Payable Costs during the billing period. Constructor shall submit all payment applications in accordance with the Contract Documents. Payment applications shall show the percentage of each portion of the Work on the schedule of values that has been completed as of the end of the period covered by the payment application.

16.4 LIEN WAIVERS AND LIENS

~~16.4.4.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If requested by Owner, as a prerequisite for payment, Constructor and Design Professional shall provide (a) partial lien waivers and releases in the amount of the application for payment; and (b) affidavits from Precon Trades, Subcontractors, Suppliers or consultants, as applicable, for the Work or Services performed through the end of the billing period. Such waivers and releases shall be conditional upon payment. No party shall be required to sign an unconditional waiver of lien, either partial or final, prior to receiving payment or for an amount in excess of what it has been paid.~~

~~16.4.4.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required, Constructor or Design Professional, as applicable, shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party performing labor or services or supplying materials in connection with the Work and covered by such payments to Constructor or Design Professional, as applicable. If the responsible Party fails to take such action on a lien, Owner may cause the lien to be removed.~~

~~16.4.5 RETAINAGE Retainage, if any, shall be addressed in the Risk Pool Plan.~~



16.8

16.9 PARTIAL OCCUPANCY OR USE

16.9.1 Developer may occupy or use completed or partially completed portions of the Project when (a) the portion of the Project is designated in a Certificate of Substantial Completion; (b) appropriate insurer(s) consent to the occupancy or use; and (c) public authorities authorize the occupancy or use. Constructor shall not unreasonably withhold consent to partial occupancy or use. Developer shall not unreasonably refuse to accept partial occupancy.

16.10 FINAL COMPLETION AND FINAL PAYMENT

16.10.1 Upon notification from Constructor that the Work is complete and ready for final inspection and acceptance, the Core Group shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

16.10.2 When the Work is complete, Constructor shall prepare for Developer's acceptance a final application for payment stating that, to the best of Constructor's knowledge and based on Developer's inspections, the Work has reached Final Completion in accordance with the Contract Documents. At such time, Design Professional shall also prepare for Developer's acceptance a final application for payment stating that the Services are complete except those required post-Final Completion.

16.10.3 Developer's accountants or other representatives will endeavor to review and report in writing on the final accounting of each of Constructor and Design Professional within fifteen (15) Days after its delivery to the Core Group. Based upon the Payable Costs as substantiated by Constructor's and Design Professional's final accounting, and provided the other conditions of this Section 16.10 have been met and subject to HUD requirements, including its cost certification requirements, the Core Group shall, within seven (7) Days after receipt of the written report of Developer's accountants, either approve the application for final payment, or notify the Party in writing of the reasons for withholding approval. If Developer's accountants report the Payable Costs to be less than claimed, the Parties shall to proceed to dispute resolution in accordance with ARTICLE 18. Pending a final resolution of the disputed amount, Developer shall pay Constructor and Design Professional the approved amount certified in its respective application for final payment.

16.10.4 Final payment shall be made to Constructor and Design Professional within twenty (20) Days after the Core Group has approved such Party's application for final payment and the Core Group has executed a certificate of Final Completion.

16.10.5 As a condition precedent to final payment, Constructor shall submit the following to Developer:



16.10.5.1 An affidavit declaring any indebtedness connected with the Work, e.g., payrolls or invoices for materials or equipment, have been paid or satisfied, or will be paid with the proceeds of final payment;

16.10.5.2 As-built drawings, manuals, copies of warranties, and all other close-out documents required of Constructor by the Contract Documents; and

16.10.5.3 Final waiver and release of any liens, conditioned on final payment being received.

~~16.10.6 As a condition precedent to final payment, Design Professional shall submit the following to Developer:~~

~~16.10.6.1 Record drawings and specifications and all other close-out documents required of Design Professional by the Contract Documents; and~~

~~16.10.6.2 Release of any liens, conditioned on final payment being received.~~

16.10.7 If, after Substantial Completion, Final Completion is materially delayed through no fault of Constructor, Developer shall pay the balance due Constructor for the portion of the Work fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by Section 16.10.

16.11 RECORDS Each Risk Pool Member shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. Each Risk Pool Member's records supporting its performance and billings under this Agreement shall be current, complete, accurate, and maintained according to generally accepted accounting principles. Risk Pool Members shall preserve all such records for a period of three years after the final payment or longer where required by Law. Developer and the Core Group shall be afforded access to all records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Any such review or audit will not involve investigating or reviewing any books, records, or other data to the extent any of them involve the calculation, composition, or determination of any stipulated or fixed sums or rates set forth in the Contract Documents. Developer's accountants shall be subject to acceptance by the Core Group prior to being permitted access to any such records, books, and documents.

16.11.1 Developer and the Core Group may conduct verifications such as counting employees at the Worksite, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with employees, Subcontractors, and Suppliers.

16.11.2 Design Professional and Constructor shall require consultants, Precon Trades, Subcontractors, Subsubcontractors, and Suppliers to comply with these record-keeping and auditing requirements.

ARTICLE 17 SUSPENSION AND TERMINATION

17.1 EVENTS OF DEFAULT The following shall constitute events of default:

17.1.1 Persistent failure to make adequate progress with the Work or Services;



17.1.2 Failure to make timely payment, without cause, as required under the Contract Documents;

17.1.3 Failure to comply with Laws;

17.1.4 Any other material breach of this Agreement.

17.2 DECLARATION OF DEFAULT AND RECOVERY Upon a Party declaring in writing another Party in default, all Parties shall within 24 hours meet and confer as to a mutually agreeable recovery plan to cure the default. The Parties shall adjust compensation to the extent appropriate where costs are incurred by the non-defaulting Parties to assist the defaulting Party in curing the default.

17.3 TERMINATION FOR CAUSE In the event Parties cannot reach agreement on a recovery plan or the defaulting Party fails to materially comply with the agreed recovery plan, the non-defaulting Parties shall confer and agree upon how to proceed in the absence of cure. Any agreement reached shall not, unless it expressly states otherwise, waive or restrict any right or remedy the non-defaulting Parties may have against the defaulting Party.

17.3.1 If the non-defaulting Parties cannot agree on how to proceed in the absence of cure, each may exercise any right or remedy available to it under this Agreement, including:

17.3.1.1 If Developer, it may upon seven days' written notice to all Parties terminate the defaulting Party for cause, take possession of all defaulting Party's materials, equipment, tools located on the Worksite, accept assignment of the defaulting Party's subcontracts, materials contracts, and consulting agreements, and perform the defaulting party's obligations under this Agreement by any reasonable method Developer may deem expedient, including retaining others to perform the obligations. If Developer terminates the defaulting Party for cause, the defaulting Party will not receive further payment, if any, until the Project achieves Final Completion. Upon Final Completion, Developer shall pay the defaulting Party for (a) all unpaid Payable Costs incurred by the defaulting Party to the date of termination plus (b) any unpaid amounts of the defaulting Party's Profit on its completed Work or Services (as determined under the Risk Pool Plan without regard to any adjustments based on team performance or shared savings but prorated based on the defaulting Party's percentage completion of Work or Services on the date of termination), less (c) Developer's costs arising out of the defaulting Party's failure to cure, including the costs of completing the defaulting Party's Work or Services and reasonable attorneys' fees. If Developer's costs are greater than the amount due to the defaulting Party, the defaulting Party shall pay the difference to Developer upon demand. If Developer terminates the defaulting Party, then upon the request of the defaulting Party, Developer shall furnish a detailed accounting of Developer's costs arising out of the defaulting Party's failure to cure.

17.3.1.2 If Design Professional or Constructor, it may upon seven days' written notice to all Parties either: (a) if Developer is the defaulting party, terminate the notifying Party's obligations under the Agreement to perform any further Work or Services and pursue any right or remedy available to it under the Agreement, including recovery of any amounts owed for Work or Services provided; or (b) if Developer is not the defaulting Party, pursue any right or remedy against the defaulting Party available under this Agreement and make of Developer such request for an equitable adjustment as appropriate under the circumstances and this Agreement. If a Party terminates the Developer for cause, Developer shall pay the terminating Party for (w) all unpaid Payable Costs incurred by the terminating Party to the date of termination,



plus (x) any unpaid amounts of the terminating Party's Profit on its completed Work or Services (as determined under the Risk Pool Plan without regard to any adjustments based on team performance or shared savings but prorated based on the terminating Party's percentage completion of Work or Services on the date of termination), plus (y) Payable Costs required or directed to be performed post-termination and costs reasonably incurred to protect the Work, demobilize operations, and terminate commitments to Subcontractors, Suppliers, and consultants, plus (z) the terminating Party's legal costs (inclusive of reasonable attorneys' fees) in terminating Developer for cause.

17.3.1.3 If Design Professional's or Constructor's participation in the Project is terminated, then the Agreement will remain in effect among the remaining Parties if they are able to negotiate in good faith appropriate adjustments to compensation and changes to the terms and conditions of the Contract Documents per Section 17.5.

17.4 TERMINATION FOR DEVELOPER'S CONVENIENCE Developer may without cause terminate the Agreement or the right of one of the other Parties to perform its remaining obligations under the Agreement. Developer shall notify the Parties of the effective date of such termination and give such instructions as necessary as to any Work or Services that are to be provided notwithstanding the termination. If only one Party's right to perform its remaining obligations under the Agreement is terminated, the Agreement will remain in effect among the remaining Parties if they are able to negotiate in good faith appropriate adjustments to compensation and changes to the terms and conditions of the Contract Documents per Section 17.5.

17.4.1 Developer shall pay any terminated Parties within thirty (30) days of the effective date of termination, such sums due each for (a) the Payable Costs for Work or Services performed by or on behalf of the terminated Party prior to the effective date of the termination; (b) the Payable Costs required or directed to be performed post-termination and costs reasonably incurred to protect the Work, demobilize operations, and terminate commitments to Subcontractors, Suppliers, and consultants; (c) any Profit owed under the Agreement (as determined under the Risk Pool Plan without regard to any adjustments based on team performance or shared savings but prorated based on the terminated Party's percentage completion of Work or Services on the date of termination); and (d) a termination fee of \$[].

17.4.2 Upon receipt of notice of termination, the terminated Party shall stop all Work or Services, take appropriate actions to protect the Work and Design Documents, terminate all existing contracts, and enter into no further contracts.

17.5 REMAINING PARTIES If only one non-Developer Party is terminated, the Agreement shall remain in effect among the remaining Parties if they are able to negotiate any appropriate adjustments to compensation and changes to the terms and conditions of the Contract Documents in order to proceed with the Project with a replacement for the terminated Party. If the remaining Parties are unable to so agree, then upon thirty (30) days' written notice to the other remaining Party, either Party may declare the Agreement terminated. Such a termination shall have the same effect as Developer terminating the other remaining Party for convenience under Section 17.4.

17.6 SUSPENSION Developer may, without cause, suspend the Work and Services required for the completion of the Project. Upon receipt of written notice of suspension, Constructor and Design Professional shall promptly suspend operations as directed in the notice. Upon request,



Constructor and Design Professional shall provide Developer with an estimate of the impact of the suspension on the Payable Costs and Contract Time. The Target Cost, Expected Cost, EMP, and Contract Time shall be equitably adjusted to the extent affected by the suspension. Any suspension of the Work and Services not caused by Constructor or Design Professional for a period of more than sixty (60) Days shall constitute an event of default by Developer.

ARTICLE 18 DISPUTE RESOLUTION

18.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, all Parties and Joining Parties shall continue the Work or Services and maintain the Project Schedule during any dispute resolution proceedings and Developer shall continue to make payments of undisputed amounts in accordance with this Agreement.

18.2 DIRECT DISCUSSIONS If the Core Group cannot reach resolution with the Disputing Parties on a disputed matter within five (5) business Days of the date of first Core Group discussion, any Party may submit the dispute in writing to the Senior Executive Team for consideration. Submission to the Senior Executive Team shall be a condition precedent to proceeding with any further dispute resolution process. The Senior Executive Team shall review the dispute and take one or more of the following actions: (a) negotiate a resolution of the dispute; (b) after appropriate discussions, issue a statement that the Parties are at impasse; (c) request additional supporting data from the claimant or a response with supporting data from another party; or (d) request a technical analysis from any IPD Team member. The Senior Executive Team may, but shall not be obligated to, consult with or seek information from any Party or Joining Party or from persons with special knowledge or expertise who may assist the Senior Executive Team in resolving the dispute. The cost of such consultation shall be allocated by the Senior Executive Team. Unless the Disputing Parties otherwise agree in writing, if the dispute remains unresolved thirty (30) Days after submission to the Senior Executive Team, any Disputing Party may proceed with the resolution of the dispute pursuant to the following provisions of this ARTICLE 18.

18.3 MEDIATION If direct discussions pursuant to Section 18.2 do not result in resolution of the dispute, any Disputing Party may make written demand that the dispute be mediated under the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), unless the Disputing Parties mutually agree to select another set of mediation rules. The mediator shall be as mutually agreed by the Disputing Parties. Unless otherwise agreed, the mediation shall be convened within thirty (30) Days of the demand for mediation and shall conclude within forty-five (45) Days of the demand. Any Disputing Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating party to the non-terminating parties and to the mediator. The costs of the mediation shall be shared equally by the Disputing Parties.

18.4 BINDING DISPUTE RESOLUTION Unless the Disputing Parties otherwise agree, if the dispute is unresolved after submission of the matter to mediation, a Disputing Party must submit the matter to the binding dispute resolution procedure designated below if the Disputing Party desires to pursue its claim:

☒ Arbitration using the current Construction Industry Arbitration Rules of the AAA and administered by the AAA;

☐ The current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or



☐ The current arbitration rules of ☐ and administered by ☐.

Unless the disputing Parties and Joining Parties mutually agree otherwise in writing, if arbitration is selected as the binding dispute resolution procedure and this Agreement does not specify the arbitration rules to be utilized, then the arbitration shall be conducted using the current Construction Industry Arbitration Rules of the AAA and the arbitration shall be administered by the AAA.

☐ Litigation in either the state or federal court having jurisdiction over the matter.

If no option in this Section 18.4 is marked as being selected, then litigation is the applicable binding dispute resolution procedure.

18.4.1 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Disputing Parties, and judgment may be entered upon an award in any court having jurisdiction.

18.4.2 The costs of any binding dispute resolution procedure and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

18.5 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work or Services to provide for the joinder or consolidation of such dispute resolution procedures.

18.6 LIEN RIGHTS Nothing in this ARTICLE 18 shall limit any lien rights or remedies not expressly waived by Constructor or Design Professional that such Party may have under Laws.

18.7 COMMENCEMENT OF LIMITATIONS PERIOD Causes of action between or among the Parties or Joining Parties pertaining to acts or failures to act will be deemed to have accrued and the applicable statutes of limitations will commence to run not later than the date of Substantial Completion.

ARTICLE 19 CONTRACT DOCUMENTS

19.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Developer's Program:
- (b) The Developer-provided information specified below:
- (c) Other: ☐ HUD
Contract

19.2 INTERPRETATION OF CONTRACT DOCUMENTS

19.2.1 The drawings and specifications are complementary. If the Work is shown only on one but not on the other, Constructor shall perform the Work as though fully described on both consistent with, and reasonably inferable from, the Contract Documents.

19.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Constructor



shall immediately submit the matter to the Core Group for clarification. The Core Group's clarifications are final and binding on all Parties, subject to an equitable adjustment in the Expected Cost, Target Cost, EMP, and Contract Time.

19.2.3 Where figures are given, they shall be preferred to scaled dimensions.

19.2.4 Any terms that have well-known technical or trade meanings, shall be interpreted in accordance with their well-known meanings, unless otherwise specifically defined in this Agreement.

19.2.5 **ORDER OF PRECEDENCE** In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the following order shall govern: (a) Change Orders and written amendments to this Agreement; (b) the HUD Construction Contract and BSPRA ; (c) the Risk Pool Plan; (d) this Agreement; (e) the drawings (large scale governing over small scale), specifications, and addenda issued prior to the execution of this Agreement or signed by both Parties; (f) information furnished by Developer that is designated as a Contract Document; and (g) other Contract Documents. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control except as provided in subsections 19.2.2 or 19.2.3. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

19.2.6 **TITLES** The titles given to the articles and sections are for ease of reference only and shall not be relied upon for interpretation.

19.2.7 **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of any Party, but shall be construed in a neutral manner.

19.3 DEVELOPERSHIP AND USE OF DOCUMENTS

19.3.1 The Project Documents are instruments of service of the respective author. All title to, ownership of, and copyright privileges in the Project Documents are vested in the respective author, subject only to the use provisions set forth below. However, Developer shall own and possess any copyright or trademark embodied in the physical Project.

19.3.2. The originals of all Project Documents shall be held by IPD Team members for the benefit of Developer. At Developer's request, any or all Project Documents shall be immediately delivered to Developer in their original form, or in clear, reproducible form, regardless of whether this Agreement is completed, suspended, or terminated.

19.3.3 **DEVELOPER'S USE** Developer shall have the right, regardless of whether this Agreement is completed, suspended, or terminated, to use the Project Documents for any Project-related purpose, including any future renovation or remodeling. If Developer uses the Project Documents for construction work without retaining the author for that work, then Developer shall defend, indemnify, and hold the author harmless from liability arising from such use.

19.3.4 **AUTHOR'S USE** The author of a Project Document may reuse drawings, specifications, and other data prepared for the Project in its practice, but only in their separate constituent parts. Such author shall not use such drawings, specifications, and



other data in a manner that would produce a project with substantially similar and distinctive features as this Project unless Developer has given written consent. Any Party using any of the drawings, specifications, and other data in its practice outside the context of this Project shall indemnify, defend, and hold the other Parties harmless from liability arising from such use.

19.3.5 LIMITED USE OF PROJECT DOCUMENTS Design Professional, Constructor, Subcontractors, Subsubcontractors, or Suppliers shall not reuse the Project Documents as a whole in a manner that might infringe Developer's retained copyright and trademark in the completed physical Project, without the specific written consent of Developer. Constructor, Subcontractors, Subsubcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Project Documents not owned by them as appropriate to the execution of their Work.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 EXTENT OF AGREEMENT The Contract Documents represent the entire, integrated agreement between the Parties. They supersede all prior written and oral negotiations, representations, or agreements. This Agreement is for the exclusive benefit of the Parties and Joining Parties and not for the benefit of any third party, except to the extent expressly provided in this Agreement.

20.2 ASSIGNMENT The terms and conditions of this Agreement shall be binding upon the IPD Team members and their respective partners, successors, assigns, and legal representatives. Except as to the assignment of proceeds, an IPD Team member shall not assign its interest in this Agreement without the written consent of the other IPD Team members, except that Developer may assign the Agreement to a wholly owned subsidiary of Developer when Developer has fully indemnified the other Parties or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the other Parties than this Agreement. In the event of such assignment, Constructor and Design Professional shall execute any consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume Developer's rights and obligations under the Contract Documents. If any Party attempts to make an assignment without the requisite consent, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Parties.

20.3 GOVERNING LAW This Agreement shall be governed by the Laws in effect at the location of the Project without giving effect to conflict of law principles.

20.4 SEVERABILITY The partial or complete invalidity of any provisions of this Agreement shall not affect the enforceability of any other provision.

20.5 NO WAIVER OF PERFORMANCE The failure of any Party to insist, in one or more instances, on the performance of any obligation of this Agreement, or to exercise any of its rights, shall not be construed as a waiver of such term, covenant, condition, or right on subsequent occasions.

20.6 NO PARTNERSHIP OR JOINT VENTURE This Agreement shall not be construed to create a partnership or joint venture between the Parties nor the Risk Pool Members. No Party shall conduct itself in any way to suggest that a partnership or joint venture exists.



20.7 The IPD Team shall perform their respective obligations with integrity, requiring at a minimum that:

20.7.1 Conflicts of interest shall be avoided or disclosed promptly to the other IPD Team members; and

20.7.2 Each IPD Team member shall not pay nor receive any contingent fees or gratuities to or from any other IPD Team member or its agents, subcontractors, consultants or others for whom they may be liable to secure preferential treatment.

20.8 RIGHTS AND REMEDIES The Contract Documents create and define the rights, liabilities, responsibilities of the Parties and Risk Pool Members as between and among them. The remedies, whether in contract, tort or otherwise, are expressly limited by this Agreement. In performing its contractual obligations, a Risk Pool Member shall have a duty of care towards Developer and the other Risk Pool Members. A Party shall in good faith take all actions and do all things necessary, proper, or advisable to consummate, make effective, and comply with all the terms of this Agreement applicable to the Party.

20.9 CONFIDENTIALITY Each IPD Team member shall treat as confidential and not disclose to third persons, except as is necessary for the performance of the Work, or use for its own benefit, any of each other's confidential information, know-how, discoveries, production methods, and the like that may be disclosed or which is acquired in connection with the Project, without the written consent of the confiding party. Each IPD Team member shall specify those items to be treated as confidential and shall mark them as "Confidential." The duty of confidentiality does not apply to any information that is in the public domain without the fault of the disclosing IPD Team member, was independently developed by the disclosing IPD Team member, or is required to be disclosed by legal process.

20.10 SURVIVAL The following provisions will survive the termination or expiration of this Agreement: Articles 12, 17, 18, 19, 20 and 21; Sections 4.4.2, 4.7, 10.5, 16.1, 16.4.4.2, 16.6, and 16.11; and provisions of the Risk Pool Plan dealing with payment of Risk Pool amounts after a termination.

ARTICLE 21 DEFINITIONS

21.1 "A-3 Report" is a Lean Construction tool. Unless otherwise directed by the Core Group, the A-3 Report template contains seven main elements that follow one another in a natural and logical sequence: background; current situation and problem; goals and targets; root cause analysis; action items and proposed implementation plan; verification measures; and follow-up. The IPD Team will develop a custom A-3 Report template to be used for the Project. An A-3 Report should always address both the current condition and a target condition. In addition, all information should flow and be relatively simple.

21.2 "Actual Cost" means the sum of the Payable Costs plus the Profit of Constructor and Design Professional. For clarity, Profit of other Risk Pool Member would be included in the Payable Costs of Constructor or Design Professional.

21.3 "Agreement" means this ConsensusDocs 300 Standard Multi-Party Agreement for Integrated Project Delivery, as modified, and exhibits and attachments made part of this Agreement.

21.3.1 The following exhibits are part of this Agreement:

Exhibit A: Project Business Case and Objectives [] pages, dated []



Exhibit B: Agreed Billing Rates [] pages, dated []

Exhibit C: Insurance Requirements [] pages, dated []

21.4 "Allowable Cost" means the maximum Actual Cost established by Developer to meet the Project Business Case and objectives as outlined in Exhibit A.

21.5 "Change Order" is a written order approved by the Core Group after execution of this Agreement, indicating changes in the scope of the Work or Services, Expected Cost, Target Cost, EMP, or Contract Time, including substitutions proposed to and accepted by the Core Group.

21.6 "Change Request" is a written notice requesting a change to the Work, Services, or Contract Documents.

21.7 "Communications Protocol" is the written, formal process and standards for Project communications and electronic document and data creation, usage, and retention on the Project.

21.8 "Construction Documents" means the drawings, specifications, and other design documents, in any media, that delineate the design at a level sufficient for permitting and that specify other requirements for the construction of the Project.

21.9 "Construction Phase" is the period of time commencing with the start of construction activities on the Worksite and ending at Final Completion.

21.10 "Construction Schedule" is the schedule approved by the Core Group detailing the services and activities of Developer, Constructor, Design Professional, and Subcontractors in the Construction Phase. The Construction Schedule shall be prepared by Constructor and shall be consistent with the Contract Time and Project Schedule.

21.11 "Constructor" is the person or entity identified in ARTICLE 1.

21.12 "Contract Documents" consist of this Agreement, Risk Pool Plan, the documents listed in Section 19.1, information furnished by Developer pursuant to Sections 4.4 and 5.1, Developer's Program, BIM addendum, final and approved Construction Documents, EMP Amendment, and other modifications issued in accordance with this Agreement.

21.13 "Contract Time" is the period between the commencement of the Preconstruction Phase and Substantial Completion.

21.14 "Core Group" is the decision-making body for the delivery of the Project comprised of an authorized representative of each Party, and any other IPD Team member invited to join the Core Group.

21.15 "Day" means calendar day unless otherwise specifically defined.

21.16 "Defective Work" is any portion of the Work that is not in conformance with the Contract Documents.

21.17 "Design Documents" are the drawings and specifications, in any media, prepared by licensed design professionals that describe the Work and, when fully developed and approved, will result in Construction Documents.



- 21.18 "Design Professional" means the architect or engineer identified in ARTICLE 1 and includes Design Professional's representative, licensed in the state where the Project is located.
- 21.19 "Disputing Parties" are the IPD Team members involved in a particular dispute relating to the Agreement.
- 21.20 "DP Work Plan" means the plan prepared by Design Professional and its consultants depicting (a) their activities to be accomplished in each phase of the Project; (b) the Design Documents to be developed during each phase; (c) the anticipated labor (and resulting personnel costs); and (d) the anticipated reimbursable expenses associated with the Services.
- 21.21 "EMP Amendment" means the formal amendment establishing the Estimated Maximum Price.
- 21.22 "Estimated Maximum Price" or "EMP" means the amount shown as such in the EMP Amendment, comprised of the costs identified in subsection 8.1.1, and subject to the statement of its basis required in subsection 8.1.2.
- 21.23 "Expected Cost" is the IPD Team's best estimate of the final Actual Cost of the Project at the time of the Validation Study, based upon current best practices on similar IPD projects, as adjusted according to this Agreement.
- 21.24 "Final Completion" is the date when Constructor's obligations to construct and commission the Project, and deliver close-out documentation under this Agreement, are complete and accepted by Developer. This date shall be confirmed by a certificate of Final Completion signed by the Core Group.
- 21.25 "Hazardous Material" is any substance or material identified as hazardous under the Laws, or any other substance or material that is subject to statutory or regulatory requirement governing handling, disposal, or cleanup of hazardous or toxic materials.
- 21.26 "IPD Team" means the Parties and the Joining Parties.
- 21.27 "Interim Directed Change" is a change to the Work directed by Developer pursuant to Section 15.5.
- 21.28 "IPD Team Contingency" is a line item in the Expected Cost and EMP available to address ~~design and construction errors and omissions and to pay~~ for items that are properly considered Payable Costs, but which were not included in the estimated Payable Costs and are not the result of items specified in ARTICLE 15 that would entitle Constructor or Design Professional to a Change Order. Refer to BSPRA Agreement for other uses.
- 21.29 "Joining Agreement" is an agreement by any Design Professional's consultant, Developer's Consultant, or any Subcontractor for participation in the IPD Team and/or the Risk Pool Plan. Unless otherwise agreed, the form of the Joining Agreement shall be the ConsensusDocs 350 Standard IPD Joining Agreement as modified by the Parties.
- 21.30 A "Joining Party" is a person or entity that has signed a Joining Agreement, though it is not necessarily a Risk Pool Member. A Joining Party becomes a Risk Pool Member only when the Joining Agreement specifically so provides.



21.31 "Joint Worksite Investigation" means the Worksite investigation carried out by the IPD Team pursuant to subsection 5.1.2.

21.32 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work or Services that are enacted as of the Agreement date.

21.33 "Lean Construction" means striving to implement the best practices, tools, methods, and techniques of the lean construction movement in order to maximize value, minimize waste, and improve total project performance with a particular emphasis on collaboration, open communication, and the reliable release of work between specialists during design, supply, and construction of the Project.

21.34 "Others" means other contractors, suppliers, entities and persons at the Worksite who are not directly or indirectly employed by Constructor, Subcontractors, or Design Professional.

21.35 "Developer" is the person or entity identified in ARTICLE 1.

21.36 "Developer's Consultants" means those consultants retained by Developer, other than Design Professional, who will assist Developer in executing the Project.

21.36A "Developer Contingency" is a line item in the Expected Cost and EMP available to address design and construction errors and omissions and to pay for items that are properly considered Payable Costs, but which were not included in the estimated Payable Costs and are not the result of items specified in ARTICLE 15 that would entitle Constructor or Design Professional to a Change Order. The Developer Contingency is only to be utilized after undistributed and previously distributed amounts in the Risk Pool have been depleted. Refer to BSPRA Agreement for other uses.

21.37 "Developer's Program" is an initial description of the Project and Developer's objectives, including the Allowable Cost, space requirements and relationships, time requirements, flexibility and expandability requirements, special equipment and systems, and Worksite requirements.

21.38 "Party" means any one of Developer, Design Professional, or Constructor.

21.39 "Payable Costs" means the direct and indirect costs incurred in connection with the performance of the Project by Developer or a Risk Pool Member pursuant to ARTICLE 9, but does not include Profit.

21.40 "Preconstruction Phase" is the period commencing with the Developer's approval of the Validation Study and ending at the approval of the Construction Documents for construction by the governmental authority(ies) having jurisdiction.

21.41 A "Precon Trade" is a Subcontractor retained by Constructor to provide collaboration and services during the Validation Phase or Preconstruction Phase of the Project. It is anticipated that a Precon Trade shall continue to serve as a Subcontractor during the Construction Phase provided that the Core Group determines that its performance merits continued participation and accepts its price proposal.

21.42 "Profit" is the portion of a Risk Pool Member's compensation in addition to its Payable Costs.



21.43 "Project" is the construction of the building, facility, or other improvements outlined in Developer's Program.

21.44 "Project Documents" are all the drawings, models, specifications and other documents, whether electronic or paper, prepared by IPD Team members for the Project.

21.45 "Project Schedule" is the document initially set forth in the approved Validation Study that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Developer's Program.

21.46 "Responsibility Matrix" is a matrix setting forth the relative roles and responsibilities of IPD Team members as to matters not already addressed in this Agreement, such as which entities are responsible for designing, installing, or advising on certain project components or systems or which entities are responsible for designing, reviewing, or approving various construction documents.

21.47 "Responsible Design Professional" shall mean the person or entity that has the legal responsibility for preparing the design, including drawings or specifications, for a particular portion of the Work.

21.48 "Risk Pool" - see Section 10.2.

21.49 "Risk Pool Members" are the Design Professional, Constructor, and those of the Design Professional's consultants and Precon Trades who participate in the Risk Pool Plan.

21.50 "Risk Pool Plan" is the plan for how the Risk Pool Members agree to share risk and rewards as established in the approved Validation Study and amended from time to time.

21.51 "Senior Executive Team" is comprised of a representative from each company represented in the Core Group. At a minimum, each Senior Executive Team member must have full authority at a regional or business-unit level within its company to make decisions regarding this Agreement. Senior Executive Team members do not have full-time, day-to-day responsibility for the Project, but have direct oversight and periodic involvement with the IPD Team's performance.

21.52 "Services" means the services required of Design Professional or of consultants retained by Design Professional for the Project pursuant to the Contract Documents.

21.53 "Subcontractor" is a person or entity retained by Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor shall include a Precon Trade.

21.54 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete so that Developer may occupy or utilize the Project, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Constructor's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Core Group.

21.55 "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.



21.56 A "Supplier" is a person or entity retained by Constructor, a Subcontractor or a Subsubcontractor to provide material or equipment for the Work.

21.57 "Target Cost" is the IPD Team's specific and documented goal for the final Actual Cost, which reflects a reduction in the Expected Cost.

21.58 "Target Value Design" or "TVD" is a design methodology that requires Project values, cost, quality, schedule, and constructability to be basic components of the design criteria, and uses cost targets to drive innovation in designing a project that provides optimum value to Developer.

21.59 A "TVD Cluster" is a cross-functional team of designated representatives of the IPD Team collaborating on the design or implementation of major Project components, systems, or processes or to develop certain IPD Team deliverables.

21.60 "Validation Phase" is that portion of the Work and the Services to be performed under this Agreement up through Developer's approval of the Validation Study.

21.61 "Validation Study" is the written report prepared by the IPD Team during the Validation Phase addressing whether the Project can be designed and constructed within the Allowable Cost and other parameters set forth in Developer's Program.

21.62 "Work" means the construction and services required of Constructor for the Project pursuant to the Contract Documents. The Work may refer to the whole Project or only a part of the Project.

21.63 "Worksite" means the location identified in ARTICLE 1 where the Work is to be performed.

This Agreement is entered into as of the date entered in ARTICLE 1.

DEVELOPER: ARNOLD DEVELOPMENT GROUP, LLC, a Missouri limited liability company

BY: [Signature]

PRINT NAME [Jonathan Arnold]

PRINT TITLE [Managing Member]

WITNESS: [Signature] NAME [TRAVIS HUFFMAN] TITLE [P.M.]

CONSTRUCTOR: HAREN LAUGHLIN CONSTRUCTION COMPANY, INC., a Kansas corporation

BY: [Signature]

PRINT NAME [Jeff Wasinger]

PRINT TITLE [Executive Vice President]

WITNESS: [Signature] NAME [CALAYDE DAVEY] TITLE [PROJECT MANAGER]

DESIGN PROFESSIONAL: DIRECT DESIGN ENTERPRISES

BY: [Signature]



PRINT NAME [Jeffrey M. White]
PRINT TITLE []

END OF DOCUMENT.



Exhibit A

Business Case for Second and Delaware Apartments

Program:

- 276 apartments made up of a combination of studio, one bedroom and two bedroom units.
- Concrete cast in place construction – built to last 200+ years
- Ability to add future amenity space on 70% of roof as recreational space for residents (gardens & terraces)
- Passive House Certified
- 500 car parking garage beneath building.
- Landscaped courtyard with private terraces for ground floor units.
- Amenity spaces to include
 - Club room
 - Yoga room
 - Children's play room
 - Conference room
 - Sales / Managers Office
 - Two party rooms on 6th floor

Target Value Cost: \$45,902,000

Exhibit B
BILLABLE LABOR RATES

		Wage	Fringe	LABOR BURDEN*	TOTAL HOURLY COST		
HLC	CARPENTER	44.75	7.36	11.2	\$ 63.31		
HLC	LABORER, Common or General	35.50	6.39	8.98	\$ 50.87		
HLC	POWER EQUIPMENT OPERATOR, Forklift	44.00	7.29	16.75	\$ 68.04		
HLC	POWER EQUIPMENT OPERATOR, Bobcat/Skid Loader	45.20	7.41	17.29	\$ 69.90		
NCSI	CARPENTER	36.55	15.75	7.07	\$ 59.37		
NCSI	CARPENTER, FORMAN	38.05	15.75	7.36	\$ 61.16		
NCSI	LABORER, Common or General	26.70	15.10	6.83	\$ 48.63		
NCSI	PAINTER, Drywall Finishing/Taping	27.93	15.94	5.80	\$ 49.67		
PEC	ELECTRICIAN, ON SITE (FOREMAN)	36.69	20.62	6.60	\$ 63.91		
PEC	ELECTRICIAN, ON SITE (APPR 4-2)	33.02	20.62	5.94	\$ 59.58		
PEC	ELECTRICIAN, ON SITE (APPR 4-1)	31.19	20.62	5.61	\$ 57.42		
PEC	ELECTRICIAN, ON SITE (APPR 3-2)	29.35	20.62	5.28	\$ 55.25		
PEC	ELECTRICIAN, ON SITE (APPR 3-1)	27.52	20.62	4.95	\$ 53.09		
PEC	ELECTRICIAN, ON SITE (APPR 2-2)	25.68	20.62	4.62	\$ 50.92		
PEC	ELECTRICIAN, ON SITE (APPR 2-1)	22.01	20.62	3.96	\$ 46.59		
PEC	ELECTRICIAN, ON SITE (APPR 1-2)	20.18	20.62	3.63	\$ 44.43		
PEC	ELECTRICIAN, ON SITE (APPR 1-1)	18.35	20.62	3.30	\$ 42.27		
PEC	ELECTRICIAN, OFF SITE	18.00	3.47	2.74	\$ 24.21		
GEG	LABORER, Common or General	26.70	15.10	8.55	\$ 50.35		
GEG	PLUMBER, Excludes HVAC Pipe Installation	41.64	20.34	13.33	\$ 75.31		
GEG	PLUMBER, OFF SITE FABRICATION				\$ 35.00		
GEG	PIPEFITTER, Includes HVAC Pipe Installation	43.33	19.32	13.87	\$ 76.52		
GEG	SHEET METAL WORKER: Includes HVAC Unit Installation (Excludes HVAC Duct Installation)	38.39	17.70	12.29	\$ 68.38		
GEG	SHEET METAL WORKER (HVAC Duct Installation Only)	15.86	2.08	5.08	\$ 23.02		
GEG	HVAC Worker, OFF SITE FABRICATION				\$ 35.00		
		Wage	Fringe	LABOR BURDEN*	TOTAL HOURLY COST	IRCC Overtime & 1/2	IRCC Overtime Double
JRCC	Special Cement Finisher Foreman	32.41	18.83	10.56	\$ 61.80	\$ 83.28	\$ 104.76
JRCC	Cement Finisher Foreman	33.24	18.83	10.84	\$ 62.91	\$ 84.93	\$ 106.96
JRCC	Cement Finisher	31.24	18.83	10.18	\$ 60.25	\$ 80.95	\$ 101.66
JRCC	Extra Special Labor Foreman	35.45	14.52	11.56	\$ 61.53	\$ 85.01	\$ 108.51
JRCC	Rohrer Labor Foreman	30.65	14.52	9.99	\$ 55.16	\$ 75.47	\$ 95.79
JRCC	Labor Foreman	30.40	14.52	9.91	\$ 54.83	\$ 74.97	\$ 95.12
JRCC	Journeyman Laborer	28.40	14.52	9.26	\$ 52.18	\$ 70.99	\$ 89.82
JRCC	General Carpenter Foreman	39.30	16.16	12.81	\$ 68.27	\$ 94.31	\$ 120.36
JRCC	Carpenter Foreman	37.80	16.16	12.32	\$ 66.28	\$ 91.33	\$ 116.38
JRCC	Journeyman Carpenter	37.30	16.16	12.16	\$ 65.62	\$ 90.33	\$ 115.06
JRCC	Operating Engineers	38.56	15.29	12.56	\$ 66.41	\$ 91.97	\$ 117.53
JRCC	Teamsters	33.04	12.81	10.77	\$ 56.62	\$ 78.51	\$ 100.41
JRCC	General Superintendents	49.01	-	23.14	\$ 72.15		
JRCC	Superintendents	40.89	18.83	14.86	\$ 74.58		
JRCC	Senior Project Manager	70.66	-	35.07	\$ 105.73		
JRCC	Project Manager	40.69	-	23.72	\$ 64.41		

Exhibit B
BILLABLE LABOR RATES

		Wage	Fringe	LABOR BURDEN*	TOTAL HOURLY COST	KAT Overtime & 1/2	KAT Overtime Double
KAT	CARPENTER	36.55	15.55	12.14	\$ 64.24	\$ 85.32	\$ 108.50
KAT	LABORER	27.10	15.10	10.05	\$ 52.25	\$ 67.86	\$ 85.30
KAT	IRONWORKER, REINFORCING	31.25	27.60	13.58	\$ 72.43	\$ 90.45	\$ 110.42
KAT	POWER EQUIPMENT OPERATOR	37.04	15.51	12.23	\$ 64.78	\$ 86.15	\$ 109.62
KAT	POWER EQUIPMENT OPERATOR, Forklift	35.70	15.51	11.94	\$ 63.15	\$ 83.75	\$ 106.41
KAT	OPERATOR: Crane - Boom Less Than 150 Feet	37.85	15.51	12.40	\$ 65.76	\$ 87.60	\$ 111.57
OFFSITE							
KAT	CARPENTER	36.55	N/A	8.81	\$ 45.36	\$ 85.32	\$ 108.50
KAT	LABORER	27.10	N/A	6.79	\$ 33.89	\$ 67.86	\$ 85.30
KAT	IRONWORKER, REINFORCING	31.25	N/A	7.68	\$ 38.93	\$ 90.45	\$ 110.42
KAT	POWER EQUIPMENT OPERATOR	37.04	N/A	8.92	\$ 45.96	\$ 86.15	\$ 109.62
KAT	OPERATOR: Crane - Boom Less than 150 feet (4 hour min)	37.85	N/A	9.09	\$ 46.94	\$ 83.75	\$ 106.41
KAT	LOWBOY, TRAILER, HAULING OF MATERIALS (4 hour min)	160.00	N/A	N/A	\$ 160.00	\$ 87.60	\$ 111.57
KAT	EXCAVATOR, BOOMTRUCK, ETC. FOR HOISTING (4 hour min)	132.94	N/A	N/A	\$ 132.94	\$ 87.60	\$ 111.57

* LABOR BURDEN IS DEFINED AS PAYROLL TAXES - EMPLOYER'S PORTION OF SOCIAL SECURITY, EMPLOYER'S PORTION OF MEDICARE, STATE UNEMPLOYMENT TAX, FEDERAL UNEMPLOYMENT TAX, WORKER'S COMPENSATION INSURANCE (AS ADJUSTED BY YOUR MODIFICATION RATE) AND GENERAL LIABILITY INSURANCE. IT IS APPLIED TO THE WAGE RATE THAT WILL BE PAID TO THE EMPLOYEE (ON HIS/HER CHECK)

THE TOTAL HOURLY COST DOES NOT INCLUDE ANY GENERAL OVERHEAD OR PROFIT.

RISK POOL PLAN

Second and Delaware Apartments, Kansas City, Missouri

February 22, 2016

Recitals. This Risk Pool Plan is entered into in conjunction with the ConsensusDOCS 300 Standard Multi-Party Integrated Project Delivery Agreement entered into on the 22nd day of February, 2016 between **ARNOLD DEVELOPMENT GROUP**, as Owner, **DIRECT DESIGN ENTERPRISES**, as Design Professional, **HAREN & LAUGHLIN CONSTRUCTION COMPANY, INC.** as Constructor ("Agreement"). This Risk Pool Plan is agreed to by the Owner, Design Professional, Constructor, and the IPD Trade Contractors, who consent to the IPD Agreement via ConsensusDOCS Joining Agreement. All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Agreement.

1. Risk Pool Members.

Haren & Laughlin Construction Company, Inc.
Western Forms
KAT Excavation, Inc.
John Rohrer Contracting Company
Green Field Energy Group
Palmer Electric Company
Nebel Construction Services, Inc.

2. Total Funds in Risk Pool Plan.

IPD Team Contingency \$800,000

Profit \$1,309,331

3. Risk Pool Member's Interest in Risk Pool (also referred to as a Risk Pool Member's Profit or Profit-at-Risk).

100% of the Profit of each Risk Pool Member is at risk in the Risk Pool.

	Profit	% of Pool
Haren & Laughlin Construction Company, Inc.	\$ 421,525	32.2%
Western Forms	\$ 75,000	5.7%
KAT Excavation, Inc.	\$ 196,100	15.0%
John Rohrer Contracting Company	\$ 195,117	14.9%
Green Field Energy Group	\$ 179,941	13.7%
Palmer Electric Company	\$ 128,231	9.8%
Nebel Construction Services, Inc.	\$ 113,417	8.7%
	<u>\$1,309,331</u>	<u>100.0%</u>

4. Change Orders.

A Change Order entered into pursuant to Section 15.4 of the Agreement does not automatically result in an adjustment to the Risk Pool Plan. Any such adjustment must be set forth in the Change Order and shall be subject to the Senior Executive Team's approval. Any adjustment to the Risk Pool Plan shall be based on the percentage of the anticipated increase in the Risk Pool Member's Payable Costs as a direct result of the change. Under no circumstances shall any Change Order adjusting the Risk Pool Plan provide for reimbursement of overhead.

5. Determining Shared Savings.

Target Cost - \$45,902,000

Savings are realized when the final Actual Cost is below the Target Cost. 75% of such savings ("Shared Savings") get distributed to the Risk Pool Members based on each Member's percentage interest in the Risk Pool as defined above, and subject to the following: (a) each Member's participation in Shared Savings shall not exceed 100% of such Member's Profit at risk; and (b) each Risk Pool Member's participation in 10% of Shared Savings shall be adjusted based on the IPD Team's achievement of the Project quality standard as established by the Owner.

Project Quality Standard

The Project quality standard is achieved by the IPD Team meeting the following criteria in the completed Project:

(x) Aesthetics, Fit and Finish – To what extent does the completed Project provide the external, visual appeal required by the Owner's Program, including quality of craftsmanship, finish, plumb and square walls?

(y) Green Goals – To what extent does the completed Project express the Owner's energy efficiency as stated in the Owner's Program, including achieving Passive House certification?

Upon Final Completion, the Core Group will rate each of these criteria with an integer between -3 and +3. A -3 rating means that the performance was substantially worse than required by the Owner's Program. A 0 rating means that the performance was adequate in meeting the Owner's Program. And a +3 equates to a performance substantially better than required by the Owner's Program. The ratings for each of the three criteria will be tallied to determine a net score for the Project quality standard.

If the net Project quality standard's score is a positive number, the Risk Pool will be increased by the percentage of total savings under the Target Cost (if any) equal to the product of 1.1 multiplied by the net Project quality standard's score rounded to the nearest whole number. For example, the Risk Pool will be increased by 10% of the total savings under the Target Cost if the IPD Team achieves a net score of 9. A negative net score rating will not decrease the Risk Pool, but no amount of the reserved 10% of Target Cost savings will be added to the Risk Pool. After the Core

Group completes its review of the achievement of the objectives by the IPD Team, it will forward its recommendation to the Senior Executive Team. The Senior Executive Team shall act to approve or modify the Core Group's recommendation in the exercise of its sole discretion. Failing such action within 30 days of the forwarding of the recommendation of the Core Group, such recommendation shall become final.

Target Cost

The Target Cost may be amended due to the effects of escalation and/or Change Orders on Risk Pool amounts as provided in the Agreement between the Parties.

6. Stipulated Sum for Overhead (pursuant to subsection 9.2.2.23 of the Agreement)

Normal, non-Project overhead of Constructor and identified Subcontractors shall be respectively compensated through the stipulated sums set forth below:

Haren & Laughlin Construction Company, Inc.	\$1,264,574
Western Forms	\$0
KAT Excavation, Inc.	\$237,857 (after \$39,643 or 1% deferral)
John Rohrer Contracting Company	\$236,665 (after \$39,444 or 1% deferral)
Green Field Energy Group	\$314,897
Palmer Electric Company	\$224,405
Nebel Construction Services, Inc.	\$198,480

7. Termination of Risk Pool Member.

Any Risk Pool Member that is terminated from the Project shall forfeit all rights to participate in any Project savings as described above.

8. Retainage.

Retainage shall be held and disbursed pursuant to the terms of the HUD Construction Contract.

9. Distribution of Profit and Savings.

Risk Pool Members shall bill their Profit-at-Risk monthly on a percentage of work complete basis. The Senior Executive Team shall consider the following criteria in evaluating any Profit disbursement request: **(a)** the degree to which savings have accrued in the performance of the Services and the Work; **(b)** the likelihood based on current and projected performances by the IPD Team that such savings will be maintained for the duration of the Project; **(c)** the extent to which each Risk Pool Member has completed its individual performance of the Services or Work; and **(d)** the remaining duration of the Project.

The balance of all profits held in the Risk Pool Plan and that portion of the Shared Savings not subject to the Project quality standard shall be disbursed to the Risk Pool Members upon Final

Completion. The portion of the Shared Savings subject to the Project quality standard shall, to the extent earned in accordance with the terms of Section 5 above, be disbursed to Risk Pool Members 30 days following Final Completion.