

**SECOND AMENDMENT TO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

THIS SECOND AMENDMENT TO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (this "Second Amendment") is made and entered into as of this 24th day of February, 2020, by and between the CITY OF LAKE WORTH BEACH, FLORIDA, a Florida municipal corporation ("City"), 1601 DIXIE, LLC, a Florida limited liability company ("Owner").

WHEREAS, City (formerly known as the City of Lake Worth) and Owner entered into that certain Economic Development Incentive Agreement with Effective Date of May 1, 2018 as modified by that Amendment dated December 13, 2019 (the "Agreement"); and

WHEREAS, City and Owner acknowledge that Owner has entered into a separate contract with Moss & Associates, LLC ("Moss") for the construction of the Infrastructure Improvements (the "Infrastructure Contract"), a copy of which is attached hereto as **Exhibit "A-1"**; and

WHEREAS, Owner has applied for and City has issued the building permits for Owner to commence the Project; and

WHEREAS, Owner has proposed to have Moss provide a public construction bond for the Infrastructure Improvements; and

WHEREAS, the public construction bond to be provided includes the bond and dual obligee rider ("Bond"), which are attached hereto as **Exhibit "A-2"**; and

WHEREAS, the parties have agreed to enter into this Second Amendment to modify certain terms and conditions of the Agreement in order to address the savings clause in the Bond's dual obligee rider and ensure the bond remains in effect until all conditions of the bond are satisfied in full; and

WHEREAS, this Second Amendment is necessary to further the objectives of the Agreement, and do not change the substance of the Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein in the sum of Ten and no/00 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner agree as follows:

1. In the event of any conflict between the terms of this Second Amendment and the terms of the Agreement, then the terms of this Second Amendment shall control. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Unless otherwise defined herein all capitalized but undefined terms used herein shall have the same meanings assigned to the same in the Agreement.

3. Section 3(g) is hereby added as follows:

(g) City and Owner acknowledge that Owner has entered into the Infrastructure Contract directly with Moss. The Infrastructure Contract provides that City is a third party beneficiary thereof; however, City shall have no obligation and shall not be liable for any costs, claims, fees or expenses under the Infrastructure Contract.

4. Section 5(b)(1) is hereby replaced with the following:

(1) Payment of Infrastructure Improvements Fund.

Within three (3) business days of the date the Second Amendment to this Agreement is approved by City's City Commission, Owner shall cause the Bond to be executed and recorded, and shall execute, the escrow agreement attached hereto as Exhibit "A-3" (the "Escrow Agreement") with the escrow agent provided therein ("Escrow Agent"). Within two (2) business days of the City's receipt of a copy of the recorded Bond and a copy of the executed Escrow Agreement, City shall execute the Escrow Agreement and deposit with the Escrow Agent fifty percent (50%) of the Infrastructure Improvements Fund (the "Infrastructure Deposit"). Except as provided in this Second Amendment, such funds while placed with Escrow Agent shall be subject to all terms and conditions of this Agreement.

In the event of a default by Owner under the Infrastructure Contract which is continuing for more than fifteen (15) business days after notice from Moss to Owner, Moss shall deliver a copy of such written notice of default to City and to Escrow Agent, which shall identified reason for default and all amounts demanded to be paid to Moss under the Infrastructure Contract (a "Default Notice"). In the event that City receives a Default Notice from Moss then, within ten (10) business days, City shall in its sole discretion have the right, but not the obligation and in addition to any other remedy City may have, to direct Escrow Agent in writing to release the portion of the Infrastructure Deposit as is demanded in the Default Notice to Moss pursuant to the terms of the Infrastructure Contract. If Escrow Agent receives such written direction from City, Escrow Agent shall promptly (within three (3) business days of receipt of City's written direction) release the identified Infrastructure Deposit amount to Moss. Such payment shall constitute a cure of Owner's default evidenced by the Default Notice and Moss shall continue to perform under the Infrastructure Contract as stated therein.

If Escrow Agent has released all of Infrastructure Deposit to Moss pursuant to City's written direction (or the Escrow Agent released the Infrastructure Deposit to Owner as authorized herein) and City receives an additional Default Notice(s) from Moss, City shall in its sole discretion have the right, but not the obligation and in addition to any other remedy City may have, to pay the portion of the remaining Infrastructure Improvement Fund as is demanded in the additional Default Notice(s) to the Escrow Agent within ten (10) business days of receipt of the Default Notice(s). City may then direct Escrow Agent to pay the identified portion of the remaining Infrastructure Improvement Fund as demanded in the additional Default Notice(s) to Moss pursuant to the terms of the Infrastructure Contract. If Escrow Agent receives such funds and written direction from City, Escrow Agent shall promptly (within three (3) business days) release the identified Infrastructure Improvement Fund amount to Moss. Such payment shall constitute a cure of Owner's default evidenced by the Default Notice and Moss shall continue to perform under the Infrastructure Contract as stated therein.

If City directs Escrow Agent to make payments to Moss as provided above, Owner shall be responsible for all costs and expense to City including without limitation City's reasonable attorney's fees for reviewing the Default Notice and any related documents and all related legal services. Said costs may be deducted by City from the Infrastructure Improvement Fund amount remaining to be paid.

The City's City Manager is authorized to execute the Escrow Agreement for the City and to provide written direction to the Escrow Agent as set forth herein.

Once Moss has been paid an amount equal to the Infrastructure Deposit for work under the Infrastructure Contract (whether by the Owner, Lender or by the Escrow Agent), the Owner shall cause Moss to send a written notarized statement to the City, Lender, Owner and Escrow Agent of its receipt of an amount equal to the Infrastructure Deposit for work under the Infrastructure Contract, which shall include a statement that there is no pending default under the Infrastructure Contract and that the Bond remains in full force and effect ("Receipt Notice"). Upon delivery of the Receipt Notice, the Infrastructure Deposit (or the remaining Infrastructure Deposit amount) shall be released by the Escrow Agent to Owner (or, at Owner's election to a Lender controlled account).

Upon receipt of a certificate(s) of completion for the Infrastructure Improvements or other confirmation of completion of the Infrastructure Improvements as agreed to by City, Owner (or Lender on Owner's behalf) may submit a payment disbursement request to City for the balance of the Infrastructure Improvements Fund (less any payment previously paid by City to

the Escrow Agent and less any amount retained by City for City's costs). Within thirty (30) days following City's receipt of the Owner's (or Lender's) payment disbursement request, City shall verify that the Infrastructure Improvements have been completed, and if verified, pay to the Owner (or, at Owner's election, to a Lender controlled account) the balance of the Infrastructure Improvement Fund (less any payment previously paid by City to the Escrow Agent and less any amount retained by City for City's costs).

5. City shall have the right to audit all payments made by the Escrow Agent including, but not limited to, all documentation submitted to the Escrow Agent for disbursement of funds to Moss.

6. All costs, fees and expenses of the Escrow Agreement and Escrow Agent shall be paid by Owner.

7. This Second Amendment shall not become effective until signed by Owner and approved by City's City Commission and executed by the Mayor (or designee) and City Clerk.

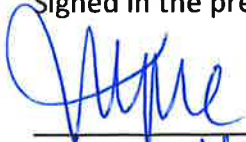
8. This Second Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. A copy of this Second Amendment and any signatures hereon shall be considered for all purposes as originals. Except as otherwise amended and modified hereby, the Agreement shall remain unmodified and in full force and effect and shall be deemed effective.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused their representatives to execute this Second Amendment this 24th day of FEBRUARY, 2020.

Signed in the presence of:

CITY



Print Name Melissa Coyne

CITY OF LAKE WORTH BEACH, FLORIDA

By: 
Michael Bornstein, City Manager

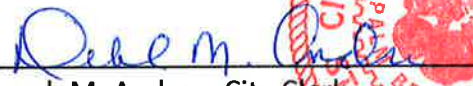
Date FEBRUARY 24, 2020



Print Name BEATRICE HOLLIMAN

ATTEST:

Approved as to form and legal sufficiency:

By: 
Deborah M. Andrea, City Clerk

By:  FOR
Glen J. Torcivia, City Attorney

Approved as to Financial Sufficiency:

By: 
Bruce T. Miller, Financial Services Director

[OWNER SIGNATURE ON FOLLOWING PAGE]

OWNER

1601 DIXIE, LLC, a Florida limited liability company

Print Name

Kenia Santos

By:

As

President

[Corporate Seal]

Date 02-14-2020

STATE OF

Florida

COUNTY OF

Broward

The foregoing instrument was acknowledged before me physically this 14th day of February 2020 by Jeffrey R Burns as the President of 1601 Dixie, LLC, a limited liability company authorized to do business in the State of Florida, and who is personally known to me or who has produced the following N/A as identification.

Notary Public:

Print Name:

Michelle A. Rice

My commission expires:

11-13-2021



EXHIBIT "A-1"

Infrastructure Contract

(attached hereto)

AIA® Document A102™ - 2007

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

notwithstanding
the watermark
draft, the
agreement is
being signed as
is and both
parties agree it
is in final form.

AGREEMENT made as of the 30th day of January in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

1601 Dixie LLC
414 N Andrews Avenue, Fort Lauderdale, FL 33301

and the Contractor:

(Name, legal status, address and other information)

Moss & Associates, LLC
2101 N. Andrews Avenue
Fort Lauderdale, FL 33311

for the following Project:

(Name, location and detailed description)

The Mid
1601 North Dixie Highway
Lake Worth Beach, FL 33460

The Architect:

(Name, legal status, address and other information)

Glidden Spina & Partners Architecture Interior Design Inc.
207 Sixth Street
West Palm Beach, FL 33401

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is not intended for use in competitive bidding.

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

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

DS DS
JB JB

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the General Contract (the A201 General Conditions of the Contract for Construction, as modified in writing by the parties), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

In the event of any conflict among the Contract Documents, the Contract Documents shall be construed according to the following priorities:

- Highest Priority: Change Orders and Construction Change Directives
- Second Priority: Amendments and Addenda issued after the date of the Agreement with later date having greater priority
- Third Priority: Contractor's Qualifications and Assumptions attached hereto
- Fourth Priority: Agreement
- Fifth Priority: General Conditions, as modified by the parties
- Sixth Priority: Drawings, with detailed drawings taking precedence over large scale

Seventh Priority: Specifications

ARTICLE 2 THE WORK OF THIS CONTRACT

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

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

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

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the latter of the date of this Agreement, the date to be fixed in a notice to proceed issued by the Owner or when all the below conditions are met:

- 1) Governmental approvals and/or permits have been issued for the applicable stage of the Work to commence.
- 2) Proper evidence of financing in accordance with the General Conditions
- 3) Filing of Notice of Commencement by Owner
- 4) Executed Owner-Contractor Agreement
- 5) Evidence of Builder's Risk Insurance (if to be provided by Owner)

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than **March 17, 2021. 319 working days/ 458 calendar days from the date of commencement, or as follows:**

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

See Exhibit E - Schedule

Portion of Work

Substantial Completion date

03/17/2021

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

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

If Contractor fails to Substantially Complete the Work within the Contract Time, then Contractor shall pay to Owner, as liquidated damages (but not as a penalty) the following:

(i) for each Unit included within the Work, an amount equal to Thirty Five and 00/100 Dollars (\$35.00) per Unit, per calendar day after the first sixty (60) calendar days following the expiration of the Contract Time. The liquidated damage rate shall increase to One Hundred and 00/100 Dollars (\$100.00) per Unit, per calendar day for each and every calendar day after the first ninety (90) calendar days and thereafter until Contractor Substantially Completes the Unit; and

(ii) for the Common Areas included within the Work, an amount equal to One Thousand and 00/100 Dollars (\$1,000.00) per calendar day for each and every calendar day after the first sixty (60) calendar days following the expiration of the Contract Time until Contractor Substantially Completes the Common Areas. The total amount of liquidated damages shall not exceed one half (1/2) of the Contractor's Fee.

If Contractor achieves Substantial Completion of the entire Work before the Completion Date as modified, then Owner will pay Contractor a bonus of One Thousand dollars (\$1,000) per day commencing on the date of Substantial Completion of the entire Work was achieved and ending on the date that is fourteen (14) days before the Completion Date. Any bonus payment will be in addition to the Contract Sum and GMP.

ARTICLE 5 CONTRACT SUM

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

§ 5.1.1 The Contractor's Fee:

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

a lump sum amount that will be equivalent to _____ percent (0%) of the direct costs of the Work, including the Contractor Controlled Contingency and the cost of bonds and insurance, as determined by the acceptance of the Guaranteed Maximum Price by the Owner, which fee will then be converted into a lump sum amount of (\$0.00). This amount will be paid proportionately on a monthly basis in an amount equal to the percentage of Work in place for the current billing month. No retainage shall be withheld from the Contractor's Monthly Fee billings. Deductive Change Orders reductions in allowance items will not change the Contractor's Fee. However, to the extent that the Contractor Controlled Contingency is not used, and a deductive change therefore made to the GMP to reduce it by the unused amount, the fee will be reduced by 0% of the unused contingency.

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

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

NA

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed One Hundred percent (100%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
NA		

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed \$1,035,000.00, or an amount set forth in the attached Exhibit A (Schedule of Values), subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.1.1 Upon Final Completion of the Work, if the total Cost of the Work plus the Contractor's Fee is less than the Guaranteed Maximum Price, as adjusted in accordance with this Agreement, then the difference shall be "savings". The savings shall be allocated as follows:

(a) (50%) to Owner and (b) (50%) to Contractor. Owner shall pay Contractor's share of savings as additional compensation as part of Contractor's Final Payment; provided, however, that savings shall not include any deletions from the scope of the Work to be performed under this Agreement.

(Insert specific provisions if the Contractor is to participate in any savings.)

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

(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

Described within the GMP Qualifications

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:

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

Item	Price
See Exhibit B – Allowances NA	

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

See Exhibit A – Qualifications and Assumptions

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

§ 5.3 CONTRACTOR'S CONTROLLED CONTINGENCY

The "Contractor's Controlled Contingency" shall be \$0.00. The "Contractor's Controlled Contingency" is for the exclusive use of the Contractor to address unexpected circumstances and to defray unanticipated charges and additional expenses incurred by the Contractor due to errors in estimating both time and money and for the Contractor's costs and expenses incurred to correct subcontract scope and other deficiencies and subcontractor field errors and omissions, to the extent not paid for by Subcontractor, that are not otherwise reimbursable and do not constitute a change in the Work as defined in the General Conditions to this Agreement. No Owner approval is necessary in order for the Contractor to be able to access and utilize the Contractor's Controlled Contingency. However, such utilization shall be related to the Work and charges against the Contractor's Controlled Contingency will be tabulated and reported by the Contractor as part of the Contractor's Monthly Progress Report to the Owner. Contractor will also provide a tracking system for the measurement and transfers of contingency accounts. The full amount of any remaining Contractor's Controlled Contingency shall be considered to be within the GMP for purposes of the calculation of any "Shared Savings" at the Final Completion of the Work.

ARTICLE 6 CHANGES IN THE WORK

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

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to

subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

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

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

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

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

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site and personnel in the main or branch offices of Contractor who perform activities directly related to the Project, including Contractor's project management staff and safety engineer at the home office when engaged in performance of the Work under this Agreement, and usual vacation pay, incentive bonuses and profit sharing made by Contractor to its superintendents, foremen and managers on the Project with all such sums being included within the GMP.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval.

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

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

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or as part of employees' salary package and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and retirement, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 and will be cost at the fixed rate of 69.43 __ % of wages and 69.43 __ % of salaries.

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

§ 7.3 SUBCONTRACT COSTS

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

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

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

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. Rental and/or leasing of automobiles (including leased automobiles and vehicle allowances paid by Contractor to employees providing services in connection with the Work).

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

§ 7.5.4 Costs incurred in the Contractor's home office or field in connection with the project for document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site, cell phones used by site personnel, reasonable petty cash expenses of the site office, and charges for electronic document management system, charges for on-site power consumption, water, sanitary facilities, first aid, elevator services and hoisting.

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

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Contractor shall provide the Owner with complete copies of all insurance certificates required by the Contract Documents within ten (10) days of date of execution of this Contract by the Owner and Contractor. Costs of premiums for all bonds and insurance, including Builder's Risk if to be provided by Contractor and Contractor's General Liability (general liability will cost a fixed rate of one half of one percent (0.50%) of the final Contract amount and the Contractor's Bond pursuant to Florida Statute 713.245 will cost a fixed rate of N/A for this phase), which Contractor is required by the Contract Documents to purchase and maintain and/or Contractor requires, including cost of Performance & Payment bonds for subcontractor and/or suppliers. If SDI is used on this project, the amount shall be at a fixed rate of one and one-quarter percent (1.25%) of the total subcontract and purchase order amounts. **No bond required for the Project. A Florida Statute 255.05 bond shall be furnished and will be billed to the owner at eight tenths of one percent (0.8%).** Builder's Risk insurance and deductibles thereunder will be paid for by Owner outside of the GMP. Contractor shall cooperate with Owner in administering the OCIP policy, provide all necessary information as may be reasonably requested and assist in obtaining refunds from all subcontractors.

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

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

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

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

7.6.6 The Contract Sum as set forth in Exhibit "A" contains a General Conditions line item of \$1,550,000.00. That dollar amount shall be amortized over 14.5 months payable once each consecutive month when a draw request is submitted for the month. Should the Project be delayed due to cause beyond Contractor's fault, the monthly payment shall continue at the same rate until final completion. Notwithstanding the foregoing, in the event of such a delay, Contractor shall provide evidence reasonably satisfactory to Owner of the application of the General Conditions payments during any month that exceeds the initial construction schedule, and any such payment shall be for direct actual costs, not based on a flat fee or lump sum.

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

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

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

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work with Owner's written approval if expenditure is anticipated to be above \$5,000.

§ 7.6.11 - N/A

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Any cost not specifically and expressly excluded by Section 8 which the Contractor reasonably and necessarily incurs in the performance of the Work or in the furtherance of the Project, with such sums being included within the GMP, provided, however that any such cost in excess of ten thousand dollars (\$10,000) per item shall not be included as a Cost of Work, unless such cost is approved in writing in advance by the Owner, whose approval shall not be unreasonably withheld.

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

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

§ 7.7.4 Losses and expenses, not compensated by insurance or otherwise, sustained by Contractor in connection with the Work, provided they have resulted from causes other than the negligence or the willful or wanton misconduct of Contractor. Such losses shall include deductibles on any insurance loss settlements made with the written consent and approval of Owner. No such losses and expenses shall be included in the Cost of Work for the purpose of determining Contractor's Fee nor shall such sums be included within the GMP. If, however, such loss requires

reconstruction, and Contractor is placed in charge thereof, it shall be paid for this service a fee proportionate to that stated in Article 5.1.2.

§ 7.7.5 Not Used

§ 7.7.6 Costs associated with third party quality assurance programs.

§ 7.8 RELATED PARTY TRANSACTIONS

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7, or the GMP; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Contractor Controlled Contingency in accordance with the provisions of Section 9.1 shall be shared between the Owner and Contractor as provided for in Article 5.2.1.1.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 11 ACCOUNTING RECORDS

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

ARTICLE 12 PAYMENTS (The time frames included in Article 12 are subject to reasonable adjustment by the parties hereto as may be required by Owner's lender)

§ 12.1 PROGRESS PAYMENTS

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

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

Ending the Last Day of each Month

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

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

§ 12.1.4 With each Application for Payment, the Contractor shall submit petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee and General Conditions Contractor will provide partial lien releases in accordance with Florida Statute 713 through and to the extent of the prior month's disbursement from Contractor and lower tier subcontractors who filed and served a proper Notice to Owner.

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Subtract retainage of ten percent (10%) until Project is at fifty percent (50%) completion. Upon fifty percent (50%) completion, Contractor shall invoice and Owner shall release fifty percent (50%) of the withheld retainage (thereby reducing withheld retention to five percent (5%)). Thereafter, retention will continue at the rate of five percent (5%) until Substantial Completion. Notwithstanding the above, no retainage shall be held on Contractor's Fee, General Condition / General Requirements, insurance costs, Bond Costs or costs on material purchased directly by Contractor from a supplier.
- .3 (a) Add the Contractor's Fee, The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of «0 » percent («0 » %) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007, provided, however, that no amounts shall be subtracted from General Conditions Contractor's Fee, General Requirements, insurance costs, bond Costs or costs on material purchased directly by Contractor from a supplier.

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

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

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

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- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 Contractor has provided a final Contractor's affidavit and conditional final lien releases from lower tier subcontractors who filed and served a proper Notice to Owner in accordance with Florida Statute 713 .
- .4 The certificate of occupancy or its equivalent (CO) has been obtained from the applicable government agency, unless the same is delayed or not available due to causes beyond Contractor's fault, in which case the CO shall not be required for Final Completion.

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

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation by an independent third party of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall not result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after Final Completion of the Work, receipt of Final Contractor's Affidavit, Contractor's Final Conditional Release of Lien and Contractor's final Application for Payment.

« »

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

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER NA

NA

§ 13.2 BINDING DISPUTE RESOLUTION

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

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

[« »] Arbitration pursuant to Section 15.4 of AIA Document A201-2007

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[**X**] Litigation in a court of competent jurisdiction located in Broward County, Florida. This contract is governed by Florida law. DUE TO THE SPECIALIZED NATURE OF CONSTRUCTION LITIGATION, EACH PARTY IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY.

[**«**] Other (Specify)

« »

ARTICLE 14 TERMINATION OR SUSPENSION

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

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

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee and General Conditions computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

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

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

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

Prime plus two percent (2%) « » % « »

§ 15.3 The Owner's representative:
(Name, address and other information)

1601 Dixie LLC
414 N Andrews Ave.
Fort Lauderdale, FL 33301

Attn: Jeff Burns
CC Nick Rojo and Michelle Rice
§ 15.4 The Contractor's representative:
(Name, address and other information)

« »
« Moss & Associates, LLC»
« 2101 N. Andrews Avenue»
« Fort Lauderdale, FL 33311»
«Attn: Randy Spicer Jr. »
« CC: Brett Atkinson and Bruce Moldow»

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

§ 15.6 Other provisions:

1. The City of Lake Worth Beach ("City") is a third-party beneficiary of the contract, however, City shall have no obligation and shall not be liable for any costs, claims, fees or expenses hereunder.
2. In the event of a default by Owner which is continuing for more than fifteen (15) business days after notice from Contractor to Owner, Contractor shall deliver a copy of such written notice of default to City and to First American Title Insurance Company, as Escrow Agent, which shall identify the reason for default and all amounts demanded to be paid to Contractor. If the default is cured within ten (10) fifteen (15) business days thereafter, Moss shall continue to perform pursuant to this agreement.
3. Escrow Agent's notice address is First American Title Insurance Company, 2121 Ponce de Leon Blvd, Suite 710 Coral Gables, FL 33134, ATTN: Yessie A. Gonzalez, Senior Commercial Escrow Officer (lcrawford@firstam.com)
- « » 4. City's notice address is City of Lake Worth Beach, 7 N Dixie Highway, Lake Worth Beach, FL 33460, ATTN: Michael Bornstein, City Manager (mbornstein@lakeworthbeachfl.gov);**

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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

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

See Exhibit B – Contract Documents

§ 16.1.6 The Addenda, if any:

Number

Date

Pages

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

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

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

« »

- .2 Other documents, if any, listed below:

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

« »

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007. Contractor shall not be obligated to provide a bond until the conditions in Article 4.1 are satisfied. *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

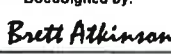
Type of insurance or bond

Limit of liability or bond amount (\$0.00)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remaining copy to the Owner.

DocuSigned by:

 4CA385167B9D4CC

DocuSigned by:

CONTRACTOR (Signature)
 Moss & Associates, LLC

Jeff Burns - Owner's authorized representative
(Printed name and title)

Brett Atkinson - Executive Vice President
(Printed name and title)

notwithstanding
the watermark
draft, the
agreement is
being signed as
is and both
parties agree it
is in final form.

AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

The Mid
1601 North Dixie Highway
Lake Worth Beach, FL 33460

THE OWNER:

(Name, legal status and address)

1601 Dixie LLC
414 N Andrews Ave
Fort Lauderdale, FL 33301

THE ARCHITECT:

(Name, legal status and address)

GliddenSpina & Partners Architecture Interior Design Inc.
207 Sixth Street
West Palm Beach, FL 33401

ADDITIONS AND DELETIONS:

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

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

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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, General Conditions of the Contract, 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. The Agreement and 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 Not Used.

§ 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. The Work shall consist of all items specifically included in the Contract Documents, as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves, any of which are recognized by the Contractor or which should reasonably have been recognized by the Contractor^{DS} exercising the standard of care ordinarily exercised by a contractor of the Contractor's like skill and experience shall **JB**

be promptly referred to the Owner by the Contractor for clarification or explanation.

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

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

§ 1.2.3.1 In general, the Drawings are intended to nominate and establish the location, quantity and relationship of work, and the Specifications are intended to define the type and quality of materials and workmanship requirements of the work shown.

§ 1.2.3.2 When a requirement is made by the Contract Documents that is not possible to meet, such as the requirements for an unavailable material, the Contractor shall submit prompt notice to the Owner and Architect for direction under Article 4.2.1 with approval by Owner as required.

§ 1.2.4 The Contractor shall provide and erect acceptable barricades, fences, signs and other traffic devices to protect the Work from traffic and the public in the manner required by the Contract Documents."

§ 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.

§ 2.1.3 The Owner reserves the right to observe the Work at any time within reason, as coordinated with Contractor. The presence of the Owner or its representatives at the project site does not imply concurrence or approval of the Work.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work ~~and when the Guaranteed Maximum Price is established~~, 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 Unless provided specifically to the contrary, the Owner shall be responsible for obtaining and paying for all permits, licenses, fees, and charges, excepting only the Contractor's license. By way of example and not limitation, the Owner shall secure and pay separately and outside the Contract Sum for all necessary approvals, assessments, permits, licenses, fees, charges, and costs related to the real property, including title, easements, and zoning; use or occupancy of permanent structures, including compliance with applicable codes; permanent changes in existing facilities; permits and authorizations for effluent, air pollution, water pollution, or other environmental impacts; removal and disposal of hazardous, toxic, contaminated, or harmful substances; impact or other fees related to the effect of completed construction on utilities; and satisfying requirements of governmental authorities.

§ 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 materially fails to carry out Work in accordance with the Contract Documents, then after written notice to the Contractor and opportunity to cure, 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 (unless extended by Owner) after receipt of written notice from the Owner and fails 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 solely 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.

§ 3.1.1.1 The Contractor is responsible for determining that all of the Contractor's subcontractors are insured and duly licensed in accordance with the federal, state and local licensing laws unless otherwise agreed by Owner.

§ 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.

The Contractor acknowledges and declares that it has visited and examined the site; generally examined visible conditions affecting the Work; and is generally familiar with the conditions thereon and thereunder affecting the same. In connection therewith, the Contractor specifically represents and warrants to the Owner that it has reviewed: (1) the nature, location, and character of the Project and the site, including, without limitation, the surface conditions of the site and all structures and obstructions thereof, both natural and man-made, and all surface water conditions of the site and the surrounding area; (2) the nature, location, and character of the general area in which the Project is located, including, without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, and labor necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

In connection with the foregoing, and having examined all Contract Documents as aforesaid and having visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents that it has not discussed with Owner and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify the Owner of such fact.

Further, Contractor recognizes the extra degree of care required under the urban site construction circumstances with respect to safety, protection of pedestrians, cleanliness of the site, health and other laws, and protection of existing utilities, adjacent streets, and property. In arriving at the Contract Sum and the Contract Time, the Contractor has or will, as an experienced and prudent contractor, exercise(d) its best judgment and expertise to include the impact of such circumstances upon the Contract Sum and Contract Time. The parties agree that time is of the essence with respect to all time requirements in 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 and Owner 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. Nothing herein is intended to preclude the Contractor from delegating responsibility and control over construction means, methods, techniques, sequences and procedures to subcontractors performing portions of the Work.

§ 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 and Owner 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 or the Owner issues in response to the Contractor's notices or requests for information pursuant to

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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.

§ 3.2.5 If any errors, inconsistencies or omission in Contract Documents are recognized or reasonably should have been recognized by the Contractor, the Contractor shall be responsible for notifying the Owner in writing of such error, inconsistency or omission before proceeding with the Work. The Owner will take such notice under advisement and within a reasonable time commensurate with job progress render a decision. If Contractor fails to give such notice and proceeds with such Work, it shall correct any such errors, inconsistencies or omissions. Owner shall bear all resulting costs except the additional costs that resulted from Contractor's failure to comply with this provision.

§ 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 not be liable for any adverse consequences from adhering to such instructions, including but not limited to the failure of such instructions to produce desired results. 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 Owner or Architect when applicable. 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 As provided herein 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 under a contract with Contractor 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 Owner or Architect when applicable, 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.

§ 3.4.2.1 By making requests for substitutions as provided above, the Contractor represents that the Contractor or its Subcontractor has investigated the proposed substitute product and unless otherwise agreed, determined that it is equal or superior in all respects to that specified, represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified; certified that the cost presented is complete and includes all related costs under this Agreement except the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

§ 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

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

§ 3.5.2 - N/A**§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted at the time this Agreement is executed by both parties ~~the Guaranteed Maximum Price is established,~~ 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 or its subcontractors shall secure and pay for any governmental fees, licenses and inspections other than threshold inspection 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. Owner shall secure and pay for all permits and sub-permits outside of the GMP.

§ 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 that the Contractor knows or reasonably should have known 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 10 days after first observance of the conditions. The Architect and Owner will promptly investigate such conditions and, if the Architect or Owner determine 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 and Owner 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.

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§ 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 an allowance shall also cover all other of Contractor's costs pertaining to the subject matter and scope of the allowance, including but not limited to Contractor's costs for unloading and handling at the site, labor, installation costs, shop drawings and approvals, overhead, profit, and all other expense of whatever nature caused by or associated with the allowance; 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 project staff who shall be in attendance at the Project site during performance of the Work. The Project Executive or Project Manager shall represent the Contractor, and communications given to the Project Executive or Project Manager 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 the name and qualifications of a proposed job-site staff. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed staff or (2) that the Owner requires additional time to review. Failure of the Owner 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 the Contract is fully executed, 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 for the Architect and Owner'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 ten (10) days after receipt of a submittal to approve or reject the 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, Owner-selected Material 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, 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 and Owner 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. The Architect shall maintain all Shop Drawings, Product Data, Samples and permits which are required by the Contract Documents current at all times.

§ 3.12.6 By reviewing and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed 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. Architect shall approve all Contract Documents by stamping "approved" on all such documents.

§ 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 and Owners agents (excluding Licensed Professionals) 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 proven to be 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. 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. To the fullest extent permitted by law, Owner shall indemnify and hold Contractor, its officers and directors harmless of and from any and/or all liability, damage, loss, claim, demand, action and expense (including legal fees and disbursements) sustained or incurred by Contractor as proven to be a result of activities, acts or omissions of Owner or its agents, employees, contractors and Architect, ~~or as a result of any other matter beyond the reasonable control of Contractor or its subcontractors.~~ These agreements of indemnity shall survive the termination of this Contract.

§ 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. Written 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 those services as described in the Contract Documents. The Owner or Architect as applicable shall have the authority to order minor changes in the Work pursuant to Subparagraph 7.4 which do not involve an adjustment in the Contract Sum or Contract Time. The Architect shall have no authority to order changes in the Work involving adjustments in the Contract Sum or Contract Time without the written approval of the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the 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. If the Architect directs the Contractor to cease using a particular means, method, technique, sequence or procedure because, in the Architect's reasonable opinion, the such means, method, technique, sequence or procedure may have an adverse effect on the finished work, then the ~~Architect~~ Owner may direct the Contractor to submit an alternative plan for the Architect's approval subject to Article 7.

§ 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

The Owner and Contractor shall communicate with each other directly 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 and Owner 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 advise the Owner to reject Work that does not conform to the Contract Documents and the Owner will have the authority to reject such Work. Whenever the Architect considers it necessary or advisable, the Architect will have authority to recommend to the Owner 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 within ten (10) days or less after receipt of the submission by Contractor so as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors. .. 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, Owner or Contractor will prepare Change Orders and Construction Change Directives. The Owner or Architect as applicable 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. Notwithstanding this 4.2.8 or any other provision of the Contract Documents, any Change Order shall require the prior written consent of the Owner.

§ 4.2.9 The Architect will conduct inspections to assist the Owner in determining the date or dates of Substantial Completion and the date of final completion and the Owner will have the authority to make such determination; 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 Drawings and Specifications on written request of either the Owner or Contractor. The Architect shall respond effectively to such requests and shall answer requests for information, make decisions, render interpretations, take action on and return the Contractor's submittals and shop drawings, and issue approvals with sufficient content, clarity, and promptness so as not to cause disruption or delay to the progress of the Work nor to increase the Contractor's cost of performance and, in any event, not later than twenty (20) days after the Architect's receipt of the information as to which the Architect's action is requested by the Contractor or required by the Contract Documents, unless a shorter response time is required so as to avoid delay or disruption or is otherwise specified by the Contract Documents (e.g. issuance of a Certificate of Payment within seven days).

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Drawings and Specifications 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 Owners 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. The Architect is not, however, authorized to make verbal or written changes or modifications in the Contract Documents, to direct any additional work not required by the Contract Documents, or to waive the performance by the Contractor of any requirement of the Contract except as provided in "Changes In the Work" (Article 7).

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 including the trade subcontractors, suppliers, manufacturers and materialmen. 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, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner 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 Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner 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 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 has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner 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.

§ 5.2.5 The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents and employees, adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work on the Project, including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, the Contractor shall meet with all other involved, before installation, to plan the most effective and efficient method of overall installation.

§ 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. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with 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 by appropriate Change Order.

§ 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

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report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results.

§ 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 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 and Contractor; 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 with the prior written approval of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, 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 Contractor, Owner or Architect and signed by the Owner and Contractor 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 or Owner and signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the 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. Contractor shall have no obligation to proceed on any Construction Change Directive that is contrary to requirements of loan documents (as made known to Contractor) or when the total amount of outstanding and unresolved Construction Change Directives and other unexecuted Change Orders exceeds ½ of 1% of the GMP.

§ 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 Owner 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 Owner 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 and General Conditions 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. 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 change, 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 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 Owner or Architect where applicable 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. The Contractor shall carry out such changes will be effected by written order promptly subject to the Contractor's right to initiate a Claim pursuant to Article 15.

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. The Contractor shall diligently pursue the Work to completion.

§ 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, strikes, lockouts, fire, unusual delay in deliveries, unavoidable casualties, Acts of God, riots, civil commotions, sabotage, vandalism, concealed conditions, hazardous materials, requirements of law, statutes, regulations, zoning and land use matters, failure of Owner to remove hazardous materials, shortage or unavailability of materials, supplies, labor, equipment and systems requiring reconstruction or repair to the Work or Project or any part thereof or other causes beyond the Contractor's control; or by delay authorized by the Owner pending negotiation; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended for each day of delay and the Contract Sum shall be adjusted by Change Order for additional costs and time.

§ 8.3.1.1 The Contractor shall give the Owner written notice of any delay, including delay caused by the Architect, as soon as possible but in any event within ~~three~~ten days of its discovery the delay. The Contractor must take into account reasonably anticipated downtimes due to typical weather conditions for South Florida at the time that the work is performed, equipment breakdowns, labor shortages, scheduling conflicts, material delivery delays, recognized holidays, or any other incidents or conditions that can be reasonably anticipated to occur on a project of this size and magnitude. The Contractor's failure to properly staff the job, failure to manage the work, or failure to allow for normal, seasonable weather delays shall not entitle the Contractor to additional time. No extensions of Contract Time due to weather delays shall be considered by the Owner unless the weather was unusual for the period of time in which the Work is performed and that the overall Project completion time was, in fact, truly impacted by the unusual weather.

§ 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 and Owner, 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 Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least five days before the last day of each month (or as reasonably required by the Owner's lender), Contractor will submit and review with Owner a pencil copy of its Application for payment. Thereafter, and by the last day of each month, the Contractor shall submit to the Architect and Owner 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 that includes any agreed-to corrections from the pencil copy. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner 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 including retainage, 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 at 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 Owner will, within ten days after receipt of the Contractor's Application for Payment, either issue to the Contractor a Certificate for Payment for such amount as is properly due, or notify the Contractor in writing of the Owner'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 Owner and Architect of the Work and the data comprising the Application for Payment, that, to the best of the Owner and 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 results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner and 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 Owner and 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 Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Owner and Architect are unable to certify payment in the amount of the Application, the Owner will notify the Contractor as provided in Section 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations. The Owner 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 Owners 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 after notice and opportunity to cure;
- .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 in accordance with the Subcontract Agreement and the Owner is not in breach of its obligations to pay Contractor in accordance with the Contract Documents;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the property of the Owner or a separate contractor not otherwise covered by insurance;
- .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 direct damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents after notice and opportunity to cure.

§ 9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld within five days after notice of same to Owner.

§ 9.5.3 If the Owner withholds 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, provided the Owner is not in breach of its obligations to pay Contractor under the Contract Documents

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner shall make payments in the manner and within the time provided in the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than ten 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 Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the 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.

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§ 9.7 FAILURE OF PAYMENT

If the Owner or Architect does not issue a Certificate for Payment, through no fault of the Contractor, within five 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 Owner or Architect or awarded by binding dispute resolution, then the Contractor may, upon three additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 Notwithstanding the other provisions of Article 9, the Owner's obligation for timely payment shall be conditioned on the allowance in the Contractor's payment application procedure for ten (10) days for handling by the Owner and five (5) days by the Architect.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the date of Temporary Certificate of Occupancy (TCO) issued by the authority having jurisdiction. If the TCO is delayed for any reason beyond the control of the Contractor, then the date of Substantial Completion will be 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 Owner and 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 Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner and 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 Owner and 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 responsibility of the Owner 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.

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§ 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 Owner and Architect will promptly make such inspection and, when the Owner and 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 Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the 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.

In addition to the stated requirements, the Contractor shall be required to deliver to the Owner: (i) a final signed contractor's affidavit in statutory form; and (ii) evidence that no liens are outstanding arising by, through or under the Contractor except as set forth in the Final Affidavit. Provided Contractor has been paid all amounts due hereunder, if there is any claim of lien filed which arise by, through or under the Contractor, then the Contractor shall cause such lien to be paid or bonded within ten (10) days following notice from the Owner. In conjunction with all advances being requested, if requested by Owner, the Contractor shall deliver to the Owner lien waivers from all subcontractors and material suppliers.

§ 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, the Owner shall, upon application by the Contractor, 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 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.

§ 9.10.6 Contractor shall not be responsible to provide a bond, effect a discharge or refund any payments to Owner arising out of a lien or claim filed due to Owner's failure to pay amounts properly due to Contractor pursuant to this Contract or Owner's agreement with Contractor not to pay a specific subcontractor or subcontractors.

§ 9.11 CONDITIONED PAYMENTS

§ 9.11.1 Nothing in the Contract or other Contract Documents is intended nor may be construed to waive, abridge, or adversely affect the Contractor's right to make the Contractor's actual receipt of payment from the Owner a condition precedent to the Contractor's payment (whether progress, final, or any other payment) to Subcontractors, suppliers, or other contractees. If the Contractor or its contractees are required to submit affidavits of payment, waivers of rights, releases of claims, or the like, such requirements will not be deemed effective as to unpaid contract balances and retainage until same are actually received by the Contractor from the Owner.

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 Except as may be expressly set forth in the Scope of Work attached hereto, the Contractor shall not be liable for any hazardous, toxic, or contaminated substances, chemicals, pollutants, or other material of any kind or description, including but not limited to asbestos or polychlorinated biphenyl, which may cause injury, sickness, or harm to persons or property (herein "Harmful Substances"). The sole exceptions to the foregoing exemption from Contractor's liability are Harmful Substances which the Contractor or its subcontractors brings onto the Project site or which the Contractor or its subcontractors generates from operations at the Project Site, to the extent such Harmful Substances were not required by the Contract Documents or were not the necessary by-product of Contractor's performance of Work in accordance with the Contract Documents.

§ 10.3.2 The Contractor is not in the business of and shall not be considered as a handler, generator, operator, treater, storer, transporter, or disposer of Harmful Substances and, other than the exceptions stated in Subparagraph 10.3.1, the Owner shall be responsible for and shall indemnify and hold the Contractor harmless from the identification, testing, handling, removal, treatment, storage, transportation, disposal and other activities related to Harmful Substances. The Owner shall extend the Contract Time and adjust the Contract Sum for all delays and extra costs which can fairly be attributable to Harmful Substances, including but not limited to shut-down, delay, disruption, and start-up of Contractor's operations.

§ 10.3.3 Other than the exceptions stated in Subparagraph 10.3.1 above, the Owner shall be completely liable for and shall indemnify the Contractor from all injuries, claims, costs, losses or damages of any type, howsoever arising including but not limited to fines, assessments, legal fees, court costs, actual damages claimed or suffered, cost of removal, transportation, remediation or disposal, or any other amounts related in any manner to Harmful Substances which are present in any form or location over, on, in or under the Project site, or which the Owner or designers, agents, or other entities for whom the Owner is responsible have caused to be at issue because of the location and scope of Work to be performed in accordance with the Contract Documents or other act or omission of such parties. Accordingly, with the sole exceptions under Subparagraph 10.3.1, the Owner agrees to defend, indemnify and hold Contractor harmless and shall waive any rights or claims to costs related in any manner to such Harmful Substances whether or not Contractor has directly or indirectly handled, uncovered, excavated, transported, or performed activities with respect to such Harmful Substances including, but not limited to, moving Harmful Substances from one portion of the Project site to another.

§ 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 or its subcontractors, 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.

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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 shall be written on an occurrence 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 Owner's written request. 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. If any of the foregoing coverages are required to remain in force after final payment and are reasonably available, 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 receipt of a written request therefor from Owner at 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 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 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, 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. It is understood and agreed that Owner is bearing all risk of loss to the property for which the Owner has an insurable or financial interest during construction, and in the event of a loss during construction, Owner agrees to look solely to the proceeds of the Builders Risk Insurance which Owner has agreed to furnish, the only exception being such losses which occur as a result of Contractor's negligence or willful acts, and then, only to the

extent not covered by the Builders Risk insurance. 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 as named insured. Should a loss occur, the Contractor shall be paid by Owner for all work in place at the time of such loss regardless of whether or not such work was damaged in whole or in part by the peril.

§ 11.3.1.1 Builders Risk insurance shall be on an "all-risk" 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, hurricane, 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. A copy of the Builders Risk Policy shall be delivered to the Contractor prior to the commencement of the Work.

§ 11.3.1.2 If the Owner does not intend to purchase such Builders Risk 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 as cost of the Work 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 Builders Risk insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles outside of the GMP.

§ 11.3.1.4 This Builders Risk 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, whether or not the person or entity had an insurable interest in the property damaged and without restrictions to type, cause, time or location of occurrence or loss.

§ 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.

§ 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 Owner's or Architect's written request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Architect, be uncovered for the Owner's or 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 Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and reasonable compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of 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

§ 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 whom it is addressed or two (2) business days after delivery via overnight courier or if sent postage prepaid by United States registered or certified mail, return receipt requested. All notices shall be sent to the persons and addresses as follows:

To Owner
1601 Dixie LLC
Attn: Jeff Burns
414 N. Andrews Ave.
Fort Lauderdale, FL 33301
Cc: Nick Rojo and Michelle Rice

To Contractor:
Moss & Associates, LLC
2101 N. Andrews Avenue Ft Lauderdale, FL 33311
ATTN: Randy Spicer Jr. with
CC to Bruce J. Moldow and Brett Atkinson

§ 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 and paid by the Owner outside of the GMP, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner 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 Owner or 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 Owner and Architect.

§ 13.5.5 If the Owner or 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. The Owner shall not be required to pay interest unless payment is not made within ten (10) days after Contractor's written notice that the amount is past.

§ 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.

§ 13.8 In the event the Work is damaged and/or destroyed by acts of terrorist or vandalism (except where perpetrated by employees of Contractor or its Subcontractors during work hours), then the Contractor shall not be liable for such damages and shall not be obligated to correct the Work that has been damaged by such acts and/or to complete or rebuild the Work if destroyed by such acts unless the Owner and Contractor execute a mutually acceptable Change Order that adjusts the Contract Sum and Contract Time.

§ 13.9 The signing parties to this Contract do not intend to confer any rights upon any persons not a party to this Contract; accordingly this Contract shall not be construed to create any third party beneficiaries.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract 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 Owner has not issued a 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 60 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 (provided the Owner does not cure within the seven (7) day period), terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead, profit on Work

performed, reasonable cancellation and demobilization costs, and costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 30 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 three additional days' written notice to the Owner 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 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 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, but excluding Change Orders and Change Directives issued after Termination 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 is an obligation for payment shall survive termination of the Contract.

§ 14.2.5 Notwithstanding anything to the contrary herein, the Owner shall give the Contractor written notice of grounds for termination for cause and afford the Contractor an adequate opportunity to commence to cure which is reasonable under the circumstances, but not to exceed 60 days, unless a longer period is agreed to by both parties before exercising any rights or remedies under Paragraph 14.

§ 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 subject to the Contractor's rights under this Contract.

§ 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.

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§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may upon 10 days written notice, terminate the Contract for the Owner's convenience and without cause provided however that Owner shall not exercise its rights to Terminate for Convenience for the purpose of reducing its costs.

§ 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 thereon.

§ 14.5 The Owner shall not be responsible for Contractor's loss of anticipated profits on Work not performed on account of any termination.

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, adjustment or interpretation of Contract terms, payment of money, extension of time 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. Claims must be initiated by written notice. 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 within 21 days after the occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party..

§ 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..

§ 15.1.4 Not used

§ 15.1.5 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.

15.1.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 15.1

§ 15.1.7 CLAIMS FOR ADDITIONAL TIME

§ 15.1.7.1 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.

§ 15.1.7.2 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.

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

15.1.9 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.

§ 15.1.10 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 completed.

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 express terms of the Contract Documents.

§ 15.2 INITIAL DECISION
NOT USED

§ 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 filing litigation.

§ 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. Such mediation shall occur within thirty (30) days of notice.

§ 15.4 ARBITRATION
NOT USED

§ 15.4.4 CONSOLIDATION OR JOINDER
NOT USED





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EXHIBIT A - Qualifications & Assumptions

The intent of these Qualifications and Assumptions is to provide a supplemental scope and cost control guide. They are also included to further the Owner's understanding of what is included in the scope of this project based on Moss & Associates interpretation of the Contract Documents.

DIVISION 1- GENERAL REQUIREMENTS:

1. This Contract Sum is based upon the Owner and Moss & Associates (hereafter referred to as Moss) entering into an agreement that is mutually acceptable to both parties.
2. The Contract Sum is based on the Attached List of Documents . Included is the work as shown on the drawings, described in the specifications, and clarified herein. Reasonable efforts have been made to identify any conflicts or omissions in the documents.
3. It is assumed that the documents have been coordinated by the designers. The Contract Sum does not include a contingency to complete design.
4. The Owner shall direct the Architect, Engineers, and Specialty Consultants to incorporate all revisions, sketches, changes, answers to Requests for Information, and all pertinent as-built information, etc. into a final construction set of documents that will be submitted to the authorities as a final permit revision prior to substantial completion.
5. This GMP includes a Contractor Controlled Construction Contingency (the "CCCC") of \$534,507.00. The contingency is for scope buyout and is to be used solely by the contractor as defined by the owner contract. Both the Owner and Contractor shall benefit from unspent CCCC or Project Cost Savings. As such, Contractor shall supply Owner with a monthly report with supporting documentation identifying the status of; a) the budget (budget vs actual), b) subcontractor buyout, c) list of allowances (budget vs actual), d) list of CCCC spent, e) pending PCIs, f) approved PCIs, and g) reconciliation of Project Cost Savings. Owner shall benefit from 75% of unspent CCCC or Project Cost Savings, and Contractor shall benefit from 25% of unspent CCCC or Project Cost Savings during the duration of the Project as outlined below (the "Cost Savings During Construction"). Upon substantial completion, any remaining unspent CCCC or Project Cost Savings shall be split 50/50 amongst the parties (the "Cost Savings at Completion").
 - a. Shared Cost Savings Formula: \$250,000 of Cost Savings During Construction shall be distributed during the duration of the project as outlined below, provided that at no time prior to 85% complete shall funds be returned and distributed to either party should the balance of the CCCC fall below \$250,000.
 - i. \$50,000 (\$37,500 to Owner, \$12,500 to Contractor) upon purchasing 95% of all subcontracts
 - ii. \$50,000 (\$37,500 to Owner, \$12,500 to Contractor) upon completion of all building structures
 - iii. \$50,000 (\$37,500 to Owner, \$12,500 to Contractor) upon reaching 50% complete as per monthly payment requisitions
 - iv. \$50,000 (\$37,500 to Owner, \$12,500 to Contractor) upon reaching 85% complete as per monthly payment requisitions

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EXHIBIT A - Qualifications & Assumptions

v. \$50,000 (\$37,500 to Owner, \$12,500 to Contractor) upon start of Owner punch list

6. Moss will not be responsible or liable for testing, handling, transporting, or disposing of existing hazardous materials (including but not limited to asbestos, P.C.B'S, lead, molds, lead glass, fuel, oils, contaminated soils, and any other hazardous materials or substances) for the work of this proposal. We assume that if the work is required, the contracts will be held directly by the Owner, the Owner shall indemnify and hold Moss harmless from any such related claim should the discovery and removal of such materials result in a delay of the work. Moss shall be granted an adjustment in contract time and sum for all cost, including escalation resulting from such delays. The Owner has provided Moss with a Phase 1 and Phase 2 environmental survey. Any costs associated with delays resultant from the discovery and removal of hazardous and special waste materials shall be borne by the Owner, unless otherwise stated in either report.
7. The Master Building Permit is by Owner at no cost to Contractor. Per meeting with the city building officials, this contract only assumes all sub permit fees to be \$79.00 each and has included this for all applicable sub permits as dictated by the city building officials. Per our understanding of the Owner/City Agreement, offsite utility fees are not included in this contract. If the city imposes additional sub permit fees outside of the \$79.00, these are excluded and therefore will be paid by owner. Any permit expediting services required for contract documents, shop drawings, and etc. will be provided by the Owner.
8. The Cost of Work is based on use of all Open Shop trade labor. No labor agreements or restrictions are included. No prevailing wage rates have been included.
9. No staff, costs, or schedule durations for tenant work or unit customizations are included in this agreement. Any tenant finishes as defined within this GMP shall be completed prior to TCO.
10. If a named storm is projected to approach the vicinity of the project, Contractor shall be reimbursed via change order to perform the necessary preparation and remobilization work and time.
11. The Contract Sum INCLUDES items designated as allowances (indicated on *Exhibit B – Allowances*). It is agreed and understood that the final costs for these line items of work may be higher or lower than the allowances included and will be approved by ownership via change order prior to purchase/installation.
12. The costs of the following items are to be paid for by the Owner. These costs are not included in our Contract Sum Proposal:
 - a. Removal and disposal of any underground obstructions (tanks, structures, and unforeseen site conditions).
 - b. Environmental studies and removal of all unsuitable materials including, but not limited to, asbestos, lead paint, and hazardous materials.
 - c. Testing laboratory/technical agency fees (i.e. on-site inspections, threshold inspections, soils/materials testing, threshold inspections, special inspectors, third party commissioning agent fees, etc.) and any overtime for inspection services by authorities having jurisdiction (i.e. fire marshal, building officials, etc.)
 - d. All architectural, structural, and other consultant fees and services.
 - e. Electrical services are defined as such;
 - a. This subcontract includes financing, furnishing, and installing for all infrastructure and services associated with temp power by the contractor

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EXHIBIT A - Qualifications & Assumptions

- b. The subcontract includes installing the conduit and wire between transformers and will turn up into the transformer pads. All final connections are by utility company.
 - c. The conduit and wire material need to be delivered to site by utility company and any expenses associated with the furnishing of this material is by owner.
 - d. The Utility company is responsible to furnish and install all service from the utility poles to the transformers. If there are any costs for this work, it will be paid by owner.
 - e. The utility company must supply and deliver the transformer and the transformer pads. This contract assumes that Moss will install the provided transformer pads. If there are any costs for this work, it will be paid by owner.
 - f. All final connections
 - f. Utility company/ Hotwire utility impact and connection fees including transformers and/or sources permanent power or services (i.e. transformers, new/power poles) are excluded and considered to be paid for by owner.
 - g. The cost of all meters, utility replacement/relocation unless shown on the drawings.
 - h. Cost of power, water, sewer, and natural gas consumption after substantial completion.
 - i. Monitoring wells and testing required by HRS/DERM/BCEPD.
 - j. Air quality monitoring and testing program.
 - k. Police Fees and Site Security Personnel/Watchman services and security will be paid for by Owner and managed by MOSS.
 - l. Survey/monitoring of offsite existing buildings/structures for settlement.
 - m. All costs associated with obtaining easements, FEMA requirements, or surveys as required by the building officials.
 - n. Dixie Highway Road closure, site impact fees, and right-of-way permits. MOT and partial lane closures on 16th and 17th are the responsibilities of the GC. This does not include any potential closure of sidewalks adjacent to Dixie Highway.
 - o. The costs associated with the Owner's office trailer and associated improvements.
 - p. Builder's Risk Insurance premiums and deductibles.
 - q. Grounds maintenance after substantial completion.
 - r. Furniture fixtures and equipment (FF&E) that are not affixed to a permanent structure or otherwise qualified on the plans unless it is otherwise called out as excluded within the qualifications.
 - s. Owner's contingency.
 - t. Relocation of Utility services inclusive of poles, overhead services, guidewires, etc.
 - u. Davis Bacon or other prevailing wages
13. The FDEP (Florida Department of Environmental Protection) Army Corps. Of Engineers, and the FWMD (Florida Water Management District) permits (dewatering, ERP, wells, etc.) are to be secured by others. The cost of any fees is excluded from this Contract Sum.
14. Where an NPDES (National Pollutant Discharge Elimination System) permit (EPA and/or FDEP) is required it shall be secured by others. The cost of any fees is excluded from this Contract Sum.
15. The SWPPP (Storm Water Pollution Prevention Plan) associated with the NPDES permits shall be developed by others. The cost of any fees is excluded from this Contract Sum.
16. The cost of inspections performed under an NPDES permit is excluded from this Contract Sum.
17. DOT permits are excluded and shall be furnished by Owner.

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EXHIBIT A - Qualifications & Assumptions

18. DERM Permit fees are excluded and shall be furnished by Owner.
19. Any costs assessed by FEC and/or associated with work in the FEC right of way is by owner.
20. The cost for a Performance & Payment Bond premium is excluded. In the event the Owner's lender does require this bond, a change order will be issued to add the associated costs.
21. Owner and GC shall establish guidelines to allow billing of offsite stored materials and pay for deposits (i.e. tile and countertops, elevators, etc.) that may be required by specified vendors (i.e. cabinetry, tile, plumbing fixtures, light fixtures, elevators, glazing and appliances). Such guidelines shall also be acceptable to the Owner's construction lender.
22. This Contract Sum does not include any escalation contingency. GC will attempt to procure subcontracts with no escalation provision and buyout 90% of the subcontracts within the first three months of construction.
23. Owner understands the potential impacts resulting from the current administration as it relates to material prices. As you probably know, the market for certain construction materials is currently somewhat volatile due to the new tariffs and other causes and may be subject to sudden price increases and shortages. These effects include, but are not limited to; price increases, shortage of material, additional time required to procure materials, vendors not holding their original proposals, payment terms, and restrictions on order modifications, etc. GC will put forth best faith efforts and attempt to mitigate material price fluctuations.

Construction material price escalations, shortages or schedule impacts resulting therefrom are not included in the GMP or Contract Time. In the event of price increases, material shortages or delays in material deliveries occurring during the performance of the Contract due to causes beyond the fault of the Contractor, the GMP, Contract Time, and any other applicable/impacted contract requirements shall be equitably adjusted by change order.

Contractor shall complete 90% of buyout of the subcontracts within (90) days following Contract Date in order to mitigate the above referenced risk.

24. This contract assumes work is able to be performed Monday- Saturday 7AM-7PM. As discussed in meeting with city officials, it was agreed verbally that this was acceptable, but we need a formal variance to confirm. During the course of construction, if an unforeseen issue arises that restricts work hours, the Owner and the Contractor will be work together with the city to reinstate these working hours. If these attempts are not successful, the Owner and the Contractor will mutually agree on a schedule moving forward.
25. The artist's and architect's renderings have not been considered.
26. Schedule: Owner understands the potential conflict that may arise and the potential for delays due to the existing offsite overhead utility lines that are slated to be relocated. At this time the City of Lake Worth Beach has been notified of the drop dead dates for removal of overhead lines, and Contractor shall be responsible for promptly notifying the City of Lake Worth Beach of any change to the course of construction or these dates.
27. Excluded are any costs directly related to the Utility Company and their work associated with the relocation of the overhead lines. In the event, the city demands ancillary work such as pole removal and disposal, such costs are excluded and shall be paid for by Owner.
28. Upon notification of completion/turnover of a Unit(s)/Public Space/Other, Owner understands that they have a time obligation to provide contractor final owner punch list within 3 weeks from the date of notification. This understands that units will be turned over no more than 30 units ^{ps} per week.

^{ps} per week. ^{ds} JB



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EXHIBIT A - Qualifications & Assumptions

Contractor will communicate with Owner and provide as much notice as possible to expected timeframes associated with Unit(s)/Public Space/ Other delivery.

29. Please see below for clarifications to GI.0.1

- a. Note 7 – Excluded – It is assumed that these plans are coordinated by the AOR. In good faith, contractor will make reasonable attempts to mitigate all unforeseen coordination issues. If additional costs arise, this will be funded by owner. It is understood that the Contractor shall immediately notify the Architect and Owner at the time the Contractor becomes aware of an issue involving plan coordination that affects cost. Such failure to promptly notify Owner shall require the Contractor to be responsible for any cost increase involving plan coordination.
 - b. Note 10 – Strike through – It is assumed that the AOR/EOR will review shop drawings for approval.
 - c. Note 11 – It is understood that the current set will be kept electronically on site
30. The contractor has utilized basic, entry level, BIM coordination. CAD files do not constitute contract documents. Although this has assisted in potentially identifying some discrepancies and addition coordination needed, this does not represent a complete design and additional coordination may be needed in the future. Costs associated with this additional coordination are not included in this contract.
31. This contract assumes adjacent property is to be utilized for construction parking for the entire duration of the project. Contractor shall be responsible for finalizing a lease with the adjacent property owner and the Owner shall have no responsibility for failure to do so.
32. All items marked in these qualifications as excluded and/or not included, are understood to imply that all additional costs associated with this work are by owner.
33. Owner understands that costs associated with vandalism and theft will be carried and reimbursed under the Owners insurance policy.
34. This contract does not include any cost effects associated with any outstanding RFI's. The estimated rough order of magnitudes for these RFI's will be provided to owner.

DIVISION 2 – SITE WORK

Earthwork and Sitework:

1. This contract assumes that any vertical spacing, horizontal clearance, separation of utilities required by DERM, County Health Department, HRS or any other government agency has been incorporated into the design drawings by the Civil Engineer. We have not included any consideration for the resolution of potential conflicts evident or otherwise that are not clearly shown on the drawings.
2. Per the Geotech report, it is assumed that there is no need to remove any inorganic/peat material on this site.
3. Any rerouting of utilities due to existing utility conflicts, except as shown on the contract documents is excluded from this contract.
4. Extraction and/or removal of existing subgrade foundations/structures is not included inclusive of any existing foundations unforeseen and discovered after the date of this agreement.

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EXHIBIT A - Qualifications & Assumptions

5. Any references to tree protection, removal and relocation is excluded.
6. The cost of work and fees associated with the water taps are excluded within the GMP and therefore paid by Owner.
7. This contract disregards with note 23 on Sheet D-01 that refers to FFE to be at 20.00 NAVD. It is understood to be 17.50 NAVD
8. The contract includes the mill and resurface of 17th Ave north. It includes patching on 16th Ave north and Dixie Highway in any locations that are affected by utility connections
9. Please see comments on general notes as listed on C-02
 - a. General Note 6 – It is assumed that these plans include all necessary information taken from the geotechnical report and this if there is a conflict in information the civil drawings will take precedence
 - b. General Note 9 – Strike through entire sentence “No extra compensation ...{through}...authorization of such additional work.
 - i. It is understood that if conditions in the field are different than that of which is on the drawings that we will notify the EOR, however if there are additional expenses incurred this will be by owner.
 - c. General Note 19 – Strike through – All insurance requirements are established through the Owner contract and OCIP manual.
 - d. General Note 23 – Strike through – These qualifications will take precedence.
 - e. General Note 27 – Per these qualifications it is understood that the responsibility, both time and compensation, with obtaining any utility easement is the responsibility of the owner.
 - f. The Paving is based on the “Paving Specifications” table and Cross Sections as shown on sheet D-03, not the paving general notes shown on sheet C-02. The details and cross sections call for 1.5” Type SP-9.5 Asphalt. This contract includes a standard mix witch contains some recycled asphalt (not virgin asphalt as called out in general notes).
10. U-01 shows (6) water services to be brought across 17th Ave. This contract only includes a meter box for the (1) 2” service. Meter boxes for 1” service to be financed and procured by utility company or owner. Tapping and meter fees are excluded. This contract scope ends at the meter entry point, all work on the other side of the meter that is not depicted on the plans is not included in this contract.
11. Provide 8 Ft high precast screen wall in lieu of the 8 Ft high boundary sound wall as reference. This contract assumes a painted wall without stucco.

Landscaping and Irrigation:

1. Landscape drawings shall supersede Architectural drawings relative to architectural elements such as finishes, material selections, gates, railings, fences, etc.
2. The Planting Material /Specification Table on L-3 and L-4 superseded the diagrammatic image on the trees as it pertains to the final planting count (all notes on all other pages are superseded by these counts).
3. Provide synthetic turf in lieu of sod at fenced in Dog Park.
 - a. An additive alternate will be sent to owner to provide synthetic turf in lieu of sod at the game lawn and to replace the provided turf at the dog lawn with sod and irrigation.

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4. The following substitutions are assumed in this contract to be approved Value Engineering to reduce the landscaping & irrigation budget:
 - a. 18' CT Cabbage Palm ILO 18' CT King Palm
 - b. 14'-16' Gumbo Limbo ILO 22' OA Gumbo Limbo
 - c. 9' CT straight trunk Malayan Coconuts ILO 14' CT straight trunk Malayan Coconuts
 - d. 12' CT Triple Montgomery Palms ILO 12' CT Date Palms
 - e. 3 gal 28" Green Buttonwood ILO 3G 36"ht Ficus Nitida
 - f. 1 G Dwarf Faxahatchee Grass ILO 1 G Fernwood
 - g. 4" Jasmine Minima ILO 1 G Jasmine Minima
5. All references to landscaping/green walls are excluded and standard light texture stucco and paint are included.
 - a. An additive alternate will be submitted to owner
6. "MOSS" wall in clubroom is excluded and standard paint will be used to create "V" effects.
 - a. An additive alternate will be submitted to owner to provide a faux "live wall" covering.
7. This contract excludes the synthetic turf joints depicted at the pool deck on sheet L-8 and will be preplaced with the standard pavers qualified below.
 - a. An additive alternate will be submitted to owner
8. All offsite work performed, will return affected area back to original site grade. Any restoration or additional off-site landscaping is excluded from this contract.

Vehicular and Pedestrian Pavers:

1. Pavers are to be standard 2 3/8" gray cement based concrete pavers over a 1" sand setting bed. The paver included in this contract is assumed to be \$1.75/SF material allowance. These pavers will be at the cross walks leading to the club house (as depicted on L7) and around the pool deck in lieu of of the Kool deck coating and the artistic pavers (as shown on L8)

Site Amenities & Furnishings:

1. Excludes any cabanas, trellis, furniture, summer kitchens, waste receptacles, grills, bike racks, etc.
 - a. An additive alternate will be submitted to owner to provide above excluded site amenities and furnishings.

Signage:

1. Allowance of \$15,000 included for code min. building signage.
 - a. This does not include Unit Signage or Building Labeling/Numbering Signage.
2. Retail tenant signage (on elevations it is depicted as "SIGNAGE") is excluded.
3. Building frontage signage (on elevations it is depicted as "THE MID" sheet A5.0.2) on building is excluded.
4. (6) Entry monument signs are included as block with stucco and paint. Signage by owner.

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EXHIBIT A - Qualifications & Assumptions

5. Electrical services to any signage is per the electrical contract documents only.
6. This contract does not include photoluminescent paint or signage. Architect has verified that this is not required.

DIVISION 3 – Concrete / Structure

1. This proposal is based upon the understanding that coordination of all Architectural elements has occurred between the Architect and the Engineer and is included on the Structural Drawings. Notwithstanding anything else contained herein, Contractor shall consider the entire set of plans
2. This contract includes the structural steel columns to be bare. This contract does not include, intumescent paint, galvanized surfaces, fireproofing spray, etc. applications applied to the structural columns.
3. Precast cross detail as depicted on the structural drawings will not be used. And means and methods of tunnel connections will be addressed with a 6" concrete curb.
4. Detail 1 /ST-0.0 – Will be modified for means and methods.
5. This contract does not include any special stair noising.
6. Fire ratings, as per the depicted Architectural plans, will be achieved. However, the details illustrated in the drawings such as 6/A8.1.1, may differ from the field applications.
7. Owner understands the nature of leaving the hollow core planks unfinished. Some level of concrete from the topping slab above the hollow plank will migrate through the joints creating an unfinished look at the ceiling level.
8. Exposed roof eyebrows on all buildings have been excluded from this contract.
9. Structure will be exposed in areas without ceilings and concrete lines will be visible. There is no additional prep work outside industry standard to the underside of the deck included in this contract.
 - a. An additive alternate will provided to owner to provide a knockdown finish at unit exposed ceilings.

DIVISION 5 – Metals

Misc Metals:

1. Finish on the balcony aluminum railings to be AAMA 2603 standard powder coat finish with standard color options, excludes metallics.
2. Balcony and Breezeway handrails as depicted on the plans are included to be Std. Mid Rail Picket Guard Rail.
3. (2) Motorized Automotive entrance gates are included
4. (4) Roof Access door and ladders are included at buildings 1,3,4, and clubhouse
5. Fire Truck gate is included as a chain link swing gate without electric.
6. Hardware associated with pool gates, is included to be code min where not indicated on security or architectural drawings, unless otherwise provided for in the drawings.
7. Door hoods as shown on 5/A7.0.2 are excluded from this contract. Standard door rain diverter is included.

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EXHIBIT A - Qualifications & Assumptions

8. Awnings/overhangs of all types shown on renderings and/or drawings are excluded from this contract.

DIVISION 6 – WOOD and PLASTICS

Millwork:

1. An allowance of \$5,000 is included for the custom hanging frame with mural located inside the Clubhouse (Ref. A1.1.6, Note 03). Mural by Owner.
2. Kitchen and bathroom cabinets in melamine with thermo-fused slab doors.
3. Unit kitchen and bathroom cabinetry from Empire Stone and Cabinets Corp. European Style (frameless) cabinets manufactured with 5/8" melamine with adjustable shelves, self-closing hinges, metabox drawer system, adjustable plastic legs and toe kicks. Soft close doors and drawers are included.
4. Wall cabinets in kitchen 42"H max. and standard door and drawer style to be slab.
5. Cabinet handles to be 8" European bar pulls.
6. Kitchen mobile islands (230 ea.) with 2cm quartz, Level 1 are included.
7. Kitchen and bathroom countertops to receive 2cm quartz, Level 1.
8. 4" quartz backsplash in the bathrooms and no quartz backsplash (included as subway tile) in the kitchens.
9. Cabinet colors in kitchens and bathrooms: TBD; however, pricing is based on samples provided to the owner (white ash, cassis riviera oak and smoky brown pear, fawn cypress).
10. LED under cabinet strip lighting is excluded.
11. Units and corridors to receive 3 1/2" high x 3/4" thick square wood baseboard.
12. Trash bins are excluded.
13. This GMP excludes crown moldings in all units.

DIVISION 7 – THERMAL & MOISTURE PROTECTION

Waterproofing:

1. Waterproofing is only included in this contract if it is explicitly documented in these qualifications.
2. Tremco Vulkem 350/351 pedestrian traffic coating at residential balconies on levels 2 and 3.
3. Tremco Vulkem 350/351 pedestrian traffic coating at 2nd and 3rd level breezeway between buildings is included. Sealer is included at all above grade breezeways.
4. There is no roll-on waterproofing provided on grade.
5. No waterproofing or sealer is included at any stairwell or landing.
6. Exposed concrete roof eyebrows, inclusive of stucco/waterproofing/paint on all buildings have been excluded through value engineering.
7. Fluid applied perimeter waterproofing is excluded around all exterior openings ie; windows, sliders, doors, storefront, louvers/xvents, etc. Industry standard caulking is included at the exterior of these perimeter conditions.

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EXHIBIT A - Qualifications & Assumptions

- a. An additive alternate will be provided to the owner.
8. Perimeter urethane sealant at hollow metal door frames at stucco, concrete or exposed cmu openings and at exterior mechanical louver frames.
9. Concrete sealer at back-of-house areas included.
10. No horizontal expansion joint caulking or expansion joint covers is shown or included in this GMP.
11. Xypex admixtures within concrete foundations and slabs is excluded.

Roofing:

1. LWIC over a concrete deck. The system consists of a 2" min LWIC over a base layer of 4" EPS Board with additional stair stepped EPS board to attain a Min R-19 and a ¼" per foot min slope. A fully adhered Carlisle .060 White TPO single-ply membrane will be applied above LWIC system.
2. Note 4 on Arch elevations (ex; A3.07) will be accomplished via 5/8" Densdeck with a TPO membrane in between edge drip metal detail in a white .032 TPO coated aluminum.
3. Pop-up roof areas above non-conditioned space will not have LWIC only and no insulation.
4. An allowance of 300LF per building type A and B and 200LF per clubhouse has been included for walking pads.
5. Uplift calcs are excluded for the coping cap or nailers.

DIVISION 8 – DOORS and WINDOWS (RS)

Doors, Frames, and Hardware:

1. Schlage control smart interconnected locks are excluded.
2. No electrified hardware is being provided for any doors unless specifically called out for on the low voltage shop drawings.
3. Door sizes, materials, frames, and ratings are to be provided per the door and frame schedule.
4. Standard hardware to be provided by Better Home Products or Similar. Hardware will meet code min. req.
5. All Exterior to be installed to meet NOA requirements
6. Baseboards are included as 3 ½" wood within the units and corridors and 5 ½" in clubhouse

Glass and Glazing:

1. The GMP includes the following glass & glazing specifications:
 - a. Aluminum painted finish in color white
 - b. All reference to PGT should read "PGT or equal"
 - c. Sizes of unit glass systems will be modified within 5" to achieve standard glazing sizes while still maintaining code minimums.
 - d. All insect/bird screens are excluded
 - e. Standard hardware is included for sliding glass and storefront doors.
 - f. Insulated glass is excluded.
 - g. U-value of 0.86 / SHGC of 0.50 are used for the residential area and U-value of 0.86 / SHGC of 0.52 are the basis of design

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EXHIBIT A - Qualifications & Assumptions

- h. Onsite water infiltration testing by the Owner Provided 3rd party testing company.
- i. Automatic door operators and concealed closers are excluded.
- j. Card readers within glass doors are part of the Low Voltage package.

DIVISION 09 – FINISHES

Drywall

- 1. Non-rated drywall walls are assumed to be ½" drywall.
- 2. Eliminate skim coat & knock down texture at unit ceilings.
- 3. All drywall is assumed to be level 4 finish.
- 4. 25 gauge framing at 24" O.C. is used at all locations other than bathroom tile walls.
- 5. Retail area to be turned over as a white box Drywall and framing is included for the bathroom and AC closet and along demising walls. Exposed concrete ceiling will be provided.
- 6. Sealant is only included at rated walls.
- 7. For means and methods, at furring locations this contract assumes either 1 5/8" metal furring 2x2 P.T. wood furring at all block and CIP walls.
- 8. Wall insulation is included as follows;
 - a. Exterior CMU to have R-7.1 VR Plus Shield Hi-Perm
 - b. Exterior walls with 3 5/8" frame over block to have R-11 bats
 - c. Exterior walls with 6" frame over block to have R-10 batt
 - d. Corridor metal frame walls to have R-19 batt
- 9. No metal framing or drywall is included in the electrical, bike storage, storage, dumpster or domestic pump rooms.

Stucco & Cement Coating

- 1. Stucco shall be average 5/8" thick and a light textured finish on vertical surfaces ilo smooth stucco. The underside of balconies (only at levels 1 and 2) to receive skimcoat. Accessories shall be white PVC.
- 2. Detail 8 on architectural elevations (Ex A3.0.7) has been included as a ½" tall by ¼" depth hand scored line
- 3. Stair ceilings and underside of stairs is to be left as exposed concrete.
- 4. Exterior framing detail for the building high roof pop-ups has been included per the structural drawings as CIP concrete with stucco.

Painting

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EXHIBIT A - Qualifications & Assumptions

1. All references to a specific paint manufacture, ie Sherwin Williams or Benjamin Moore, are interchangeable.
2. Sheet A11.0.1 refers to a finish type of "washable flat". This contract excludes washable paint and has included Promar 200 Flat Paint Finish
3. Exterior Stucco is to receive one coat Loxon primer and 2 coats of acrylic latex flat finish (Sherwin Williams A-100 flat or equal)
4. Photo luminescent paint is excluded.
5. Retail areas to receive primer and 1 coat white paint.
6. Common area GWB with prime and two coats Promar 200 Flat unless marked with semi-gloss paint color.
7. Sheets A9.5.4 and A9.5.5 depict the paint scheme for the corridors. This contract modifies the paint scheme to not include painting the door and trim. This qualification comes from a maintenance concern.
8. Unit Numbers depicted on sheets A9.5.4 and A9.5.5 are presumed to be stencils.
9. All back of house storage, utility, dumpster, etc. rooms are excluded.

Finish flooring, Tile and Stone:

1. All references to Luxury Vinyl Tile inside the residential units is omitted from this project and specifications, other than the LVT inside of the Yoga Room inside of the Clubhouse.
2. No tile finishes at balconies. Ref. waterproofing Q/A/s
3. Bathrooms to receive 4" quartz backsplash and 3" x 6" ceramic subway tile full-height backsplash in kitchens.
4. The following tile material unit pricing is included. Owner/architect or Owner's consultant and tile supplier have made proper tile selections relative to ASTM specifications, 2019 Tile Council of North America and selections have been made to carefully consider the physical final locations (wet areas, high traffic, etc) of these tile along with slip coefficients, wear/durability. Etc. (actual tiles to be selected by Owner at a later date):
 - a) Unit floor tile (excluding bedrooms and A/C closets) - Include a \$1.35/sf material allowance (12" x 24" porcelain). Tile flooring will be installed underneath cabinets. A/C closet floors will be left unfinished concrete.
 - b) Unit flooring tile includes a 15%-20% waste factor (Based on size and location).
 - c) Bathroom floors - include a \$1.35/sf material allowance (12" x 24" porcelain tile)
 - d) Shower floors - includes a \$1.35/sf material allowance (6" x 12" porcelain tile)
 - e) Tile base in unit bathrooms - includes a \$1.35/sf material allowance (4" field cut)
 - f) Unit shower walls - Includes a \$1.20/sf material allowance (4" x 8" ceramic subway tile)
 - g) Precast shower curbs are included (5" W x 4" H)
 - h) Threshold transitions (bathrooms to bedrooms are included)
 - i) Schluter strips (tile to carpet, threshold at A/C closets, and vertical transitions at shower tiled walls). Trim metal both sides of shower curbs is included.

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EXHIBIT A - Qualifications & Assumptions

- j) Kitchen backsplashes - includes a \$1.20/sf material allowance (3"x 6" ceramic subway tile)
 - k) Clubhouse tile finishes (CT-1, 2, 3, 3A, 4 and 4A) inside Public Restrooms as per Sheet A9.5.1 and tile specifications on Sheet A11.0.1.
 - l) Carpets CPT-7, 8, 9 and 10 inside of the Clubhouse are included.
- 5. Bathrooms to receive 4" quartz backsplash and 3" x 6" ceramic subway tile full-height backsplash in kitchens.
 - 6. Pliteq 5mm Geniemat FF05NP sound underlayment under tiled areas at residential floors 2 and 3.
 - 7. Residential bedrooms – includes material specification from Carpet Style Secret Weapon (plush) for carpet stretch IN over padding in all residential bedrooms.
 - 8. Corridor carpet includes material specification "Color Your World" 22 oz level loop commercial carpet tiles 24" x 24".
 - 9. Any and all references to shower niches and/or shower benches are excluded. No niches or shower benches will be furnished or installed in any bathroom.
 - 10. Conc 1 and Conc 2 as referenced on Sheet A1.1.9 inside the Clubhouse is considered to be polished concrete. Concrete 2 calls for textured concrete. This contract includes sealed broom finish concrete flooring for Conc 2.
 - a. An additive alternate will be provided to owner.
 - 11. Tile configurations and layout are considered industry standard. Tile pricing does not include diagonal patterns/layouts.
 - 12. All references to epoxy grout are excluded. This contract includes standard cementitious grout.

DIVISION 10 – SPECIALTIES

- 1. Each residential unit bathroom to receive the following toilet accessories by Delta:
 - a. Robe hook
 - b. 24" towel bar
 - c. Toilet paper holder
 - d. Towel Ring
 - e. Grab bars are excluded
- 2. Each common Area bathroom to receive the following standard toilet accessories by DELTA, KOALA or BOBRICK:
 - a. 42" and 36" grab bars
 - b. Baby changing station
 - c. Mirror 24" x 36"
 - d. Soap dispenser
 - e. Sanitary napkin disposal
 - f. Toilet tissue holder
 - g. Paper Towel receptacle
- 3. USPS Approved postal specialties
 - a. (230) tenant boxes

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EXHIBIT A - Qualifications & Assumptions

- b. (23) parcel types
- 4. ¼" Thick, 42" High Clear Frameless Glass Vanity Mirrors are included in the Units.
- 5. (322) 3/8" frameless shower swing door (32") shower enclosure
- 6. Unit closet shelving
 - a. (3000 ft) - 12" Vinyl Coated Wire Shelf w/ standard rod - closets
 - b. (3400 ft) - 12" Vinyl Coated Wire Shelf – Linen
- 7. Package concierge is excluded but the package room has been included per the plans
- 8. Fire Extinguishers and cabinets are included to meet Florida Building Code requirements.

DIVISION 11 – EQUIPMENT

Residential Equipment:

- 1. Residential kitchens appliances by GE Appliances.
 - a. 11.55 Cu. Ft. Top Freezer refrigerator with ice maker (model # GGIE18GSHSS).
 - i. An additive alternate will be provided to owner.
 - b. 30" Free-standing electric range (model # GJBS60RKSS).
 - c. 1.6 Cu. Ft. Over-the-range microwave (model # JGJNM3163RJSS)
 - d. Frontload Built-In dishwasher (model # GGSD3361KSS)
 - e. GE GGUUV27ESSMWW "Spacemaker" Electric Washer/Dryer combo. Washer capacity 3.8 Cu. Ft. and Dryer capacity 5.9 Cu. Ft.
 - f. 1/3 HP Badger garbage disposals
- 2. Clubhouse Appliances
 - a. (2) each - Bosch BB26FT50SNS "800 Series" French Door Refrigerator (this refrigerator has been value engineered from \$6,400 to \$2,500 each).
 - b. (1) each - Sharp (model# KB6524PSY) 24 in. W 1.2 cu. ft. Built-in Microwave Drawer in stainless steel
 - c. (1) each - GE Profile Series 1.9 cu. Ft, 450 watts warming drawer in stainless steel (model # GPW9000SFSS)
 - d. (1) each - 18" Wide undercounter Built-In Wine Cellar by Summit Appliance
 - e. (1) each – 15" built-in ice maker by Summit Appliance
- 3. Window washing system and anchors are excluded.

Window Treatment

- 1. Window Treatment is excluded from this GMP and therefore will be purchased and installed by the Owner.

DIVISION 13 – SPECIAL CONSTRUCTION

Swimming Pool and Fountains:

- 1. This contract assumes a complete standard design of the pool. If the AOR/EOR adds additional engineering comments to this design that increase costs, this will be paid by owner.

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EXHIBIT A - Qualifications & Assumptions

2. This contract assumes the following design standards;
 - a. 1050 SqFt / Rolling Gutter / 4ft Avg Depth / 31,416 Gal
 - b. Monolithic Bond Beam / 6" min floor thickness / 6" min wall thickness
 - c. 3,500 PSI Concrete Structure @ 28 days
 - d. Steel bar reinforcement #3 Grade 40
 - e. Hydraulically balanced plumbing to meet local DOH requirements.
3. Pool finishes have been included as such
 - a. Std. Florida stucco pebble interior finish
 - b. Waterline tile 6" x 6" (\$5 per sq ft F.I. allowance)
 - c. Gutter cap bullnose tile 2" x 6" (\$4 per linear ft F.I. allowance)
 - d. Steel cap bullnose tile 2" x 6" (\$7 per linear ft F.I. allowance)
 - e. Standard depth and no diving tiles
 - f. Standard precast coping 12" x 24" x 1.5"
 - g. Stainless steel handrail and ladder
 - h. (2) pool lights
4. Any and all waterproofing not specifically included within the Q/A/s and on the Contract Documents are excluded, including, but not limited to concrete additives, control joints or any other liquid applied applications.
5. ADA lift and pool heater are excluded.

DIVISION 14 – VERTICAL TRANSPORTATION

Elevators:

1. Any and all references to elevators and all vertical conveyance systems in non-applicable and therefore excluded.

Trash Chutes and Trash Collection systems:

1. Any and all references to trash chutes is non-applicable and therefore excluded.
2. Waste recycling systems, odor control, trash and recycling containers of any kind are excluded.

DIVISION 15 – MECHANICAL

Fire Protection:

1. A code compliant fully designed system is included with CPVC piping in residential areas.
2. Fire protection coverage throughout residential unit balconies is excluded.
3. Concealed sprinkler heads are excluded.
4. Fire protection of bathrooms less than 55 sf and closets less than 12 sf have been specifically excluded as fire protection in these areas is not required as per the code.

HVAC:

1. No dryer booster fans are included. Moss assumes that all dryers specified are included with a

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EXHIBIT A - Qualifications & Assumptions

- long throw type exhaust venting.
2. Start up and commissioning is included.
 3. All Testing & Balance and Blower Door Testing is excluded.
 4. Condensers on rooftop stands rather than detail in plans. Configurations of stands will be field coordinated based on local code
 5. Bath fans are included as Broan with flexible aluminum duct.
 6. Xvent boxes utilized for all apartment dryer, bath and O/A penetrations. 4" flexible aluminum to be used for the bath venting and 4" insulated flexible aluminum for O/A duct.
 7. The submittal package for the products that will be utilized on this project have been sent to and reviewed/accepted by the design team
 8. To get to the GMP value, the air conditioning in the corridors has been value engineered to use (2) ceiling cassette mini-split air handling units (Mitsubishi M Series) in the ceiling of the corridors that would be connected to (1) condenser on the roof. This is in lieu of the existing air handling units and condensers shown the current contract documents.
 9. Please see below for modifications to M0.0.1
 - a. Note 2 – It is assumed that the AOR has coordinated the routings of all trades. If excessive re-routing is necessary, this will be at an additional charge
 - b. Note 3 – It is assumed that we are further than 3,000 Ft and all reference to non-ferrous materials or corrosion inhibitors are not applicable to this project
 - c. Note 13 – Lavatory exhaust will utilize flex alum and all outside air and exhaust will be insulated per code min.
 - d. Note 17 – Strike through last 2 lines
 - e. Note 19 - First Sentence will only be applicable in Clubhouse
 - f. Note 20 – Thermostats will be included per specs provided.
 - g. Note 22 – Strike through ACR hard drawn
 - h. Note 24 – Strike through Site Glass
 - i. Note 24 – We will provide (2) Filters – Construction and Final
 - j. Note 28 – All condensate drain piping will be CVPC - Not copper -
 - k. Note 30 - Per the AC per specs provided.
 - l. Note on M5.0.2 - Duct board will be provided in retail areas, not metal

Plumbing:

1. Water meter(s) & associated meter fees is not included in the GMP and will be provided by Owner.
2. Multiple supplier plumbing fixture package qualified as per the following:
 - a. Peerless PTT14219 Shower Faucet
 - b. Mansfield Alto 135 – 3173 1.28 GPF Elongated Toilet
 - c. Pelican PL-1813 Porcelain Undermount Sink
 - d. Peerless P1519LF Single Post Lavatory Faucet
 - e. Pelican PL – VS3018 - Single Bowl Undermount kitchen sink
 - f. Peerless P199152LF Single handle faucet w/ side spray
 - g. 40 gal Water heater
 - h. Retail spaces – Tankless water heater

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Lake Worth, FL

EXHIBIT A - Qualifications & Assumptions

3. Water riser piping to be CPVC inside the building. Sanitary Piping will be PVC. AC condensate piping will be PVC DWV Sch. 40 with CPVC in the plenums.
4. This contract does not include sound insulation for drainage lines, hot water insulation, vertical condensate drain insulation.
5. Standard free-standing pool shower and hose bib and water bubbler per sheet A1.1.3
6. All Condensate lines will be PVC or CPVC. Insulation on condensate piping will only be used on vertical runs and where required for code minimum.
7. Contrary to note 18 P 0.0.1 , water hammer arrestors will only be used on fixtures required by code.
8. Piping and dog fountain fixture are excluded. Reference note 1 on P1.3.1 – SN10
9. Note 30 on P 0.0.1 refers only to insulation that will be required in the clubhouse building.
10. Note 15 on P 0.0.1 is considered to say "All PVC shall be cellular core no solid core.
11. In working towards the gmp goal, the linear drains depicted around the pool was eliminated and this contract includes the use of (10) areas drains connected to the storm water system.
12. Design team will accept this Q&A as acceptance for our proposed VE per Note 9 on P 0.0.1

DIVISION 16 - ELECTRICAL

Electrical:

1. Radio booster DAS (Distributed Antenna System) and Bi-Directional Amplifying (BDA) systems and equipment are excluded from this GMP, inclusive of design fees. (Note 1 on ALS.1.1 and all other's referencing radio signal boosters are too be negated.
2. Lightning Protection is not included.
3. All reference to two-way communication is not included.
4. Access control system, parking control system, CCTV security system and audio-visual system with equipment are excluded and included by Owner. Electrical Contractor to provide conduit raceways with pull strings as per the provided contract documents.
5. Infrastructure of conduit and pull strings associated with access control is included per the low voltage drawings. The GMP sheets state security by other and this contract assumes these low voltage drawings are the "security" drawings.
6. Lights shown on A1.1.4 on the underside of the balconies overhanging the retail areas are excluded since they are not shown on the electrical plans.
7. This Contract Sum includes an Allowance of \$450,000 for residential unit electrical fixtures and trim, ceiling fans, club house, site lighting, and corridors. This is an allowance and assumes ownership and design team will aid lighting dynamics in value engineering the lighting package.
8. MC or Romex cable shall be used where allowed by code.
9. No power, low voltage, or piping provisions are included for water sub-meters.
10. This contract assumes all conduit material, wire material, concrete pads, and transformers are provided by others. This contract includes the installation of the conduit, as depicted on the contract documents, as well as the concrete pad for the proposed transformers. This contract also includes the pulling of the wire from the pole shown to the transformers shown. All final terminations are excluded. All service costs, fees, material cost, and inspections, are excluded.

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Lake Worth, FL

EXHIBIT A - Qualifications & Assumptions

from this contract.

11. Electrical service to owner upgraded (if selected) insta-hots in lieu of water heaters is excluded.
12. CATV & telephone service raceways (conduit & pull strings) are included.
13. Smart panels to be provided by Hotwire
14. Our Electrical contractor will be taking over as the EOR for the Fire Alarm design. This contract includes a code compliant system regardless of what is shown on the contract documents.
15. Please see below for modifications to E0.0.1
 - a. Note 9 – Excluded
 - b. Note 13 – Excluded
 - c. Note 14 – Not Applicable
 - d. Note 24 – It is assumed this has been coordinated by the design team.
 - e. Note 25 – Strike through "after hours" and add that this will only be X-ray if required by the structural engineer.
 - f. Note 26 – Strike through Sentence "Existing electrical devices...made accessible"
 - g. Note 27 – Plenums will only include code compliant material but not the specific material as listed.
 - h. Note 38 – Strike through "Where fixtures are not available with integrally mounted test buttons, the test buttons shall be located in a discrete location as determined by the architect up to 50' away from the fixture."
 - i. Note 39 – Strike through "New lights and lamps shall match...(through)...The correct mounting height type shall be provided." And Light fixtures installed in areas having exposed food or food preparation areas or kitchens shall be properly licensed and have shatter proof lamps."
 - j. Note 44 – Excluded
 - k. Note 55 – Excluded – Dimmers not included
 - l. Note 59 – Excluded
 - m. Note 64 – Excluded
16. Please see below for modifications to E0.0.2
 - a. Note A.3 – Excluded
 - b. Note A.5, A-6, and A-7 - Will be superseded by the contract
 - c. Note A-11 – Exclude
 - d. Note A-16 – Will be superseded by the contract warranty period
 - e. Note B-5 – Exclude
 - f. Note B-6 – Strike through note – All Wire will be pulled per code.
 - g. Note B-7 – Excluded
 - h. Note B-8 – Excluded
 - i. Note B-18 - Strike through note – All conduit will meet the need of the project plans and be per code
 - j. Note C-2 – This is not correct. There would be no point of the shop drawing process if this is the case.
 - k. Note C-6 – Change to 8 weeks
 - l. Note E-3 – Excluded
 - m. Note E-8 – Strike through note – Insulation provided per code min.

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EXHIBIT B – Contract Documents

Moss shall provide the following

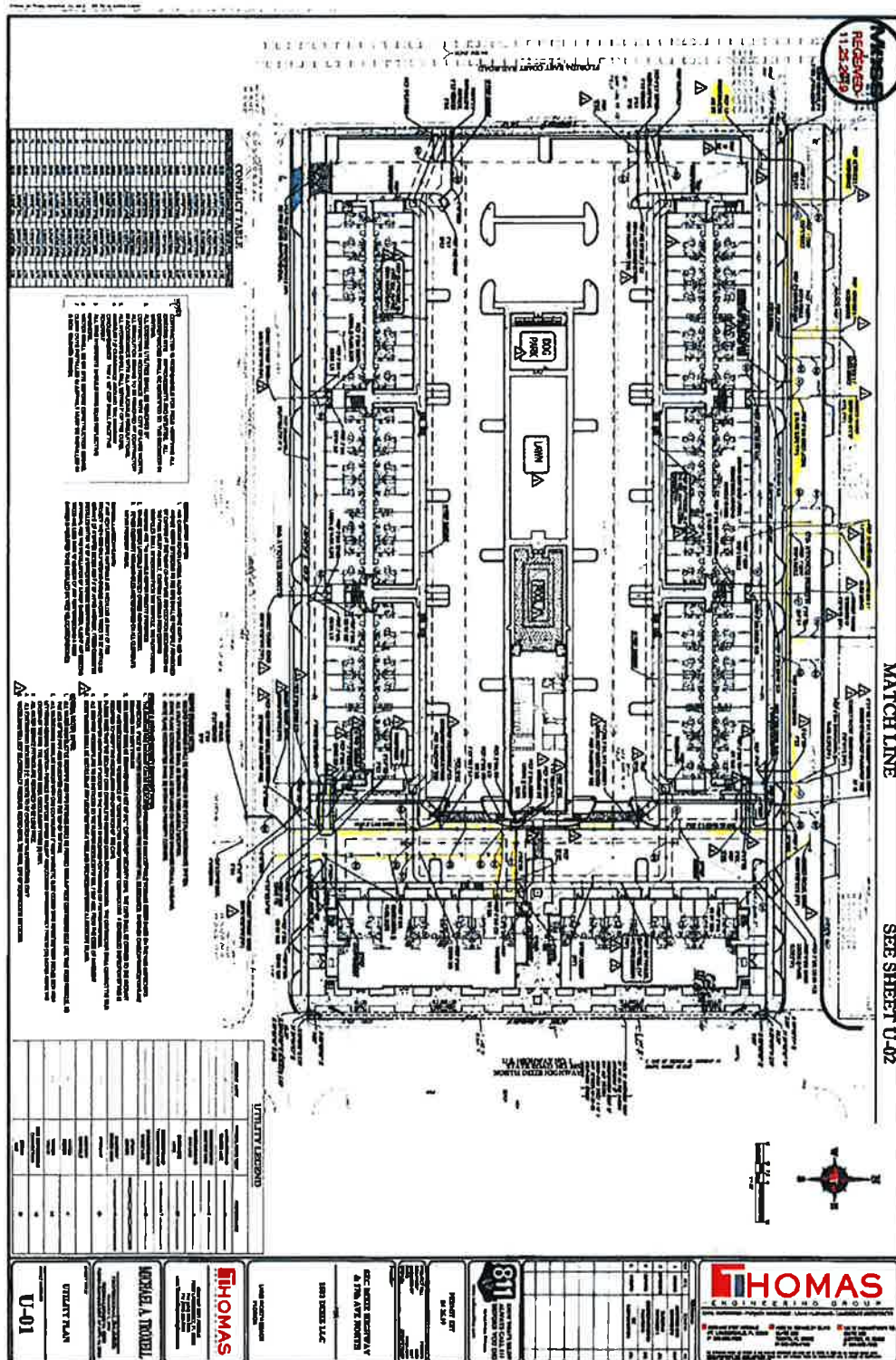
- Portion of electrical infrastructure required to provide electricity to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space.
- 17th Avenue North shall be milled and resurfaces from Dixie Highway west to the rail right-of-way as set forth in Exhibit B. In addition, F curb and gutter shall be added to aid with stormwater conveyance, also as set forth in Exhibit B.
- Portion of water infrastructure required to provide potable water and fire protection distribution mains to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space.
- Portion of stormwater infrastructure required to provide a stormwater collection and management system to serve the Project's proposed multifamily with commercial use space of approximately 5.46 acres.
- Portion of sanitary sewer infrastructure required to provide sanitary sewer collection system to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space.

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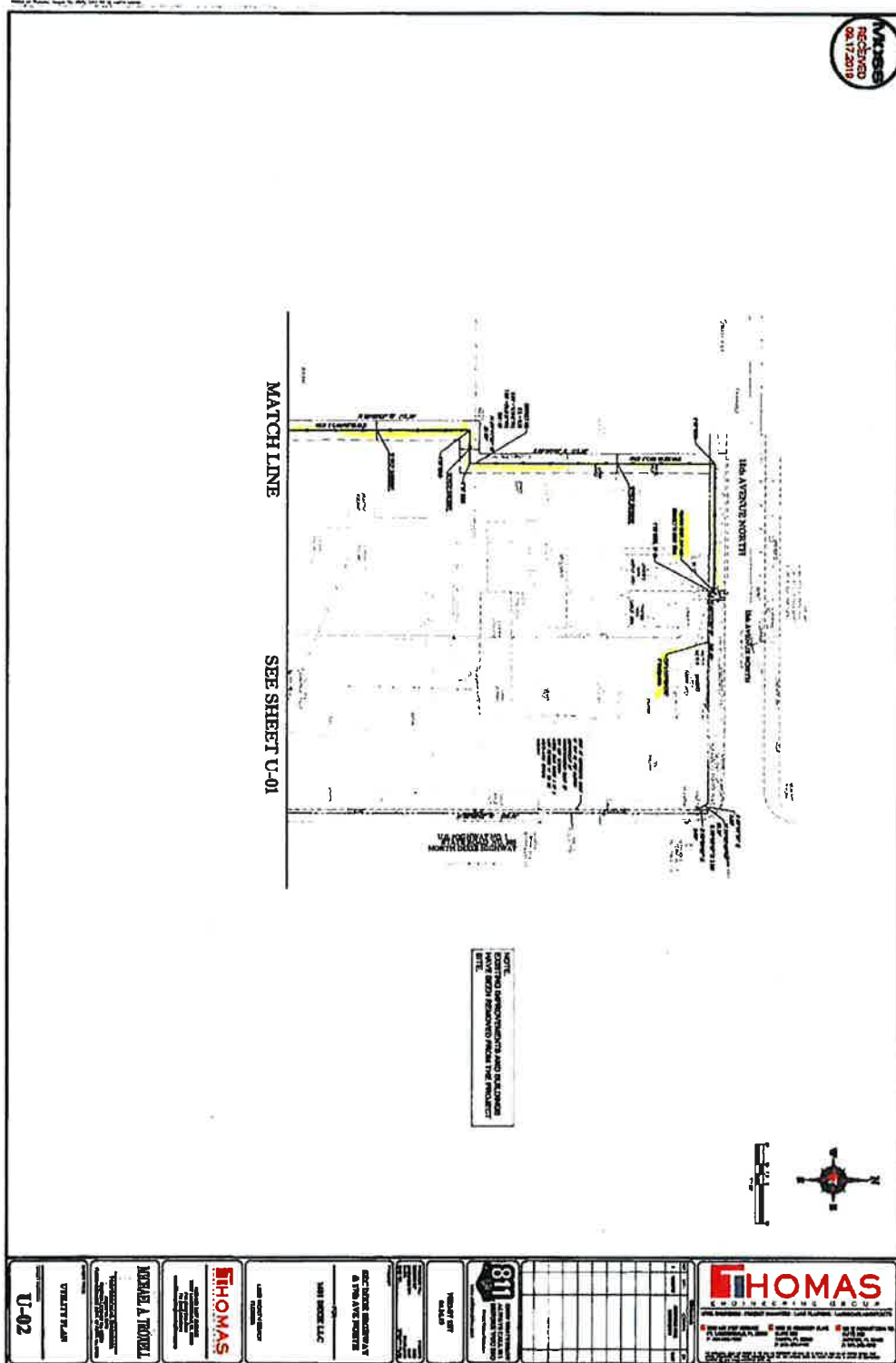
EXHIBIT B – Contract Documents





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EXHIBIT B – Contract Documents



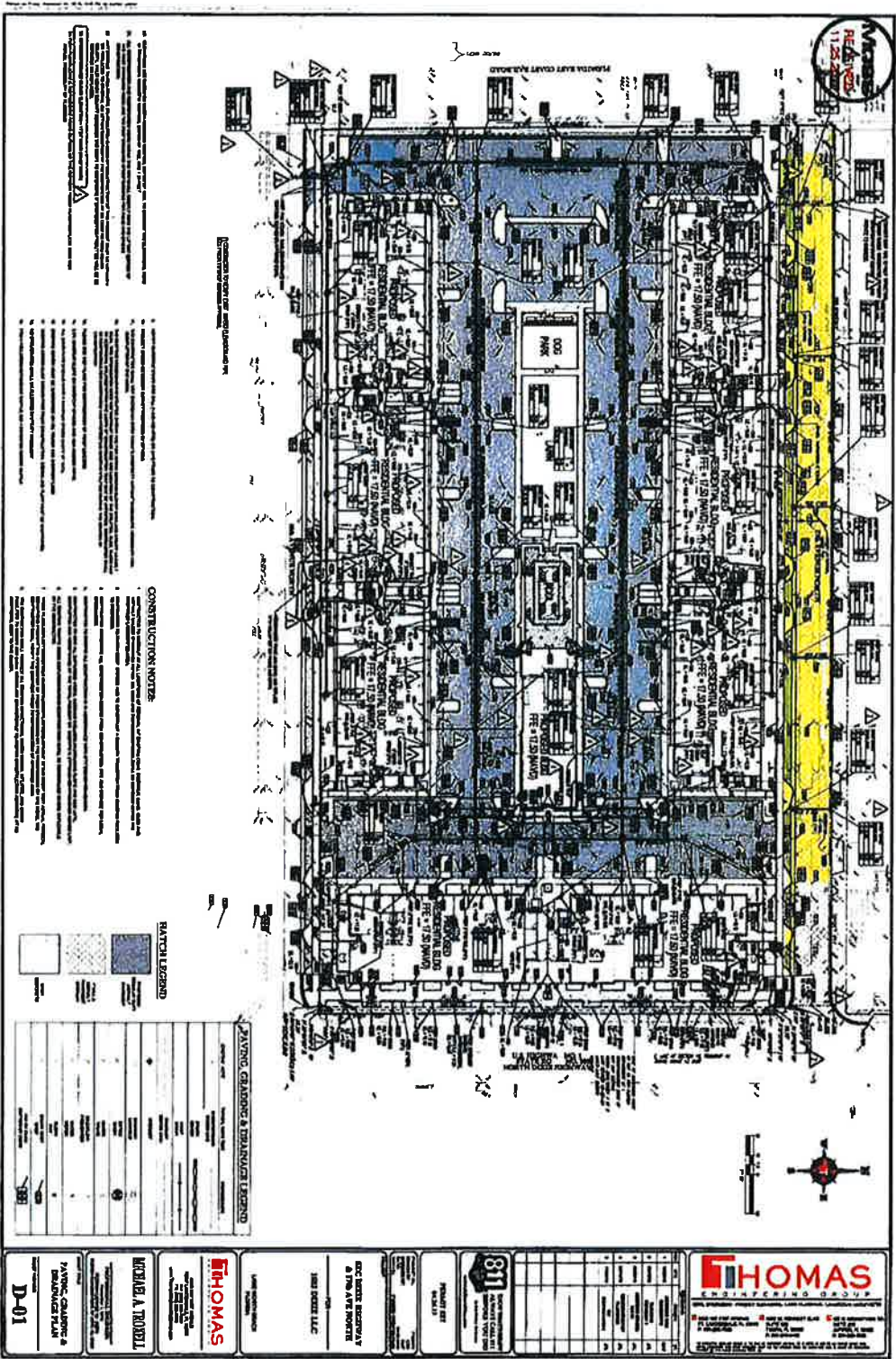
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EXHIBIT B – Contract Documents



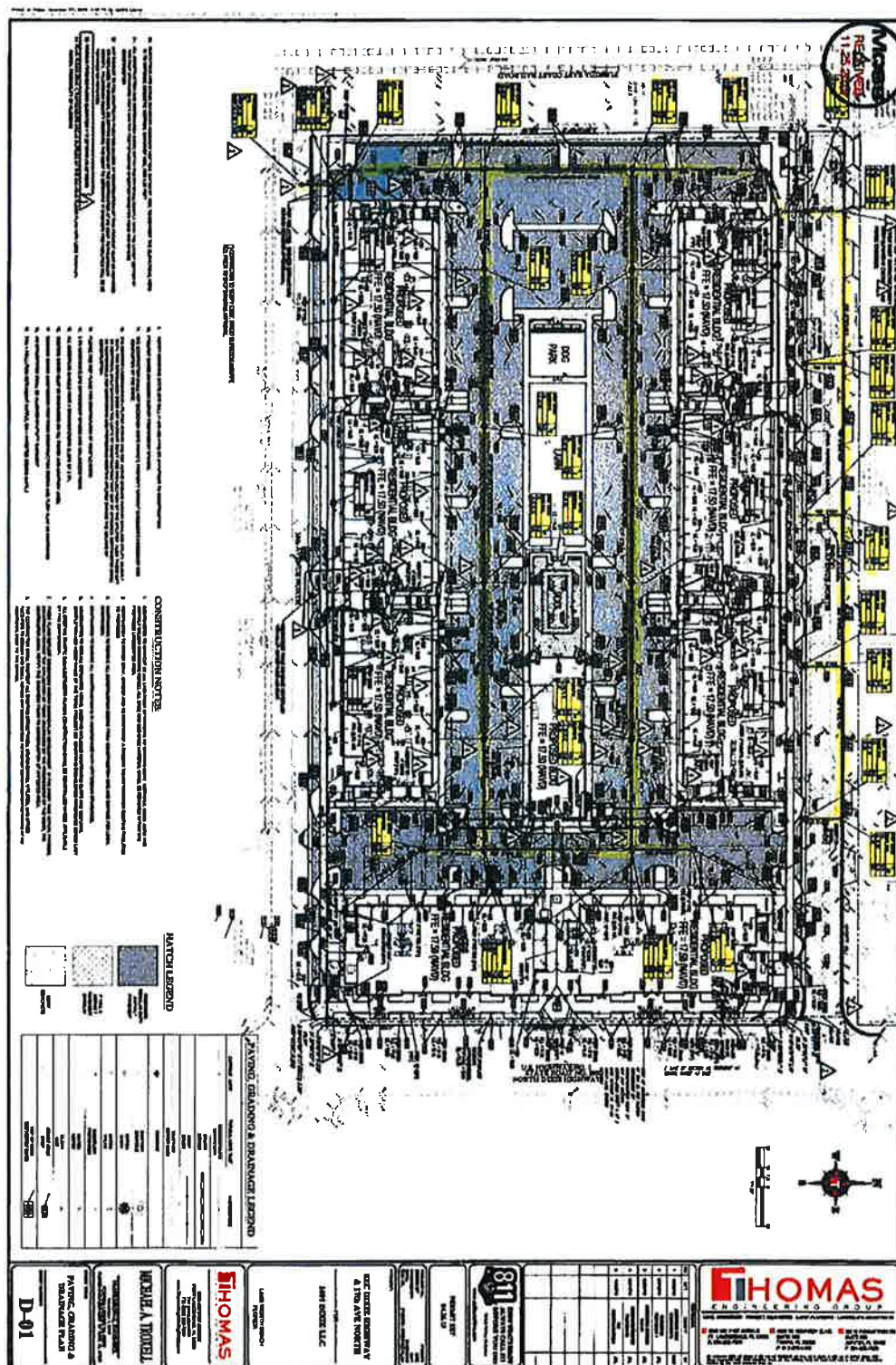
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EXHIBIT B – Contract Documents



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EXHIBIT "A-2"

Public Construction Bond with Dual Obligee Rider

(attached hereto)

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**PAYMENT AND
PERFORMANCE BOND**
(Florida Public Works)

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Hartford, Connecticut 06183

Bond No.: 106856754

Bond MUST be recorded in public records of County where improvement is located

Principal (Contractor) : Moss & Associates, LLC

Address: 2101 N. Andrews Avenue, Fort Lauderdale, FL 33311

Telephone: (954) 524-5678

Surety: Travelers Casualty and Surety Company of America

Address: One Tower Square, Hartford, CT 06183

Telephone: (407) 388-7814

Owner: 1601 Dixie LLC

Address: 414 N Andrews Avenue, Fort Lauderdale, FL 33301

Telephone: (954) 451-5252

Project Description: The Mid, 1601 North Dixie Highway, Lake Worth Beach , FL 33460

NOTE: Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

BY THIS BOND, We, Moss & Associates, LLC, called the Principal, and Travelers Casualty and Surety Company of America, a Connecticut corporation, called the Surety, are bound to 1601 Dixie LLC, herein called Owner, in the sum of One Million Thirty Five Thousand 00/100 Dollars (\$1,035,000.00) for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:


1. Performs the contract dated January 30, 2020, between Principal and Owner for construction of The Mid, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

Signed and dated this 4th day of February, 2020.

Moss & Associates, LLC
(Principal)

By: 
David Glasser, Vice President

Travelers Casualty and Surety Company of America

By: 
William Scott Trethewey, Attorney-in-Fact



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **William Scott Trothwey** of **FT LAUDERDALE Florida**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **17th** day of **January**, **2019**.



State of Connecticut

City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **17th** day of **January**, **2019**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2021**




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **4th** day of **February**, **2020**




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which this Power of Attorney is attached.**

**DUAL
OBLIGEE
RIDER**

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Hartford, Connecticut 06183

(Concurrent Execution)

This Rider is executed concurrently with and shall be attached to and form a part of performance bond No. 106856754.

WHEREAS, on or about the 30th day of January, 2020, Moss & Associates, LLC (hereinafter called the "Principal"), entered into a written agreement with 1601 Dixie LLC (hereinafter called the "Primary Obligee") for the construction of the The Mid (hereinafter called the "Contract"); and

WHEREAS, Principal is required by the Contract to provide a performance bond and Primary Obligee has requested that City of Lake Worth Beach, Florida, ATTN: City Manager, 7 N Dixie Highway, Lake Worth, FL 33460, be named as an additional obligee under the performance bond; and

WHEREAS, Principal and Travelers Casualty and Surety Company of America (hereinafter referred to as "Surety") have agreed to execute and deliver this Rider in conjunction Performance Bond No. 106856754 (hereinafter referred to as "Performance Bond")

NOW, THEREFORE, the undersigned hereby agree and stipulate that City of Lake Worth Beach, Florida, ATTN: City Manager, 7 N Dixie Highway, Lake Worth, FL 33460 shall be added to said bond as a named obligee (hereinafter referred to as "Additional Obligee"), subject to the conditions set forth below:

1. The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligee, or any of them, unless the Primary Obligee, the Additional Obligee, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) strictly in accordance with the terms of said Contract as to payments and shall perform all other obligations to be performed under said Contract at the time and in the manner therein set forth.

2. The aggregate liability of the Surety under the Bond, to any or all of the obligees (Primary and Additional Obligees), as their interests may appear, is limited to the penal sum of the Bond; the Additional Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract. At the Surety's election, any payment due under the performance bond may be made by joint check payable to one or more of the obligees.

3. The Surety may, at its option, make any payments under said Performance Bond by check issued jointly to all of the obligees.

Except as herein modified, the Bond shall be and remains in full force and effect.

Signed this 4th day of February, 2020.

Moss & Associates, LLC

(Principal)

By: 

David Glasser, Vice President,

Travelers Casualty and Surety Company of America

By: 

William Scott Trethewey, Attorney-in-Fact



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **William Scott Trothowey** of **FT LAUDERDALE, Florida**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **17th** day of **January**, **2019**.



State of Connecticut

City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **17th** day of **January**, **2019**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2021**




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

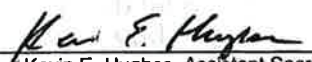
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **4th** day of **February**, **2020**




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which this Power of Attorney is attached.**

EXHIBIT "A-3"

Escrow Agreement

(attached hereto)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") entered into this 24th day of February, 2020, by and between First American Title Insurance Company ("Escrow Agent"), City of Lake Worth Beach, a Florida municipal corporation ("City") and 1601 Dixie, LLC, a Florida limited liability company ("Owner").

W I T N E S S E T H:

WHEREAS, City and Owner entered into that certain Economic Development Incentive Agreement with Effective Date of May 1, 2018 as modified by that Amendment dated December 13, 2019 and by that Second Amendment dated February __, 2020 (the "Incentive Agreement"); and

WHEREAS, Owner has entered into a separate contract with Moss & Associates, LLC ("Contractor") for the construction of the Infrastructure Improvements as identified in the Incentive Agreement (the "Infrastructure Contract"); and

WHEREAS, City and Owner have agreed to enter into this Escrow Agreement in order to address potential issues that may arise during the construction of the Infrastructure Improvements under the Infrastructure Contract; and

WHEREAS, except as specifically modified by written instruction executed by all parties and accepted by Escrow Agent, the following General Conditions of Escrow shall apply to this escrow, and the Escrow Funds received hereunder.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and are hereby incorporated into and made a part hereof.

2. Deposit of Escrow Funds. As provided in the Incentive Agreement and upon the Owner's satisfaction of certain conditions precedent, the City will deposit \$517,500 with the Escrow Agent (the "Escrow Funds"). The Escrow Funds (and any Additional Escrow Funds, as described below) while in escrow shall be subject to all terms and conditions of this Escrow Agreement and the Incentive Agreement, which is attached hereto as **Exhibit "1"**. Escrow Agent is directed to deposit the Escrow Funds (and any Additional Escrow Funds, as described below) in an interest-bearing account, which account shall be maintained in the name of First American Title Insurance Company as Escrow Agent for the parties to this Escrow Agreement. Interest earned on the Escrow Funds (and any Additional Escrow Funds, as described below) deposited shall accrue to the benefit of Owner, who has provided a completed and executed W-9 form to Escrow Agent. **THE ESCROW FUNDS WILL NOT BE PLACED INTO AN INTEREST-BEARING ACCOUNT UNTIL AND UNLESS ESCROW AGENT HAS RECEIVED THE COMPLETED W-9 FROM THE OWNER.** Accrued interest shall accumulate and constitute a part of the escrow. Escrow Agent shall not be responsible for (a) any fluctuation in the rate on

interest accruing on deposited escrow funds; (b) any failure on the part of the Bank; (c) the unavailability of FDIC insurance on all or any portion of the deposited escrow funds or (d) any other matters beyond the direct and exclusive control of Escrow Agent.

3. Owner's Default. As provided in the Incentive Agreement, in the event of a default by Owner under the Infrastructure Contract, Contractor shall deliver a copy of such written notice of default to Owner, City and to Escrow Agent, which shall identify the reason for default and all amounts demanded to be paid to Contractor under the Infrastructure Contract (a "Default Notice"). In the event that City receives a Default Notice from Contractor then, within ten (10) business days, City shall in its sole discretion have the right, but not the obligation and in addition to any other remedy City may have, to direct Escrow Agent in writing to release the portion of the Escrow Funds as is demanded in the Default Notice to Contractor pursuant to the terms of the Infrastructure Contract. If Escrow Agent receives such written direction from City, Escrow Agent shall promptly (within five (5) business days of receipt of City's written direction) release the identified Escrow Funds amount to Contractor.

If Escrow Agent has released all of Escrow Funds to Contractor pursuant to City's written direction and City receives an additional Default Notice(s) from Contractor, City shall in its sole discretion have the right, but not the obligation, to deposit additional Escrow Funds in the amount demanded in the additional Default Notice(s) with the Escrow Agent within ten (10) business days of receipt of the Default Notice(s) (the "Additional Escrow Funds"). City may then direct Escrow Agent to pay the Additional Escrow Funds as demanded in the additional Default Notice(s) to Contractor pursuant to the terms of the Infrastructure Contract. If Escrow Agent receives such Additional Escrow Funds and written direction from City then Escrow Agent shall promptly (within five (5) business days) release such funds to Contractor.

Upon receipt by Escrow Agent of a written notarized statement by Contractor to the City, Owner and Escrow Agent of the Contractor's receipt of an amount equal to the Escrow Funds for work under the Infrastructure Contract, which shall include a statement that there is no pending default under the Infrastructure Contract and that the Public Construction Bond for the construction work remains in full force and effect ("Receipt Notice"), the Escrow Funds (or the remaining portion of the Escrow Funds) shall be released by the Escrow Agent to Owner (or, at Owner's election to an account controlled by Owner's lender).

All parties to this Escrow Agreement shall have the right to audit all payments made by the Escrow Agent including, but not limited to, all documentation submitted to the Escrow Agent for disbursement of funds to the Contractor.

All costs, fees and expenses of this Escrow Agreement shall be charged to the Escrow Funds or the Owner if the Escrow Funds are insufficient to pay all costs, fees and expenses of this Escrow Agreement.

4. Limitations of Liability: Without limitation, Escrow Agent shall not be liable for any loss or damage resulting from the following:

- a. The financial status or insolvency of any other party or any misrepresentation made by any other party.

- b. Any legal effect, validity, insufficiency, or undesirability of any instruction and notice deposited with or delivered by or to Escrow Agent or exchanged by the parties hereunder, whether or not Escrow Agent prepared such instrument.
- c. The default, error, action or omission of any other party to the escrow.
- d. Any loss or impairment of Escrow Funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from failure, insolvency or suspension of a financial institution, or any loss or impairment of funds due to a invalidity of any draft, check, document or other negotiable instrument delivered to the Escrow Agent.
- e. The expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction, accepted by Escrow Agent has instructed the Escrow Agent to comply with said time limit.
- f. Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
- g. Any mistakes of fact or errors in judgment, or any acts or omissions of any kind, unless caused by its willful misconduct or gross negligence.

4. Completion of Escrow: Upon completion of the disbursement of the Escrow Funds and any Additional Escrow Funds and delivery of instruments, if any, and after receiving written approval from both parties, Escrow Agent shall be automatically released and discharged of its escrow obligations hereunder.

5. Benefit: These conditions of escrow shall apply to and be for the benefit of agents of the Escrow Agent employed by it for services in connection with this escrow, as well as for the benefit of Escrow Agent. There are no third party beneficiaries to this Escrow Agreement.

6. Attorney's Fees: In the event that litigation is initiated relating to this escrow, the parties hereto agree that Escrow Agent shall be held harmless from any attorney's fees, court costs and expenses relating to that litigation to the extent that litigation does not arise as a result of the Escrow Agent's fault. To the extent that Escrow Agent holds Escrow Funds under the terms of this escrow (excluding any Additional Escrow Funds), the parties hereto, other than Escrow Agent agree that the Escrow Agent may charge those Escrow Funds with any such attorney's fees, court costs and expenses as they are incurred by Escrow Agent. In the event that conflicting demands are made on Escrow Agent, or Escrow Agent, in good faith, believes that any demands with regard to the Escrow Funds or Additional Escrow Funds are in conflict or unclear or ambiguous, Escrow Agent may bring an interpleader action in an appropriate court in Palm Beach County, Florida. Such action shall not be deemed to be the "fault" of Escrow Agent, and Escrow Agent may lay claim to or against the Escrow Funds for its reasonable costs and attorneys fees in connection with same, through final appellate review.

7. Duties of Escrow Agent: Agent is authorized and agrees by acceptance of the Escrow Agreement to hold and deliver the same or the proceeds thereof in accordance with the terms hereof. Escrow Agent is acting as a stakeholder only with respect to the Escrow Funds and any Additional Escrow Funds and Escrow Agent's duties are purely ministerial in nature. In the event of doubt as to its liabilities or duties, Escrow Agent may, in its sole discretion (i) continue

to hold the Escrow Funds and Additional Escrow Funds until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction in Palm Beach County, Florida, shall determine the rights of the parties thereof, or (ii) deliver the Escrow Funds and any Additional Escrow Funds and the proceeds thereof to the Clerk of the Circuit Court for Palm Beach County or other court of competent jurisdiction in Palm Beach County, Florida, and upon notifying all parties concerned of such action, any liability on the part of the Escrow Agent shall fully terminate except to the extent of accounting for monies or documents previously delivered out of escrow. In the event of any suit wherein Escrow Agent is made a party by virtue of acting as agent, or in the event of any suit initiated by or against Escrow Agent, Escrow Agent may interplead any money held by Escrow Agent. Escrow Agent shall be entitled to recover reasonable attorneys' fees and costs incurred in negotiation, at trial and upon appeal, said fees and costs to be charged and assessed as court costs in favor of Escrow Agent and immediately paid by the non-prevailing party. The parties agree that Escrow Agent shall not be liable to anyone for misdelivery of monies unless such misdelivery shall be due to willful breach of this Escrow Agreement or gross negligence on the part of Escrow Agent. Escrow Agent shall not be liable for any loss resulting from any default, error, action or omission, loss or impairment of funds in the course of collection or while on deposit resulting from failure or suspension of the depository institution or Escrow Agent's compliance with any legal process, order or judgment of any court, whether or not subsequently vacated or modified.

8. Dispute: In the event of a dispute or controversy between the parties to the with regard to the Escrow Funds or Additional Escrow Funds, the Escrow Agent reserves the right to resign as Escrow Agent, upon thirty days written notice by Escrow Agent to all parties to this Escrow Agreement.. Escrow Agent shall transfer Escrow Funds and Additional Escrow Funds to a successor Escrow Agent upon joint written instruction from all parties to this Escrow Agreement within said thirty-day period. Failure of any notice of replacement Escrow Agent shall cause Escrow Agent to interplead the Escrow Funds and Additioanl Escrow Funds as provided herein.

9. Escrow Fee: Escrow Agent will be entitled to a fee in the amount of \$400.00 for performing its duties hereunder. The parties hereto agreed that the fee will be subtracted from the Escrow Funds at time of disbursement to either Owner or Owner's lender (as applicable).

10. Release of Escrow Funds and Additional Escrow Funds: Escrow Agent shall release or disburse Escrow Funds and any Additional Escrow Funds only pursuant to a written notice as provided in this Escrow Agreement.

11. Notices: All notices, requests, disbursements (except wire transfers, which shall be deemed to have been duly given after confirmation of receipt given by the recipient bank as directed in the wiring instructions) or other communications shall be in writing, shall be provided to all parties (as identified below) and shall be deemed to have been duly given on the date sent if: a) by electronic or email transmissions to the email addresses provided below, said email notice shall be deemed effective upon completion of the email, so long as the email notice has the proper and necessary notice attached by a PDF attachment with the required signature(s) and the sender retains written proof of time date and successful transmission; b) sent Federal Express or by similar private overnight courier service, or c) sent certified mail, return receipt requested, with all post

charges prepaid, and addressed to the following addresses for each party or to such further addresses as any such party may designate by written notice given pursuant to this paragraph:

Escrow Agent:

First American Title Insurance Company
2121 Ponce de Leon Blvd., Suite 710
Coral Gables, FL 33134
Attention: Yessie A Gonzalez, Senior Commercial Escrow Officer
Phone no.: (305)908-6253
Fax no.: (866) 908-6012
E-mail: YeGonzalez@firstam.com

Owner:

1601 Dixie, LLC
414 N. Andrews Ave
Fort Lauderdale, FL 33301
ATTN: Jeffrey Burns and Nick Rojo, Jr.
E-mail: jburns@affiliateddevelopment.com; nrojo@affiliateddevelopment.com

with copies to:

Greenspoon Marder LLP
200 E. Broward Blvd., Suite 1800
Fort Lauderdale, FL 33301
ATTN: Mark J. Lynn, Esq.
E-mail: mark.lynn@gmlaw.com

City:

City of Lake Worth Beach
7 N. Dixie Highway
Lake Worth Beach, FL 33460
ATTN: Michael Bornstein, City Manager
E-mail: mbornstein@lakeworthbeachfl.gov

with copies to:

Torcivia, Donlon, Goddeau & Ansay, P.A.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407
ATTN: Christy L Goddeau, Esq.
christy@torcivialaw.com

13. Entire Agreement. This Escrow Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended except pursuant to a written instrument executed by all parties.

14. Governing Law. The laws of the State of Florida shall govern the validity, construction, enforcement and interpretation of this Escrow Agreement. Any legal action instituted in connection herewith involving Escrow Agent shall be maintained only in Palm Beach County, Florida.

15. Parties Bound. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

16. Time of Essence. Time is of the essence in this Escrow Agreement.

17. Counterparts. This Escrow Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all together one and the same instrument.

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SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year first above written.

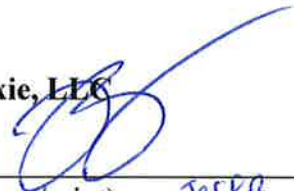
Signed, sealed and delivered in the presence of:


(Name: type/print) Kenia Santos

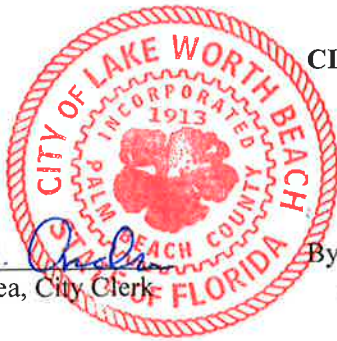

(Name: type/print) Seal Adams

Owner:

1601 Dixie, LLC

BY: 
Name (type/print) Jeff Burns
its President

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SIGNATURE PAGE OF CITY AND ESCROW AGENT FOLLOW



CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: 
Deborah M. Andrea, City Clerk

By: 
Michael Bornstein, City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

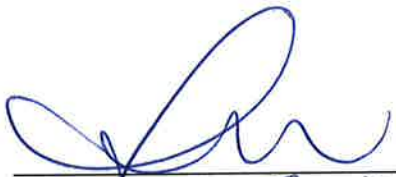
By:  *For*
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL
SUFFICIENCY

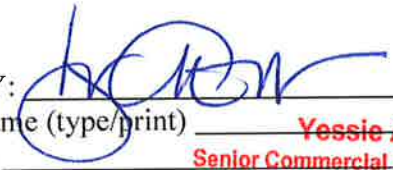
By: 
Bruce T. Miller, Financial Services Director

Escrow Agent:

**FIRST AMERICAN TITLE INSURANCE
COMPANY**


(Name: type/print) Francis Mancini


(Name: type/print) Maykel Rodriguez

BY: 
Name (type/print) Yessie A. Gonzalez
its Senior Commercial Escrow Officer, Paralegal