AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

Hamilton County, Ohio 525 Northland Ramp and Rolling Door Installations
525 Northland Boulevard
Cincinnati, Ohio 45240

THE OWNER:
(Name, legal status and address)

Board of County Commissioners, Hamilton County, Ohio
603 County Administration Building
138 East Court Street
Cincinnati, Ohio 45202

THE ARCHITECT:
(Name, legal status and address)

THP Limited, Inc.
100 East 8th Street, Suite 300
Cincinnati, Ohio 45202

TABLE OF ARTICLES

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

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

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

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

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

(Paragraphs deleted)

16 CERTAIN WARRANTIES AND OBLIGATIONS OF CONTRACTOR

(Paragraphs deleted)

17 SUPREMACY OF APPLICABLE LAW; REFORMATION OF CONTRACT DOCUMENTS

(Paragraphs deleted)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Agreement, any bonds required in connection with the Project, the Contractor's Construction Schedule (defined in Section 3.10 herein) (as modified from time to time), the Schedule of Values (as defined in Section 9.2 herein), other documents listed in the Agreement, and Modifications issued after execution of the Agreement. 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.

.1 The Contract Documents shall be interpreted to include all items necessary for the proper execution and completion of the Work.

.2 If there is an inconsistency in the quantity or quality of the Work required by the Drawings or Specifications, the greater or better quality, as determined by the Architect, shall be provided, unless the Architect issues contrary instructions in writing. The Drawings and Specifications for all trades are complementary, and must be referred to in determining the complete scope of the Work of the Contractor or any of its Subcontractors.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract"). 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, services, inspection, testing, tools, supplies, fuel, transportation, installation, temporary facilities, supervision, and clean-up 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. The Contractor shall pay all costs of the performance of all its obligations under the Contract, even if such costs exceed the Contract Sum.

§ 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 other contractors and by the Owner's own forces.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, 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

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professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 The Project Manual

The Project Manual is the volume assembled for the Work which includes the bidding requirements, sample forms, Conditions of the Contract, Specifications, Drawings and all Addenda issued prior to the execution of the Agreement.

§ 1.1.10 Project Site

The Project Site is the area within the Owner's property lines for the Work, and any adjacent properties affected by the Work. This definition of the word "Project Site" shall apply whether or not the words "Project Site" are capitalized. The term "Site" shall have the same meaning as the term "Project Site".

§ 1.1.11 Approved

When the words "approved," "satisfactory," "proper" or "as directed" are used, approval by the Owner or Architect, as applicable, shall be understood.

§ 1.1.12 Provide

When the word "provide" including derivative thereof, is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

§ 1.1.13 Addenda

Addenda are written or graphic instruments issued prior to the execution of the Contract which modify or interpret the bidding documents, including the Drawings and Specification, by additions, deletions, clarifications or corrections.

§ 1.1.14 Bulletins

Bulletins are written or graphic instruments issued by the Architect after the execution of the Contract which request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

§ 1.1.15 Knowledge

The terms "knowledge," "recognize" and "discover," and their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes and discovers in exercising the care, skill and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

§ 1.1.16 Persistently

The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

§ 1.1.17 Supplementary Instructions

Written interpretations necessary for the proper execution of the Work in the form of Supplementary Instructions will be issued with reasonable promptness by the Architect. Supplementary Instructions may either be instructions, drawings, or additional information but shall not change the Contract Sum or Contract Time without subsequently executed Change Orders (collectively, "Supplementary Instructions").

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§ 1.2 Execution, Correlation and Intent of the Contract Documents

§ 1.2.1 Execution of the Agreement by the Contractor is a representation that the Contractor has visited the Site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents, and that the Contract Documents are full and complete, are sufficient to have enabled the Contractor to determine the cost of the Work and that the Contract Documents are sufficient to enable it to construct the Work outlined therein, and otherwise to fulfill all its obligations hereunder, including, but not limited to, the Contractor's obligation to complete the Work for an amount not in excess of the Contract Sum on or before the date of Substantial Completion established in the Agreement. The Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to: (1) the nature, location and character of the Project; (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; (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the costs and timeframe required by the Contract Documents; (4) local conditions bearing on transportation, disposal, handling and storage of materials; (5) work being performed by others; and (6) the extent to which existing work which may affect operations under the Contract Documents. In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the Project Site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities or conflicts in the Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities or conflicts, it will promptly notify Owner and Architect of such fact. The Contractor shall make all investigations essential to the full understanding of the difficulties which may be encountered in performing the Work and assumes the risk of the actual conditions of the Work, the Project Site, and its surroundings notwithstanding any variances between the actual conditions and those shown or represented in the Contract Documents or surveys and other data provided by the Owner. The Contractor, regardless of any such conditions relevant to the Work, the Project Site or its surroundings, shall complete the Work for the Contract Sum (except in the case of changes in the Work which may be made pursuant to Article 7 herein). Contractor shall not be entitled to any adjustments in the Contract Time or Contract Sum as a consequence of matters discovered during the prosecution of the Work that should have been discovered by Contractor in complying with the provisions of this Agreement.

(Paragraph deleted)

§ 1.2.2 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 Agreement and the Contract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. However, if i) any provision of the Agreement irreconcilably conflicts with a provision of any other Contract Document, or ii) there is an irreconcilable conflict among the Contract Documents the provision granting greater rights or remedies to the Owner, or imposing the greater duty, standard, responsibility or obligation on the Contractor shall govern. The Contractor shall be bound by each of the Contract Documents as if the text of each were written verbatim into the Agreement.

§ 1.2.2.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.3 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.

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

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects. A defined term which is not capitalized herein shall have the defined meaning ascribed thereto, as the context requires.

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§ 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 Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's Service through which the Work to be executed by the Contractor is described. The Contractor may retain one (1) contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them, but all title, ownership and copyright privileges are and at all times shall be vested in the Owner, who will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license by the Owner to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect on behalf of the Owner. Submittal or distribution to meet official regulatory requirements of for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights of the Owner.

.1 Similar protections and limitations on use shall be extended to Drawings, Specifications, and other documents prepared by the Architect's or Owner's consultants that are included in the Contract Documents.

.2 Documents prepared by the Architect are identified with the Architect's or the Architect's consultants' names.

(Paragraph deleted)

§ 1.5.2. The Contractor shall be responsible for any loss or damage to all Contract Documents while they are in the Contractor's possession or control, and any loss or damage thereto shall be restored at the Contractor's expense. The Owner shall be allowed unrestricted access to all Contract Documents under Contractor's possession or control. All documents prepared by the Contractor pursuant to this Agreement shall be made in reproducible form.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

(Paragraphs deleted)

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. The Owner for this Project is:

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§ 2.1.2 The Owner shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedure, or safety precautions and programs in connection with the Work. The Owner shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents, or for the acts or omissions of the Contractor, Subcontractors, any of their respective agents or employees, or any other persons performing any of the Work. The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, the notice of commencement required by Ohio Revised Code §1311.252.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon the reasonable written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Following commencement of the Work and upon the reasonable written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

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

§ 2.3.2 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish existing 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.

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§ 2.3.5 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.

§ 2.3.6 Contractor shall obtain all necessary copies of the Contract Documents for performance of the Work, both for its own work and that of all Subcontractors, at no additional cost to the Owner. Contractor may order reproductions at Contractor's expense, from the Architect. No copies of Contract Documents will be available from the Owner or Architect except as provided herein.

§ 2.4 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 persistently fails to carry out Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time or fails to remove and discharge (within ten (10) calendar days) any lien filed upon the Owner's public funds by anyone claiming by, through, or under Contractor, or disregards the instructions of the Architect or the Owner when based on the requirements of the Contract Documents, after consultation with the Architect, 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. The Architect, with Owner's prior approval, is empowered to order the Contractor to stop the Work or any portion thereof on the Owner's behalf.

§ 2.5 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 three (3) day period after receipt of notice from the Owner and/or Architect to commence and continue correction of such default or neglect with diligence and promptness as such is determined in the sole discretion of the Owner and/or Architect., the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall promptly pay the difference to the Owner..

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its 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 Contractor warrants that it has visited and examined the Project Site and the character thereof and is familiar with all existing structures thereon, and is satisfied with the nature of the Work and all Project Site-specific matters affecting the Work. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once. The Contractor shall review specified materials and procedures and advise the Architect in writing

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of (1) concerns regarding specified requirements and (2) recommended alternative materials or procedures. The accuracy of grades, elevations, dimensions or locations on work installed by other contractors is not guaranteed by the Architect or Owner. The Contractor shall verify the accuracy of all grades, elevations, dimensions and locations relating to the Work. In cases of interconnection or interfacing of the Contractor's Work with other work, it shall verify at the Project Site all dimensions relating to such other work. Any error due to the Contractor's failure to verify the accuracy of such grade, elevations, location or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner. The Contractor shall make all investigations essential to the full understanding of the difficulties which may be encountered in performing the Work, and assumes the risk of actual conditions of the Work, the Project Site, and its surrounding notwithstanding any variances between the actual conditions and those shown or represented in the Contract Documents or surveys and other data provided by the Owner. The Contractor, regardless of any such conditions relevant to the Work, the Project Site or its surroundings, shall complete the Work for the Contract Sum (except in the case of changes in the Work which may be made pursuant to Article 7 herein).

.1 The parties expressly acknowledge that Owner and Architect shall proceed in reliance upon Contractor's warranties as set forth herein, and that the Contract Sum has been established by bid with the foregoing warranties in mind.

.2 If Contractor performs Work, or activities relating thereto, knowing or having reason to know of a Defect, and fails to so notify Architect prior to commencing such performance, Contractor shall be solely responsible for such performance, the correction thereof, and costs, expenses, or damages arising therefrom.

§ 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 with each other relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project Site affecting it. Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. All work, equipment and materials mentioned in the Specifications but not shown on the Drawings, and all work, equipment and materials shown on the Drawings but not mentioned in the Specifications, and all work, equipment and materials necessary for the completion of the Work shall be furnished, performed and done as if same were both mentioned in the Specifications and shown in the Drawings. Failure of the Contractor to call to the Architect's attention, in writing, any such conflicts prior to ordering, fabricating or installing shall result in the Contractor's re-ordering, re-fabricating, removing existing items and re-installing the desired material at the Contractor's sole cost. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit 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, subject to Section 15.1.7, 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 The Contractor shall perform all Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.12. If any Work deviates from the requirements of the Contract Documents, the Contractor shall

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be solely responsible for all resulting costs, damages and expenses. No claim by Contractor (a) that the Work indicated was not constructable, or (b) that performing the Work in accordance with the Contract Documents would have caused or resulted in damages, shall be available to Contractor as a defense or a claim to reduce Contractor's liability, or to increase Contractor's compensation or the Contract Time, except to the extent such defense or claim in expressly permitted elsewhere in the Contract Documents. This provision does not limit any other rights of Owner or Architect or other obligations of the Contractor.

§ 3.2.6 Except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions, by executing the Agreement, the Contractor represents the following:

.1 The Contract Documents are sufficiently complete and detailed for the Contractor to (1) perform the Work required to produce the results intended by the Contract Documents and (2) comply with all the requirements of the Contract Documents.

.2 The Work required by the Contract Documents, including, without limitation, all construction details, construction methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

§ 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. The Contractor shall promptly report deficient conditions in the Work in writing to the Architect and shall not begin any subsequent Work until deficient conditions are corrected. The Contractor shall allow a reasonable period of time for such corrections. Commencing any such subsequent Work shall be deemed to be an admission by the Contractor that such portions of the Project were in proper condition to receive such Work and the Contractor shall be deemed to have expressly waived any claims it may otherwise have had with respect to such condition.

§ 3.3.4 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 its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.3.5 The Contractor shall review all specified construction installation procedures, including procedures recommended by manufacturers or reference standards cited. If the specified procedure deviates from accepted contraction practice, or if the procedure will affect any warranties, including Contractor's general warranty, or is reasonably objected to by Contractor, Contractor shall advise Architect in writing prior to performing the affected Work, and the Contractor shall propose alternative procedures that are acceptable to Owner which will not affect the Contractor's warranty.

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§ 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 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. The Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this Section 3.4.2. By making requests for substitutions based on this Section 3.4.2, a Contractor requesting substitution:

.1 Represents that the Contractor requesting substitution has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 Represents that the Contractor requesting substitution will provide the same warranty for the substitution that the Contractor requesting substitution would for that specified;

.3 Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently became apparent; and

.4 Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

Whether or not any proposed substitution is accepted, the Contractor shall reimburse Owner for any fees charges by the Architect or other consultants for evaluating each proposed substitution.

§ 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.

§ 3.4.4 Except as otherwise provided in the Contract, Work shall be performed Monday through Friday (except Holidays) between the hours of 12:00 a.m. and 11:59 p.m. ("Regular Working Hours"). Notwithstanding the foregoing, in the event of emergency or when required to complete the Work in accordance with certain dates specified by Owner for the completion of certain portions of the Work ("Work Milestone Dates"), Work may be performed on night shifts, overtime, weekends or holidays, provided that permission to do so has been obtained from the Architect and confirmed in writing by the Owner within 24 hours of the commencement of such Work. The Contractor will not be entitled to additional compensation for Work performed outside of Regular Working Hours, except to the extent such compensation is approved, in advance and in writing, by the Owner through the Architect. In no event will Contractor be entitled to additional compensation for Work performed outside Regular Working Hours where occasioned by delays, need for repairs or other causes attributable to Contractor or its Subcontractors. Notwithstanding the foregoing and unless overtime has been requested by the Architect, the Contractor shall bear all costs of standby contractors, if any. In the event the Contractor performs any of the Work on night shifts, overtime, weekends or holidays, the Contractor shall comply with all laws, ordinances, codes, rules, and regulations applicable thereto (including, without limitation, those relating to noise). Additionally, if the Contractor elects to perform Work after Regular Working Hours, the Contractor shall reimburse the Owner for all costs and expenses the Owner incurs as a result of any such after-hours work, including, but not limited to, Additional Services fees and expenses charged to the Owner by the Architect and other contractors.

§ 3.4.5 Certified copies of all prevailing wage payrolls shall be submitted to Architect with Applications for Payment. Contractor acknowledges that it shall comply with the applicable laws in relation to wages and hours, reporting obligations and other labor requirements established by the Contract Documents. Contractor shall maintain and exercise control over all employees engaged in the performance of the Work; provided, however, Contractor shall

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remove or cause to be removed from the Project Site any employee whose presence is determined by Owner or Architect to be detrimental to the efficient and timely completion of the Work required by the Contract Documents.

§ 3.4.7 In the event Owner shall furnish any materials, labor, equipment or temporary site facilities (such as storage, sheds, water, heat, light, power, toilets, hoists, elevators, scaffolding, inclement weather protection, ventilation, pumps, watchmen service and the like), it shall be only to the extent specifically stated in the Contract Documents or by Change Order to the Contract. Whenever the Contractor uses the same, Contractor, its successors and assigns, agree to release, defend, indemnify and hold harmless Owner and its agents and employees, from and against all liability for injuries to persons, damage to property and any and all costs and expenses, including attorneys' fees, resulting from any claims or causes of action against Owner or its agents or employees, arising from the use or occupancy of such items by Contractor, or its employees, agents, successors or assigns. Unless otherwise specifically stated in the Contract Documents, whenever such items are provided, they are provided "AS IS".

§ 3.5 Warranty

§ 3.5.1 In addition to all other warranties implied by law or expressed in the Contract Documents or elsewhere, 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, including substitutions not properly approved and authorized, in writing, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor shall not be relieved of its general warranty obligation by specification of particular products or procedures unless it gives written notice of objection to specified requirements before purchase of such products and a written recommendation of alternative materials or procedures.

§ 3.5.4 The Contractor shall guarantee workmanship and materials for a period of one year from the date of issuance of the Certificate of Substantial Completion and shall leave the Work in perfect order at completion. Should defects develop within the guarantee period, the Contractor shall, upon written notice of the same, remedy the defects and reimburse the Owner for all damage to the Work whether caused by the defects or correction of same. The Contractor shall procure and deliver to the Architect, no later than the date certified by Architect as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions. The Contractor shall assign to the Owner, before Final Payment is due, all manufacturers or other third-party warranties not written in the name, or for the benefit, of Owner relating to equipment, materials and labor used in the Work. Guarantees if any, extending beyond said one year period shall be specifically provided for in the Contract and may be fulfilled by written warranty of the manufacturer.

§ 3.5.5 The Owner may occupy a portion of the Work prior to completion of the Work. Acceptance of any portion of the Work by the Owner shall be accomplished by the issuance of a Substantial Completion Certificate on the form AIA G704 – 2017. From the date of the issuance of such certificate, the Contractor shall not be relieved of obligation to correct any "punchlist" items then uncorrected. The Contractor shall continue to be responsible for all latent defects covered by the guarantee described in Section 3.5.4 above, and shall continue to carry insurance to protect both the Owner and Contractors for workers engaged on punchlist items.

§ 3.5.6 Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

.1 evaluations by the Architect;

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.2 recommendation of any progress or final payment by Architect;

.3 the issuance of a Certificate of Substantial Completion in accordance with Article 9 hereof or any payment to Contractor under the Contract Documents;

.4 use or occupancy of the Work or any part thereof by Owner;

.5 any acceptance by Owner or any failure to do so;

.6 any review of a Shop Drawing or sample submittal;

.7 any inspection, test or approval by third parties; or

.8 any correction of defective Work by Owner.

§ 3.5.7 If necessary to protect the Owner's interests, the Contractor agrees to assign to the Owner any and all third party warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.6 Taxes

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

§ 3.6.2 Purchases of building and construction materials and services by Contractor for incorporation into the Work or a portion of the Work that constitutes a structure or improvement to real property are not subject to Ohio sales or use tax pursuant to Ohio Revised Code 5739.02(B)(13) and 5741.02(C)(2). Purchases by Contractor of expendable items or items consumed by Contractor in performance of the Work which are not incorporated into a structure or improvement to real property are not exempt from Ohio sales or use taxes as provided above. Examples of such purchases include, but are not limited to, form lumber, tools, oils, greases, fuel, equipment and trailer rental, temporary fencing and temporary road materials and temporary power equipment. Purchases of items by Contractor, possession and title to which are transferred to Owner that are not incorporated into the Work or a portion of the Work that constitute an improvement to real property are not subject to Ohio sales or use tax because they are purchased and resold to Owner. The resale to Owner is not subject to Ohio sales or use tax pursuant to Ohio Revised Code 5739.02(B)(1) and 5741.02(C)(2). Examples of such items include, but are not limited to, carpeting and padding. Owner shall provide tax exempt certificates to Contractor upon Contractor request.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

§ 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. Contractor warrants that it possesses, and will keep current, any contractor licenses that may be required due to the nature or location of the Work under this Contract.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

(Paragraphs deleted)

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

§ 3.7.5 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 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, shall have full authority to act on Contractor's behalf in all matters necessary for the proper coordination, direction and technical administration of the Work and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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§ 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.

§ 3.9.4 The superintendent shall be in attendance at the Project Site not less than eight (8) hours per day, five (5) days per week, or any other time period when Work is being performed, unless the Work is suspended due to a general strike or conditions beyond the control of the Contractor, until the date of Final Completion. The superintendent shall not be employed on any other project for or by the Contractor or any other entity during the course of the Work, unless requested in writing by the Contractor and approved by the Owner.

§ 3.9.5 Prior to execution of the Agreement, Contractor shall provide a listing of Contractor's key staff, including the superintendent which shall be committed to the Project during the Contract Time. Contractor represents and warrants that it shall commit such personnel, in terms of expertise and number, to fulfill its obligations and duties under this Agreement.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's Construction Schedule for the Work. The Construction Schedule shall be related to the entire Project Construction Schedule and contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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

.1 The Contractor's Construction Schedule shall be a critical path method (CPM) precedence diagram network or other mutually agreed upon form of schedule with supporting printouts and computer data prepared on software as may be acceptable to the Owner and the Architect.

.2 The Contractor shall utilize the CPM format to develop the network logic diagrams, computer-produced schedules, and other schedule supporting data as required. The Contractor shall utilize the Contractor's Construction Schedule to plan, coordinate and manage all construction activities of the Subcontractors, sub-subcontractors, and suppliers. The Contractor shall complete its work in accordance with the Project Construction Schedule.

.3 Weekly progress meetings will also be held at the Project Site. The Owner (as necessary), the Architect, the Contractor's field supervisor, and each Subcontractor's field supervisor shall attend. Progress meetings shall be held at the Project Site. The Contractor shall provide the services of qualified main office personnel and its superintendent who shall provide the necessary scheduling information and manpower commitments at each progress meeting until Final Completion. Prior to and in preparation for the monthly progress meeting, the Contractor shall "update" the Contractor's Construction Schedule to reflect the current status of the Project. During the presentation and distribution of this "updated" material at the progress meeting, the Contractor will specifically address those critical areas of concern (as determined by the schedule "update") where immediate action by the Contractor is required.

.4 The Contractor shall at all times provide adequate rates of progress for the various parts of the Work so as to properly advance the Work and so that the Project, in the opinion of the Architect, at all times meets the requirements of the Project Construction Schedule. Whenever critical items of construction

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fall behind the planned schedule of construction as shown on the Contractor's Construction Schedule, or when items which were not critical become critical, the Owner and the Architect shall be notified by the Contractor and advised of action being taken to return the Project to its original schedule and such action shall be indicated on the Contractor's Construction Schedule which shall then be re-issued by the Contractor.

.5 In view of the critical nature of the time of completion of the Work, if the Architect and /or the Owner determines that the rate of progress of the Project or the Contractor's Construction Schedule has been delayed or is in jeopardy of not being met, for any reason other than those causes for which the Contractor is entitled to an extension of the Contract Time, as specifically provided in the Contract Documents, the parties hereby agree that the Owner and/or Architect shall have the right to require the Contractor and its Subcontractors to take whatever steps are necessary, including Extraordinary Measures (as defined in Section .6 hereof), to remedy such situation. In such event, the cost of such remedy shall not be deemed to be a change in the Work, nor shall it increase the Contract Sum, nor shall such cost be reimbursable as part of the cost of the Work, nor shall such remedy adjust the Contract Time. The Contractor shall, within three (3) days after the Architect's and/or Owner's request to take such action, notify the Owner and the Architect in writing and implement the steps which the Contractor proposes to take to remedy such situation and provide the Architect and the Owner, in a form acceptable to the Owner and the Architect, a detailed mini-progress schedule setting forth the actions to be taken by the Contractor.

.6 Further, whenever it becomes apparent that any Work Milestone Date of the Contractor may not be met, the Contractor shall take some or all of the following actions (which shall also be deemed "Extraordinary Measures") as directed by the Owner or the Architect, at no additional cost to the Owner:

(a) Increase construction manpower in such quantities as will substantially eliminate the backlog of work and put the Project back on schedule.

(b) Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or hire additional workers if necessary or any combination of the foregoing which will substantially eliminate the backlog of work and put the Project back on schedule.

(c) Reschedule activities to achieve maximum practical concurrence of accomplishment and put the Project back on schedule.

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

§ 3.10.4 The Contractor shall cooperate with the Architect in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other contractors or the construction or operations of the Owner's own forces.

§ 3.10.5 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's Construction Schedule and allows the Architect reasonable time to review submittals.

§ 3.10.6 The Contractor, within fifteen (15) days after being awarded the Contract, shall prepare and submit a report detailing the status of the procurement and the supply of the materials needed to complete the Work ("Material Status Report") on a form approved by the Architect. This report shall be updated and submitted on a regular basis to Owner and Architect or more often as directed by the Architect. Delivery dates provided on the Material Status Report shall conform to the Contractor's Submittal Schedule, Submittal Log, Contractor's Construction Schedule, the Project Construction Schedule and the Work Milestone Dates.

§ 3.10.7 The Contractor, within fifteen (15) days after being awarded the Contract, shall prepare and submit a projected schedule for manpower ("Manpower Schedule") for the duration of the Work. This Manpower Schedule

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shall be updated and submitted on a monthly basis to Owner and Architect or more often as directed by the Architect. The Manpower Schedule shall be broken down by craft or trade for each Trade Contract and Subcontract. This Schedule shall conform to the Contractor's Construction Schedule and the Work Milestone Dates.

§ 3.10.8 In the event the Owner or Architect determines that the performance of the Work, or any portion or phase thereof, has not progressed or reached the level of completion required by the Contract Documents, the Owner or Architect shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, Extraordinary Measures as defined in Section 8.2.7**.** Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The rights of Owner and Architect to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Project Construction Schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.8.

.2 The rights furnished under or pursuant to this Section 3.10.8 may be exercised as frequently as the Owner or Architect deems necessary to ensure that the Contractor's performance of the Work will comply with any completion date set forth in or inferable from the Contract Documents.

3.10.9 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Section 3.10.9 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.10.10 The Contractor shall be responsible for all costs resulting from its lack of diligence or failure to provide needed labor or materials to meet the requirements of the Work Milestone Dates or the Contractor's Construction Schedule. Owner may withhold payments to Contractor if requested to do so by Contractor's Surety, or otherwise if necessary to protect the Owner from delay or expense occasioned by the Contractor's failure to perform under the Contract.

§ 3.10.11 Neither Owner nor Architect make any representation regarding the reasonableness of the Contractor's Construction Schedule as it may affect Contractor's performance of the Work. However, Contractor represents that the Contract Sum includes any and all costs which may be incurred in order to meet the Contractor's Construction Schedule.

§ 3.10.12 Contractor shall obtain Architect's prior written consent to any proposed interruption of utility services by Contractor. Contractor shall notify Architect at least forty-eight (48) hours in advance and in writing of any utility service interruption. Contractor shall minimize the impact of any such interruptions and schedule such interruptions only during the hours of the day agreed to by the Architect.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall make available, at the Project Site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. Further, with respect to the Project, Contractor shall maintain accounting records for Work authorized to be performed pursuant to unit costs, Work performed on a time and material basis and for other Work requiring specialized accounting records. Contractor shall review for accuracy and completeness the Record Drawings to be developed by the Architect from the "As-Built" drawings to be maintained by the Contractor as noted above. Contractor shall maintain and deliver to the Architect for transmittal to the Owner upon completion of the Work, in a format acceptable to the Owner, all equipment information, applicable handbooks, maintenance and operation manuals and instruction and other related documents. Further, Contractor shall maintain a current roster of companies

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who have or are working on the Project, with names and telephone numbers of key personnel; said list to be delivered to the Architect upon completion of the Work. Finally, Contractor shall maintain all reports, estimates, meeting minutes, logs, progress photos, sketches, recordings, computer data, accounting records, cost data, Subcontracts, purchase orders and other information, whether generated by or on behalf of the Contractor or received from the Architect, Owner, Subcontractor or other parties involved with the Project, during the course of the Project and for a period of seven (7) years following Substantial Completion. Said documents shall be available for review, inspection and copying by the Owner or Architect during regular business hours.

§ 3.11.2 Beginning with commencement of the Work, and at all times required by Architect, Contractor shall furnish procurement reports, monthly reports, shop drawing logs, test reports and all other information required by Architect. Upon commencement of the Work, Contractor shall submit a Daily Report Form, (forms to be furnished by Architect) on a daily basis. This Report shall be executed by Contractor's designated representative and submitted to Architect by not later than 12:00 Noon of the subsequent work day.

§ 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 how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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.

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§ 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 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

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

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project Site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project Site. Protection of construction materials and equipment stored at the Project Site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. All Construction staging shall be on-site. No construction parking will be permitted on public streets. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the site of the Work.

§ 3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project Site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project Site, as amended from time to time. The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Architect before using the Project Site and shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing

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requirements of the rules and regulations. The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project Site.

§ 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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, on a daily basis, from accumulation of waste materials and 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 The Contractor shall, at its own cost and expense, (1) keep the Project Site free at all times from all waste materials and other rubbish accumulated in connection with the execution of its Work, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its Work and make good all defects resulting therefrom, (3) at the completion of its Work in each area, perform such cleaning as may be required to leave the area "broom clean", and (4) upon final completion of its Work, remove all of its tools, equipment, scaffolds, shanties and surplus materials. The Project Site shall be kept reasonably neat and clean at all times to eliminate hazards, reduce hazard from fire, and to allow easy circulation for men and materials everywhere on the premises. Any sidewalk, roadway, or temporary passageway used by the public must be kept clean and safely usable at all times. Should the Contractor fail to perform any of the foregoing to the Owner's or Architect's satisfaction, the Owner shall have the right to perform and complete such Work itself or through others and charge the costs thereof to the Contractor.

§ 3.15.3 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. The Owner shall have the right to retain such costs from payments due Contractor.

§ 3.15.4 If a dispute arises between the Contractor and other contractors as to their responsibility for cleaning up as required by this Section 3.15, or elsewhere in the Contract, the Owner may clean up and equitably charge the cost thereof to the several contractors. The Owner shall have the right to retain such costs from payments due Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them (collectively, the "Indemnitees") from

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and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. The Contractor's indemnity obligations under this Section 3.18.1 shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Owner, the Architect, the Architect's consultants, and agents and employees of any of them and further, against claims and judgments arising from violation of public ordinances and requirements of governing authorities due to the Contractor's or Subcontractor's method of execution of the Work. If one or more of the Indemnitees demand performance by the Contractor of obligations under this Section or other provision of the Contract Documents, and if Contractor refuses to assume or perform, or delays in assuming or performing, Contractor's obligations, Contractor shall pay each Indemnitee who has made such demand its respective attorneys' fees, costs, and other expenses incurred in enforcing this provision. The defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not an Indemnitee has made such demand. Neither the Owner's final acceptance of Work, nor the making of any payment, shall release the Contractor from its obligations under this Section. The enumeration elsewhere in the Contract Documents of particular risks assumed by the Contractor or of particular claims for which it is responsible shall not be deemed to limit the effect of the provisions of this Section or to imply that the Contractor assumes or is responsible for only risks or claims of the type enumerated.

§ 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.

§ 3.18.3 The Contractor specifically agrees and undertakes that the insurance coverage provided by Contractor under Article 11 shall provide for the defense and indemnity of the Owner and Architect, as set forth in Section 3.18.1, and that the obligation of Contractor and its insurer to defend and indemnify Owner and Architect, as named additional insureds, shall not be subject to any "professional services" or similar coverage exclusion, except where it has been judicially determined, by means of a declaratory judgment action filed and served upon Owner and Architect within a maximum of thirty (30) calendar days after Contractor's first receipt of a demand for defense and indemnity hereunder, that Contractor is wholly without fault or liability (including "vicarious" or similar liability) with respect to the claim, demand, cause of action or other matter concerning which defense and indemnity are being sought by Owner and Architect.

§ 3.19 BEFORE STARTING THE WORK

§ **3.19.1** No Work shall be done at the Project Site prior to the pre-construction conference without Owner's and Architect's approval in writing. Before undertaking any element of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Architect any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Architect before proceeding with any Work affected thereby. Contractor shall be liable to Owner for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.

§ 3.19.2 Contractor shall submit the following to Architect for review and approval in writing no later than the pre-construction conference:

.1 Contractor's Construction Schedule;

.2 a preliminary schedule of Shop Drawing and sample submittals;

.3 the Schedule of Values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate

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amount of overhead and profit applicable to each item of Work;

.4 a letter designating Contractor's Superintendent and commitment for duration of the Contract Time;

.5 all information required of Contractor to comply with the insurance requirements of the Contract Documents;

.6 all information required of Contractor with respect to the filing of a Notice of Furnishing in accordance with the Ohio Revised Code at the commencement of the Work;

.7 a plan illustrating proposed locations of temporary facilities;

.8 Noncollusion affidavits and EEO certifications from all subcontractors;

.9 Contractor's Quality Control Plan; and

.10 Contractor's Safety Plan.

§ 3.20 PRE-CONSTRUCTION CONFERENCE

§ **3.20.1** Prior to commencement of Work at the Project Site, a pre-construction conference shall be attended by Contractor, Owner, Architect and such other parties as Architect designates.

§ 3.21 CONTRACTOR'S SCHEDULES

§ **3.21.1** Unless otherwise provided in the Contract Documents, Contractor shall obtain Architect's approval in writing on final versions of the schedules submitted in accordance with this Article 3 before the first progress payment will be made to Contractor. The Contractor's Construction Schedule and the Schedule of Values must provide for an orderly progression of the Work to completion within any specified Work Milestone Dates and Contract Times. Acceptance of any schedule by Architect will neither impose on Architect responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor. Contractor's schedule of Shop Drawings and sample submissions must provide an arrangement agreeable to the parties for reviewing and processing the required submittals.

§ 3.22 INSPECTION OF RECORDS

§ **3.22.1** Contractor's records shall include, but not be limited to, accounting records, payroll records, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates, estimating work sheets; correspondence; Change Order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on substantiating charges related to the Contract. These records shall be open to inspection and subject to audit and/or reproduction by Architect, Owner, and their respective agents or authorized representatives. Records subject to audit shall also include those records necessary to evaluate and verify (1) compliance with the Contract; (2) proper pricing of Change Orders; and (3) Claims submitted by the Contractor pursuant to the execution of the Work.

§ 3.22.2 The Contractor shall afford access to all of the records upon request and shall allow the Owner and Architect to interview and have access to records of any of the Contractor's current or former employees, subcontractors and any and all related parties to the Work, pursuant to the provisions of this Article throughout the term of the Contract and for a period of three (3) years after final payment or longer if required by law. This access will be afforded the Owner or Architect at no additional cost, without additional charge either from the Contractor, or any third party who furnishes records.

§ 3.22.3 Contractor shall provide Owner and Architect with accessibility to records repository at reasonable times which are considered to be between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Adequate and appropriate work space shall be made available to Owner or designee and all requested Contract-related documentation shall be made readily accessible.

§ 3.22.4 Any adjustments and/or payments which result from any audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days from date of audit or

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inspection) from presentation of Owner's findings to Contractor.

§ 3.22.5 Contractor shall require all subcontractors, insurance and bonding agents, and suppliers (payees) to comply with the provision of this Article by insertion of the requirements herewith in written agreements between Contractor and payees.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The term "Architect" means the Architect or the Architect's authorized representative. All references to "Architect" throughout the Contract Documents shall apply equally and refer to an Engineer in the event retained by the Owner to carry out the Project together with or in lieu of the Architect.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will advise and consult with the Owner and will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become familiar with the progress and quality of the portion of the Work completed, and to determine 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.

§ 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) 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

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the 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

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such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, 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. It is understood that the Architect's review shall not relieve any contractor, subcontractor, manufacturer, supplier, fabricator, consultant or third party from responsibility for any deficiency that may exist or for any departure or deviations from the requirements of the Contract Documents or form responsibility to coordinate the Work, or portions of the Work of one trade with another. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order 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 3.7.5.

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

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

§ 5.3 Subcontractual Relations

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

§ 5.3.2 Notwithstanding any provision of Section 5.3.1 to the contrary, all subcontracts shall be in writing. The Contractor shall provide copies of subcontracts to the Owner. The Contractor will ensure that each such subcontract contains provisions requiring:

.1 that the Work be performed and guaranteed in accordance with the requirements of this Contract;

.2 submission to the Contractor of Applications for Payment under each subcontract, and reasonable time to enable the Contractor to apply for payment in accordance with Article 9;

.3 that the Subcontractor pay sub-subcontractors in accordance with applicable state law;

.4 that the Subcontractor purchase and maintain insurance and comply with all insurance provisions as required by Article 11;

.5 that the Subcontractor consent to an assignment of the subcontract from the Contractor to the Owner in the event of termination of the Contractor by the Owner; and

.6 that no liens can be filed against the Project and that Subcontractors shall require this in writing in all

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their contracts with sub-subcontractors and materialmen.

§ 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, subject to other terms and conditions of the Contract Documents. The Subcontractor shall not be entitled to any equitable adjustment if the Subcontractor is responsible, in whole or in part, for the suspension of the Work.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate

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Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Owner may make changes in the Work by altering, adding to or deducting from the Work. The Contract Sum shall not be decreased or increased as a result of changes in the Work, except as expressly provided for in Section 7.3.3 or unless evidenced by a Change Order. All changes in the Work shall be requested and authorized before commencing such changes by use of written Change Order which shall not be deemed authorized and agreed upon until Change Orders have been signed and executed by Owner, Architect and Contractor. Change Order procedures set forth herein shall be the exclusive means to effect a change in the Work including (without limitation) changes in the Work requiring an adjustment in the Contract Sum or the Contract Time. Refinements of the Drawings and Specifications shall not be considered changes in the Work. In no event shall the Contract Sum be adjusted in connection with any change resulting from any defect in the Work or a correction or replacement that is attributable (or needed as a result of) the fault of Contractor or any Subcontractor, supplier or materialmen.

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

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

§ 7.2 Change Orders

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

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

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.3 Change orders shall be executed on modified AIA Form G701-2001.

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§ 7.2.4 The Contractor's signature on a Change Order shall constitute a full, final, and complete waiver and settlement of any and all claims, demands, and causes of action that Contractor has, or may have in the future, arising out of or relating to the Change Order and the occurrences, acts, omissions, or events upon which the Change Order is based. No "reservation of rights" or other attempt by Contractor to preserve, notwithstanding Contractor's signature on the Change Order, present or future claims arising out of or relating to the Change Order (or arising out of or relating to the cumulative effect of the Change Order in combination with other change orders) shall be effective unless Owner and Contractor shall both agree, in a separate writing signed by both parties contemporaneously with Contractor's execution of the Change Order, to the specific terms, conditions, scope, and duration of such reservation of rights.

§ 7.3 Construction Change Directives

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

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

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

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 The actual and reasonable costs incurred in the performance of the Work supported by invoices, including the following maximum allowances for overhead, supervision and profit. The actual costs shall be limited as follows:

(a) wages paid for labor in the direct employ of Contractor in the performance of the Work in the field or in the fabrication shop under applicable collective bargaining agreements or under a salary or wage schedule prevailing in the area plus a markup to cover all overhead items applicable to payroll, such as insurance, taxes, F.I.C.A., workers' compensation, unemployment taxes, and union benefits;

(b) cost of materials, supplies and equipment incorporated in the Work at Contractor's net cost and out of stock unit values and equipment at net cost FOB Project Site;

(c) cost, including maintenance, of all materials, supplies, equipment and temporary facilities, which are consumed in the performance of the changed Work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor;

(d) third party rental charges of all necessary machinery and equipment, exclusive of hand tools, used in performing the changed Work, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof at rental charges consistent with those prevailing in the area. Total third party rental charges on

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machinery or equipment rented under an agreement containing a purchase option clause shall not exceed seventy-five (75%) of the option purchase price. Contractor owned machinery and equipment used on the Project shall be charged at fifty percent (50%) AED Green Book rates. Rental shall only accrue to a maximum of the current market value of the equipment when brought on the Project Site. At that time, the equipment shall become the property of the Owner and rental charges cease. Upon completion of the Work, arrangements may be made to resell the equipment to the Contractor at salvage value;

(e) cost of additional premiums for all bonds and insurance which the Contractor is required by Owner or the Contract Documents to purchase and maintain and which is incurred as a result of performing the changed Work;

(f) permit fees, royalties, damages for infringement of patents and costs of defending suits therefor, and deposits lost for causes other than Contractor's negligence or fault;

(g) cost of "drayage", exclusive of any drayage between shop and Project Site, only when the Contractor must hire an independent trucking firm and driver to perform special drayage services in performance of the changed Work for which Contractor's skills, manpower and vehicles are inadequate. "Drayage" does not include transportation performed or which could have been performed by Contractor's driver or vehicles but for their use on another project;

(h) other costs incurred in the performance of the changed Work if and to the extent approved in writing in advance in writing by Owner; and

(i) reasonable costs of Subcontractors in performing the Changed Work.

.2 Actual costs of the changed Work shall exclude the following for the Contractor and any affected Subcontractors:

(a) salaries or other compensation for officers, executives, general managers, project managers, estimators, engineers, timekeepers, surveyors, mechanics, warehouse staff, auditors, accountants, purchasing and contracting agents, draft persons, stenographers, receptionists, and other staff employees, whether or not employed at Contractor's or Subcontractor's principal office, branch office or field office at Project Site;

(b) expenses of principal offices, branch offices, or Project Site field offices, including without limitation the expenses for pick-up trucks, office trailers, storage trailers, rental of office or storage space, telephone, heat, lights, etc. are considered part of overhead;

(c) ownership cost or maintenance expenses for owned and rented equipment, including without limitation all construction equipment, trucks and vehicles, machines and all other owned equipment, required for performance of the changed Work;

(d) cost for purchase and maintenance of tools and major repairs to rental equipment, materials, supplies and facilities not consumed during construction or incorporated in the changed Work;

(e) capital expense, including interest on capital employed for the changed Work;

(f) overhead or general expenses of any kind, including but not limited to office or fabrication shop overhead or drafting and printing costs;

(g) costs due to the negligence of Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to injury or damage to persons or property, the correction and/or removal of

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defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good damage to property;

(h) cost of items not specifically and expressly included in Section 7.3.4.1; and

(i) cost of "additional supervision" at the Project Site, which is being conducted by the current Project Site staff.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 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.

§ 7.3.7 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.

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

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

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

§ 7.3.11 In Section 7.3.3, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for work performed by Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for work performed by Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-subcontractor involved, for work performed by the Subcontractor's or Sub-subcontractor's own forces, five percent (5%) of the cost.

.4 For each Subcontractor, for work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit are to be applied shall be determined in accordance with Section 7.3.4.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except where waived by the Owner, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost

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items are subcontracts, they shall be itemized also.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall also proceed expeditiously with adequate forces to achieve Final Completion within the time period provided in the Agreement.

§ 8.2.4 The Contractor shall commence the Work in accordance with Section 8.3.6 hereof and shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, in accordance with the Project Construction Schedule as may be issued from time to time during the performance of the Work, and other scheduling requirements listed in this Agreement, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the Project.

§ 8.2.5 The Contractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Work, providing information for the scheduling of the times and sequence of operations required for its Work to meet the Owner's overall schedule requirements. The Contractor shall continuously monitor the Project Construction Schedule so as to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the Project Construction Schedule, including any revision thereto.

§ 8.2.6 Should the progress of the Work or the Project be delayed, disrupted, hindered, obstructed or interfered with by any fault or neglect, or act or failure to act, of the Contractor or any of its officers, agents, servants, employees, Subcontractors or suppliers, so as to cause any additional cost, expense, liability or damage to the Owner, including legal fees and disbursements incurred by the Owner (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Contractor and its Surety hereunder or otherwise), or any damages or additional costs or expenses for which the Owner may or shall become liable, the Contractor and its Surety shall and do hereby agree to compensate the Owner and to indemnify them against all such costs, expenses, damages and liability.

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§ 8.2.7 As set forth in Article 3.10, the Owner, if the Owner deems necessary, may direct the Contractor to take Extraordinary Measures and, if so directed, the Contractor shall undertake said Extraordinary Measures and, provided that the Contractor is not in default under any of the terms or provisions of the Agreement or of any of the other Contract Documents, and/or otherwise caused, in whole or in part, the delay in the progress of the Work, the Owner will pay the Contractor for such actual additional wages paid, if any, at rates which have been approved in writing by the Owner, plus taxes imposed by law on such additional wages, plus workers' compensation insurance, liability insurance and levies on such additional wages if required to be paid by the Contractor.

§ 8.2.8 If the progress of the Work or the Project is delayed by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractor or suppliers, in whole or in part, then the Contractor shall, in addition to all of the other obligations imposed by this Agreement upon the Contractor in such case, and at its own cost and expense, undertake such Extraordinary Measures as may be necessary to make up for all time lost in the completion of the Work and the Project due to such delay. Should the Contractor fail to make up for the time lost by reason of such delay, the Owner shall have the right to cause other contractors to undertake Extraordinary Measures and to take whatever other action it deems necessary to avoid delay in the completion of the Work and of the Project, and the cost and expense of such Extraordinary Measures and/or such other action shall be borne by the Contractor.

§ 8.2.9 In the event Contractor unreasonably delays the progress of Work being performed by others in connection with the Project so as to cause loss or expense for which Owner becomes liable, Contractor shall reimburse Owner for such loss or expense upon written demand.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending settlement of a Claim; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 and this Section 8.3.

(Paragraph deleted)

§ 8.3.2.1 All Claims for extension of time shall be made to the Owner, with a copy to Architect, within the time specified under Section 8.3.3.1 below, otherwise they shall be waived. In the case of a continuing cause of delay only one Claim is necessary, provided the Claim clearly states the cause of the delay.

§ 8.3.3 If a current controlling operation or operations of the Contractor is delayed, accelerated, or disrupted by an Unavoidable Delay (as defined in Section .2 below) then the Contract Time shall, subject to the prerequisites of Sections .1, .2, .3, .4, .5, and .6 below, be extended by the time determined by the Owner, after consultation with the Architect, to be appropriate for the delay. Any such extension of time will be granted by Change Order approved by Owner.

.1 A "current controlling operation or operations" shall mean any element of the Work considered at the time by the Architect, as one which, if delayed, disrupted or accelerated will affect the time of Substantial or Final Completion of the Contract and otherwise impacts the critical path of the current approved Project Construction Schedule. Current controlling operation or operations shall be determined from such factors as Contractor's schedules, the nature of the Work being performed, the Contract Documents, such other information as may be timely submitted by Contractor, and the Contract completion date.

.2 An "Unavoidable Delay" shall mean the act, neglect or default of Architect, Owner, or any Separate Contractor, force majeure, and any other event or occurrence beyond the reasonable control or fault of Contractor or its Subcontractors or suppliers at any tier. The determination of whether a claimed delay is an Unavoidable Delay and if so, its effect on completion and the time extension to be granted, shall

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be made by the Architect and subject to Section .3 hereafter. Delays caused by or attributable to Contractor, Subcontractors, Sub-subcontractors, or suppliers shall be non-excusable. No time extension shall be granted for a non-excusable event. Examples of such non-excusable events include, but are not limited to, poor planning, slow mobilization, failure to provide sufficient workers or adequate equipment, failure to procure necessary materials, failure to coordinate or supervise the Work, poor workmanship, accidents, or inadequate financial or other resources.

.3 An extension of time shall not be granted for an Unavoidable Delay unless the Contractor gives written notice to Owner, with a copy to the Architect, of the claimed delay within five (5) days of its commencement. Architect may require Contractor to document the impact and duration of an excusable event and to demonstrate that all reasonable means have been used to minimize the effect of the delay as prerequisites to granting an extension of time.

.4 If, in the opinion of the Architect, the Contractor is not proceeding with the prosecution of the Work as scheduled, and such failure to proceed is due to the act, omission, or negligence of Contractor, any Subcontractor, Sub-subcontractor or any materialman, or the employees of any of the above, then Contractor shall, immediately, and at no additional cost, undertake such Extraordinary Measures as may be required to correct said delays and to insure no further delays to the completion of the Work called for by the Contract.

.5 If the period of delay caused by an Unavoidable Delay, as determined by the Architect, occurs concurrent in part with a Contractor-caused or other non-excusable delay, a time extension for that portion of the impact of the excusable event on completion, which is not concurrent with the Contractor-caused or other non-excusable delay, may be granted provided that the conditions of Sections .1, .2 and .3 above are complied with for the excusable event.

.6 Subject to the terms, conditions and limitations described in this Section 8.3.3, if Substantial or Final Completion of the Contract is affected by an Unavoidable Delay and otherwise impacts the critical path of the Project Construction Schedule and is in no way attributable to Contractor, Contractor may be entitled to reimbursement for its actual costs directly attributable to such delay, as supported by invoices and other documentation acceptable to Architect and Owner. In no event shall Contractor be entitled to recover consequential damages, lost profits, lost opportunity costs, impact damages or other similar remuneration in connection with such a delay.

§ 8.3.4 Nothing in the Contract Documents, including anything in this Section 8.3 shall preclude the Owner's recovery of damages for Contractor-caused delay, including the cost for Architect's additional services and other contractor's claims which are incurred as a result of the Contractor's unauthorized delays.

§ 8.3.5 In the event of a suspension of Work or delay or interruption of Work, the Contractor shall, and shall cause its Subcontractors to, protect carefully its or their materials and Work against loss, damage or injury and maintain completed and uncompleted portions of the Work as required by the Contract Documents. If the Owner determines that any Work or material has been damaged or injured by reason of failure on the part of the Contractor or any of its Subcontractors to protect same, the Contractor shall remove and replace such Work and/or materials at its own expense.

§ 8.3.6 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of commencement and the time for completion of the Work, as specified in the Contract, are ESSENTIAL CONDITIONS of this Contract, and it is further mutually understood and agreed that the Work shall commence within seven (7) days of the date of the Notice of Commencement, which shall occur within ninety (90) days of the date bids are opened, unless the time for awarding and executing the Contract is extended by mutual consent of the Owner and the bidder whose bid the Owner accepts and with respect to whom the Owner subsequently awards and executes a Contract.

§ 8.3.7 The Contractor agrees that the Work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed by and between the Contractor and the Owner that the time provided herein for the completion of the Work is

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reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

§ 8.3.8 Any liability caused by the failure of any Subcontractor to finish its portion of the Work at a scheduled time is the responsibility of the Contractor.

§ 8.3.9 It is further agreed that TIME IS OF THE ESSENCE for each and every portion of this Contract wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any portion of the Work, the new time limit fixed by such extension shall be of the essence provided that the Contractor shall not be charged with damages when the delay in completion of the Work is due to:

.1 Any preference, priority or allocation order duly issued by any governmental authority having jurisdiction over the Project;

.2 Unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, acts of God, a public enemy, acts or omissions of another contractor in the performance of a separate contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather;

.3 Any delays by Subcontractors or suppliers occasioned by any of the causes specified in Sections .1 and .2 of this Article;

.4 A stop work order which may only be issued by the Owner through the Architect with a copy of the order sent by certified mail;

.5 Change Orders that affect timing and cause delays that involve extra work on the part of the Contractor; or

.6 A stop work order which may be issued by the local building authority.

§ 8.3.10 The Contractor shall, within three (3) days from the beginning of any such delay, inform the Architect in writing of the delay and document the reason for delay and time extension requested. The Architect shall review and recommend action to the Owner within ten (10) days of receipt of request for delay.

§ 8.3.11 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

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 The Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work (the "Schedule of Values"). The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This Schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the Schedule of Values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

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§ 9.2.2 It is expressly understood and agreed by Contractor that the Contract Sum, at all times, as reflected in the approved Schedule of Values, shall be in balance with the cost of Work remaining to be completed. The Contract Sum, Schedule of Values and cost to complete shall be deemed to be in balance only when the undistributed proceeds of the Contract Sum, after provision for all retainage, reserves and set-offs, shall equal or exceed the amount necessary to complete the Work, including installation and startup of all fixtures and equipment required. Contractor agrees that if, for any reason, the amount of such undistributed proceeds shall at any time be or become insufficient for such purpose, regardless of how such condition may have occurred, Contractor will continue the Work until balance shall be achieved and before any further disbursement of the Contract Sum shall be made.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

.1 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner, including, without limitation, recorded financing statements, UCC filings and UCC searches.

.2 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project Site and the value of materials at each location.

.3 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project Site.

.4 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.

.5 Such materials shall be (1) protected from diversion, destruction, theft and damage to the satisfaction of the Owner, (2) specifically marked for use on the Project, and (3) segregated from other materials at the storage facility.

The Contractor shall reimburse the Owner for any loss or damage to such incorporated materials or equipment not covered by insurance.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or

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encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Retainage Provisions: The Owner will pay on account of the Contract as follows:

.1 For labor performed prior to Substantial Completion of the Work, the progress payment shall be reduced by eight percent (8%) and made at the rate of ninety-two percent (92%) of the Schedule of Values prepared by the Contractor and approved by the Architect and

.2 Provided the materials have been inspected and found to meet the specifications, the progress payment for materials delivered to and suitably stored at the Project site shall be reduced by eight percent (8%) and made at the rate of ninety-two percent (92%) of the Schedule of Values prepared by the Contractor and approved by the Architect. The retained balance shall be paid when such material is incorporated into and becomes a part of the Project.

.3 After the Contract is fifty percent (50%) complete, as evidenced by payments in the amount of at least fifty percent (50%) of the Contract Sum to the Contractor, no further funds shall be retained. From the date the Contract is fifty percent (50%) complete, all retained funds shall be deposited into an escrow account designated in section 153.63 of the Ohio Revised Code.

§ 9.3.5 Included with each monthly Application for Payment, Contractor shall submit sworn statements and Waivers of Lien covering all portions of the Work for which disbursement is requested to a date specified therein, and covering all Work to a reasonably current date, all in compliance with applicable mechanics lien laws of the State of Ohio and with the requirements of Owner and any title insurance company, together with invoices and other supporting data, including, but not limited to, statements and waivers of lien from all lower tier subcontractors, sub-subcontractors, material suppliers, etc., as Owner or any title insurance company may require to satisfy them that all monies due any person or party are known and paid, and that any lien or claim for the Work to such date is waived or released, and that the Project remains lien free and claim free. Disclaimers from suppliers of fixtures and equipment of any purchase money security interest therein, and evidence that all fixtures and equipment are and will be and remain free of security interest of all kinds shall be provided by Contractor. Contractor shall furnish supplementary statements advising Owner of any changes in the information covered by any statement Contractor previously furnished, and, upon request of Architect, if no such supplementary statement is furnished in connection with any progress payment, to furnish a written statement to the effect that no changes have occurred since the most recent statement furnished. Prior to the first disbursement to Contractor, and from time to time thereafter, Architect may forward to all Subcontractors, Sub-subcontractors and material suppliers listed by Contractor on its sworn statement, a contract verification to ascertain the correctness of the amount of the contract for each Subcontractor, Sub-subcontractor and material supplier as set forth on the statement. In the event of any discrepancy between the amounts as shown by the executed copies of the contracts, the sworn statement and the verification of contract forms, Architect may require that such discrepancies be eliminated to its satisfaction before any payment associated therewith will be due. Architect may employ the services of a consulting engineer, architect, accountant or attorney to assist in the verification of such contracts to determine the sufficiency of the Contract Sum to complete the Work and Contractor agrees to cooperate with any such persons when making such determination.

§ 9.3.6 Applications for payment shall be executed on AIA Forms modified G702 - 1992 and G703 - 1992. Contractor shall submit two originals with each pay request.

§ 9.3.7 Contractor covenants that all monies paid by Owner to Contractor under the terms of the Contract, shall be and hereby are, impressed with a trust in favor of labor and materialmen furnishing labor and material to Contractor with respect to the Work and in favor of taxes and other monies due any Subcontractor, Sub-subcontractor or material supplier. Contractor shall pay all Subcontractors, Sub-subcontractors, material suppliers and laborers all amounts owed any of them with respect to any such payment from Owner before using any part thereof for any other purpose. Contractor shall, as often as requested by Architect, furnish an affidavit showing the names and addresses of all persons who shall furnish labor or materials for Work and the amount due or to become due to each such person. Progress Payments may, at the discretion of Owner, be made in the form of checks payable jointly to the Contractor and its creditors (including, but not limited to, Subcontractors, Sub-subcontractors, material suppliers and laborers). If Contractor shall fail to pay promptly, when due, for all labor, supplies, services and materials furnished in connection with the performance of the Work, or make payments as required under the Contract Documents, Owner may, after

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seven (7) days written notice to Contractor, pay the amount of such liabilities and recover the amount thereof from Contractor, directly or by reduction of the Contract Sum by Change Order.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

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

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a Separate Contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- **.7** persistent failure to carry out the Work in accordance with the Contract Documents; or
- **.8** failure of Contractor to comply with any provision of the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by

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joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Any violation of these provisions by the Contractor may be considered a breach of the Contract and may result in the suspension or termination of this Contract or such other remedy as deemed appropriate by the Owner. The foregoing requirements shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the Contractor or any Subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor, deficient Subcontractor performance and/or noncompliance by a Subcontractor. Notwithstanding anything in this Section 9.6.2 to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such Subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (1) contract between the Owner and a Subcontractor of any tier, (2) obligations from the Owner to such Subcontractor, or (3) rights in such Subcontractor against the Owner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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 and suppliers 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 or supplier, except as may otherwise be required by law.

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within fourteen (14) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within

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thirty (30) days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon thirty (30) additional days' written notice to the Owner and Architect, and provided Contractor is not otherwise in material breach of the Contract, 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents. The Contractor, however, shall have no right to stop the Work if:

.1 Within seven (7) days of the Contractor's written notice, the Owner shall have advised the Contractor, in writing, of its reasons for withholding the payment, or any portion thereof;

.2 Prior to Contractor's stoppage of Work, the Owner shall have issued payment to the Contractor for all amounts which are not in dispute; and

.3 The Owner shall have placed the amount in controversy in an interest-bearing account to be held by an escrow agent acceptable to the Owner and Contractor until the Dispute is resolved.

§ 9.7.2 If any Claim or lien is made or filed with or against the Owner, the Architect, the Project, the Premises or the Project funds by any person claiming that the Contractor or any Subcontractor or other person under Contract has failed to make payment for labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or if the Contractor or any contractor or other person under subcontract causes damage to the Work or to any other work on the Project, or if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default and (3) compensate the Owner for and indemnify and hold it harmless against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by it in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes. If the amount is insufficient therefor, the Contractor shall be liable for the difference and pay the same to the Owner.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when (1) 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 and (2) the Owner has received all certificates of occupancy and other permits, approvals, licenses and other documents or authorizations from any governmental authority necessary or appropriate for occupancy and use of the Project, or designated portion thereof.

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

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

§ 9.8.4 When the Work or designated portion thereof is Substantially Complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the

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

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the

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Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, 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 the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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 Prior to and as a condition precedent to Final Completion, all of the following documents and items shall have been received and approved in writing by the Architect and the Owner:

.1 Final documents of similar nature to those required by the Contract Documents in connection with any Application for Payment hereunder;

.2 All final permits, approvals, (including, without limitation, the approval of the Owner's insurance company, if required), certificates and affidavits (including, without limitation, certificates for elevator, plumbing, sprinklers, electrical systems and life safety systems and any affidavits or certificates required pursuant to the City of Cincinnati or Hamilton County agency responsible for building construction) and authorizations for use and occupancy of the Project required by any authority having jurisdiction, including an unconditioned permanent and full Certificate of Occupancy and any other necessary occupancy and use permits;

.3 Formally prepared record drawings and CADD disk in a compatible format acceptable to the Owner and Architect, records and related data including all field notes of all the Work, all in accordance with the requirements of the Contract Documents. The Contractor shall revise these reproducible copies neatly, legibly and in accordance with the standards of drafting of the original Drawings, so as to show clearly the way in which the Work was actually constructed;

.4 Three (3) copies of operating and maintenance manuals for the Project. The manuals shall contain full information for each item of mechanical, electrical, or other operating equipment, copies of warranties therefor, schematic diagrams of control systems, circuit directories for each electric and communications panelboard, and charts showing the tagging of all valves. The Contractor shall obtain and include in the manuals reduced size photocopies of all electrical, HVAC, mechanical and plumbing Drawings. The manuals shall also contain complete keying schedules, paint color schedules, and paint color samples. Each volume of the manual shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volumes shall be bound in book form. Typewritten, drawn or photographic material shall be protected by clear plastic sleeves;

.5 All guarantees and warranties to which the Owner is entitled hereunder;

.6 Satisfactory proof that all claims, including taxes, arising out of the Work and any liens arising out of the same which shall have been filed or recorded, have been released or bonded in a manner satisfactory to the Owner;

.7 Acknowledgment of prior payments and waivers of lien from all Subcontractors, material suppliers

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and the Contractor;

.8 The Architect's certificate certifying that the Work is complete; and

.9 A written statement from the Architect that all practical orientation and physical operating instructions for all materials, systems, and equipment have been satisfactorily completed.

§ 9.10.6 No payment (final or otherwise) shall be conclusive evidence of satisfactory performance of the Work, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper Work or materials, nor shall it release the Contractor from any of its obligations under the Contract Documents; nor shall occupancy or use of the Project, or any part thereof, by the Owner constitute acceptance of the Work or any part thereof.

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. The Contractor shall submit the Contractor's safety program to the Owner for review and coordination with the safety programs of other contractors. The Contractor's safety program shall comply with all safety program requirements established by the Owner, as well as all requirements. Notwithstanding anything herein to the contrary, it is expressly acknowledged and agreed by Contractor that Contractor shall remain the controlling employer responsible for the safety programs and precautions applicable to the Work and the activities of others in areas designated to be controlled by Contractor. Contractor shall report to the Owner verbally and in writing, any injury or accident occurring at the Project Site within twenty-four (24) hours, or within a shorter period of time if required by law and immediately report to the Owner's representative any accident or occurrence on the Project Site which has caused death, serious injury or significant damage to the Project.

§ 10.1.2 In the event the Contractor encounters on the Project Site materials reasonably believed to be hazardous materials which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the materials are hazardous and have not been rendered harmless. The Work in the affected area shall be resumed in the absence of hazardous materials, or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect. The term "rendered harmless" shall be interpreted to mean that levels of hazardous materials are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project Site by the Contractor, any Subcontractor, any materialman or supplier or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic.

.1 The term "hazardous material" shall mean any flammables, explosive, radioactive materials, petroleum based materials exceeding applicable federal, state, or local regulatory limits, asbestos, toxic substances or related materials, including, without limitation, substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances" or "solid wastes" in the Comprehensive Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; or any other applicable laws and regulations and all amendments and revisions thereto.

§ 10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to hazardous materials.

§ 10.1.4 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor and Architect shall then proceed in the same manner described in Section 10.1.2.

§ 10.1.5 The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to

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be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance.

§ 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, a Subcontractor, or a Sub-subcontractor;

.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; and

.4 construction or operations by the Owner or other Contractors.

§ 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, including but not limited to Federal and State OSHA laws, rules, and regulations. The Contractor agrees to defend, hold harmless and indemnify the Owner and the Architect and their agents and employees against claims, fines, losses and expenses (including attorney's fees) arising out of or resulting in whole or in part from Contractor's failure to comply with the Contract Documents, legal and safety requirements or other prudent or reasonable safeguards.

§ 10.2.3 The Contractor shall implement, 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 the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of 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 and shall give the Owner reasonable advance notice of same.

§10.2.4.1 The presence of explosives at the Project Site is prohibited.

§ 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 and 10.2.1.4 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 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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 Project Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or 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, notice of the injury or damage, whether or not insured, shall be

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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. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

(Paragraphs deleted)
§ 10.2.9 All work shall comply with regulations of OSHA and of other regulatory agencies having jurisdiction for the Work.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

§ 10.2.11 The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the Project Site. A special permit will not relieve the Contractor of liability for damage which may result from the moving of material or equipment related to the Work. The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the Project Site and adjacent property shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by the hauling of equipment used in performance of the Work and shall correct such damage at Contractor's own expense.

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

ARTICLE 11 INSURANCE AND BONDS
§ 11.1 Contractor's Insurance and Bonds
§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability described below, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Ohio.

.1 Commercial General Liability Insurance

(a) Contractor shall maintain Comprehensive/Commercial General Liability insurance written on Insurance Service Office (ISO) form CG 0001 or its equivalent with limits not less than those indicated below covering all operations by or on behalf of Contractor providing insurance for bodily injury liability and property damage liability including coverage for:

1. Premises operations
2. Products and completed operations - must be maintained for a minimum period of five years after Substantial Completion of the Project for Contractor and all Additional Insureds listed below.
3. Blanket contractual liability
4. Broad form property damage (including completed operations)
5. Personal and advertising injury liability
6. Explosion, collapse, underground and subsidence hazards (no XCU exclusions are acceptable)
7. Independent contractor liability
8. Exterior Insulation and Finish Systems (EIFS) (applicable only if Contractor is providing this scope of work)

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9. Incidental Medical Malpractice (applicable only if Contractor is providing incidental healthcare services)

10. Severability of interests

11. Waiver of subrogation

(b) The limits of liability shall not be less than these amounts:

1. $3,000,000 Each Occurrence (combined single limit for bodily injury and property damage)

2. $3,000,000 Personal Injury

3. $3,000,000 Products-Completed Operations Aggregate

4. $3,000,000 General Aggregate - shall apply on a per project basis to Contractor's Work under the Contract Documents per CG 25 03.

.2 Commercial Automobile Liability Insurance

(a) Contractor shall maintain Commercial Automobile Liability insurance written on ISO form CA 00 01 or its equivalent covering liability arising out of any auto (whether owned, hired, borrowed, scheduled or non-owned) and providing insurance for bodily injury liability and property damage liability including coverage for:

1. Contractual liability insuring the obligations assumed by Contractor in the Contract Documents

2. Waiver of subrogation

3. If the Work requires the removal and transportation of hazardous materials from the Project Site, Automobile liability coverage must include pollution liability coverage applicable to all hazardous waste hauling vehicles including the MCS90 endorsement

(b) The limits of liability of not less than $1,000,000 combined single limit for bodily injury and property damage – each accident

.3 Umbrella and Excess Liability Insurance

(a) Contractor shall maintain Umbrella and Excess Liability insurance on an occurrence basis in excess of the Commercial Liability insurance and Business Automobile Liability insurance, which is at least as broad as each of the underlying policies. The Umbrella and Excess Liability insurance shall contain coverage for:

1. Pay on behalf of wording

2. Concurrency of effective dates with primary policies

3. Blanket contractual liability

4. Punitive damages coverage (where not prohibited by law)

5. Aggregates; apply where applicable in primary

6. Care, custody and control – follow form primary

7. Drop down feature

8. Waiver of subrogation

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(b) The limits of liability shall not be less than:

1. $2,000,000 Each Occurrence

2. $2,000,000 Aggregate

.4 Workers Compensation and Employer's Liability

(a) Workers Compensation -State of Ohio Statutory Limits and requirements as defined in Ohio Revised Code 4123

(b) This Work is performed in Ohio and is a State of Ohio project, therefore an Ohio Bureau of Workers' Compensation (OBWC) approved Drug Free Work Place policy is required.

(c) Ohio Employer's Liability – In addition to the above requirements, carry Ohio Employer's Liability coverage with limits of not less than $1,000,000 per occurrence and in the aggregate. Such coverage must not contain any exclusionary language that removes coverage for "substantially certain to occur" claims.

(d) If the Work involves ANY employment on or adjacent to navigable waterways, then the workers' compensation policy must be endorsed to include U.S. Longshore and Harborworkers (USL&H) and Jones Act coverages as applicable.

(e) Contractor shall provide Board with copy of current OBWC Certificate of Premium Payment prior to commencement of Work and upon each renewal date.

.5 General Insurance Requirements

(a) Certificate Holder shall be Board of County Commissioners of Hamilton County Ohio and certificate of insurance is to be mailed to Hamilton County, Risk Manager, Room 707, 138 East Court Street, Cincinnati, OH 45202. The name of the Project shall be placed on the certificate. Copies of the certificate and supporting forms showing compliance with the insurance requirements must be provided prior to execution of the Agreement. Certificate shall be reissued when any insurance coverage contained therein is renewed.

(b) The Board of County Commissioners, Hamilton County, Ohio and Ricking Real Estate, LLC including their officials, members, employees, agents and volunteers (collectively, the "Additional Named Insureds") shall be named as additional insureds under the Contractor's CGL/Umbrella and Automobile policies for any liability arising out of the performance of the Work. Coverage under the CGL for all required Additional Named Insureds shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured endorsement form GC 20 10 (Form B) as published by ISO. A copy of the endorsement form must accompany the certificate furnished to Owner's Risk Manager. Forms deemed by Owner's Risk Manager as equivalent will be accepted but must include additional insured status for ongoing operations and completed operations. Certificates of insurance will reflect the Additional Named Insureds as additional insured and will indicate a waiver of subrogation in favor of the Owner.

(c) Contractor's policies shall be endorsed to provide that there will be no cancellation or reduction in coverage without thirty (30) days prior written notice to Owner's Risk Manager.

(d) Contractor shall ensure that all tiers of their Subcontractors shall procure and maintain insurance in like form and adequate amounts including Additional Named Insured requirements, all as set forth in this Article 11.

(e) Contractor's insurance shall be primary insurance with respect to any insurance or self-insurance programs carried by Owner or any of the Additional Insureds.

(f) Umbrella Excess Liability in combination with primary liability coverages and limits as outlined above to satisfy the required limits of liability is acceptable.

(g) Umbrella / Excess liability coverage used in conjunction with primary policies shall have concurrency of effective dates with underlying policies; drop down feature, and; "Pay on behalf of" wording.

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(h) All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "XII" in the Best's Insurance Guide, latest edition in effect as of the date of the Agreement, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

(i) If the Owner is damaged by the failure of the Contractor to purchase or maintain insurance required under Article 11.1, then the Contractor shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable thereto.

§ 11.1.2 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in Ohio such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract Documents 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 which 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 which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;

.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; and

.7 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.3 The insurance required by Section 11.1 shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. If any insurance required herein is to be issued or renewed on a claims-made form as opposed to the occurrence form, the retroactive date for coverage shall be no later than the commencement date of the Project. Further, the policy shall state that in the event of cancellation or non-renewal, claim discovery period or "tail coverage" shall be 1 year beyond the cancellation or non-renewal date.

§ 11.1.4 Certificates of insurance 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 thirty (30) days' prior written notice has been given to the Owner's Risk Manager. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2.

§ 11.2 PROPERTY INSURANCE

§ 11.2.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in Ohio, property insurance written on a builder's risk policy or on a property policy form that provides equal or greater coverage than a builder's risk policy form, on a replacement cost basis in at least the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials. 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

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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 11.2 to be covered, whichever is earlier. This insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 11.2.1.1 Property insurance shall be on an "all-risk" policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents. Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this Section 11.2.1 shall include a waiver of subrogation in accordance with the requirements of Section 11.2.6.

§ 11.2.1.2 If the Owner does not intend to purchase such property insurance required by the Contract Documents 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 which 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, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.2.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

(a) Contractor found to be cause of loss shall pay first $100,000.00 of deductible or portion thereof.

§ 11.2.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

§ 11.2.2 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.

§ 11.2.3 Loss of Use Insurance. The Owner, at the Owner's option and for the Owner's benefit, 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, to the extent (1) of actual recovery of any insurance proceeds under the policies obtained pursuant to Section 11.2.3 and (2) permitted by applicable policies of insurance.

§ 11.2.4 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards 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.

§ 11.2.5 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of the certificate of insurance that evidences each such insurance coverages required by this Section 11.2. 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 until at least thirty (30) days' prior written notice has been given to the Contractor.

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§ 11.2.6 Waivers of Subrogation. The Owner and the Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other; (2) the Architect and Architect's consultants, and (3) Separate Contractors, if any, and any of their respective subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent those losses are covered by property insurance required by Section 11.2 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, Separate Contractors, 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 of insurance purchased and maintained by each party pursuant to Article 11 shall not prohibit waiver of subrogation but provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.2.7 A loss insured under Owner's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner in good faith for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.2.10. 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.

§ 11.2.8 If required in writing by a party in interest, the Owner in good faith 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 in good faith. 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. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

§ 11.2.9 The Owner in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection be made, an arbitrator mutually acceptable to the parties in interest and the County shall be promptly chosen. The County, as trustee, shall in such case make settlement with the insurers in accordance with the directions of such arbitrator. If distribution of the insurance proceeds by arbitration is required, the arbitrators shall direct such distribution.

§ 11.2.10 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 BID GUARANTY AND CONTRACT BOND

§ 11.3.1 The Owner shall require the Contractor to furnish either a Bid Guaranty and Contract Bond in accordance with Section 153.571 of the Ohio Revised Code or a Performance Bond in accordance with Section 153.57 of the Ohio Revised Code covering faithful performance of the Contract and payment of obligations arising thereunder as set forth in the Contract Documents. Including specifically:

.1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment;

.2 Bonds shall be executed by a responsible surety licensed in Ohio, with a Best's rating of no less than A/XII and shall remain in effect for a period not less than two (2) years following the Date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer;

.3 The Bond shall be in an amount equal to the Contract Sum;

.4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the

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surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power;

.5 Every Bond under this Section 11.4.1 must display the Surety's Bond Number.

(Paragraphs deleted)

§ 11.3.2 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 permit a copy to be made.

§ 11.3.3 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety. The Owner may, in the Owner's sole discretion, inform surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work.

§ 11.3.4 If the Surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Ohio or it ceases to meet the requirements of the preceding paragraph, Contractor shall within ten (10) days thereafter, substitute another bond and surety, both of which must conform to the requirements of the Project Manual and be otherwise acceptable to Owner.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any 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 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 2.5. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time

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fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

§ 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 be renewed and recommence for 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 of the Owner or Separate Contractors, whether completed or partially completed, 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. Contractor shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such nonconforming Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the diminished value of the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner. Such adjustment shall be effected whether or not final payment has been made.

§ 12.4 FAILURE TO PROSECUTE

§ 12.4.1 Should the Contractor at any time refuse or neglect to supply a sufficiency of skilled workers or materials of the proper quality and quantity, or fails in any respect to prosecute the Work with promptness and diligence, or causes by any act or omission, stop, impede, obstruct, hinder or delay or interfere with or damage the Work of any other Contractors or Subcontractors on the Project, or fail in the performance of any of the terms and provisions of the Contract Documents, or should the Architect determine that the Work or any portion thereof is not being performed in accordance with the Contract Documents, or should there be filed by or against the Contractor a petition in bankruptcy or for an arrangement or reorganization, or should the Contractor become insolvent or be adjudicated a bankrupt or go into liquidation or dissolution, either voluntarily or under a court order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default hereunder on the Contractor's part, the Owner shall have the right, in addition to any other rights and remedies provided by the Contract Documents or by law, after three (3) days' written notice to the Contractor mailed or delivered to the last known address of the latter, (a) to perform and furnish through itself or through others any such labor or materials for the Work and to deduct the costs thereof from any monies due or to become due to the Contractor under the Contract Documents, and/or (b) to terminate the employment of the Contractor for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which the Contractor hereby transfers, assigns

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and sets over to the Owner for such purpose, and to employ any person or persons to complete the Work and provide all the labor, services, materials, equipment and other items required therefor. In case of such termination of the employment of the Contractor, the Contractor shall not be entitled to receive any further payment under the Contract Documents until the Work shall be wholly completed to the satisfaction of the Architect and the Owner and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under the Contract Documents shall exceed the costs and expense incurred by the Owner in completing the Work, such excess shall be paid by the Owner to the Contractor, but if such cost and expense shall exceed such unpaid balance, then the Contractor or its Surety shall pay the difference to the Owner. Such cost and expense shall include, not only the costs of completing the Work to the satisfaction of the Owner and the Architect and of performing and furnishing all labor, services, materials, equipment, and other items required therefor, but also all losses, damages, costs and expenses, (including legal fees and disbursements incurred in connection with reprocurement, in defending claims arising from such default and in seeking recovery of all such cost and expense from the Contractor and/or its Surety), and disbursements sustained, incurred or suffered by reason of or resulting from the Contractor's default.

§ 12.4.2 It is recognized that if the Contractor institutes or has instituted against it a case under Title 11 of the United States Code (Bankruptcy Code), such event could impair or frustrate the Contractor's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, the Owner shall be entitled to request of Contractor or its trustee or other successor adequate assurances of future performance. Failure to comply with such request within ten (10) days of delivery of the request shall entitle the Owner in addition to any other rights and remedies provided by the Contract Documents or by law, to terminate this Contract. Pending receipt of adequate assurances of performance and actual performance in accordance herewith, the Owner shall be entitled to perform and furnish through itself or through others any such labor, materials, or equipment for the Work as may be necessary to maintain the progress of the Work and to deduct the cost thereof from any monies due or to become due to the Contractor under the Contract Documents. In the event of such bankruptcy proceedings, this Contract shall terminate if the Contractor rejects this Contract or if there has been a default and the Contractor is unable to give adequate assurance that it will perform as provided in the Contract Documents or otherwise is unable to comply with the requirements for assuming the Contract Documents under the applicable provisions of the Bankruptcy Code.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the laws of the State of Ohio.

§ 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 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 the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public

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authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.4.2 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 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

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

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

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

(Paragraphs deleted)

§ 13.5 WRITTEN NOTICE

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

§ 13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.6.1 As between the Owner and Contractor:

.1 **Before Substantial Completion**. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 **Between Substantial Completion and Final Certificate for Payment**. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

.3 **After Final Certificate for Payment**. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

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§ 13.7 GENERAL PROVISIONS

§ 13.7.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs, and sub-paragraphs are for convenience only, and neither limits nor amplifies the provisions of this Agreement. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

§ 13.7.2 Whenever possible, each provision of this Contract shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.7.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor upon the Contractor's request, reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

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§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;

.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents;

.5 is in material breach of any warranty or representation in the Contract Documents;

.6 fails to materially comply with any applicable Project Construction Schedule; Contractor's Construction Schedule;

.7 fails to proceed continuously with the construction and completion of the Work; or

.8 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with the requirements of the Contract Documents.

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§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 14.2.5 If and to the extent necessary or appropriate in connection with bonds furnished by the Contractor, the Contractor's "default" may include, but is not limited to, any of the grounds for termination set forth in Section 14.2.1 and any of the grounds for withholding certification of or recommendation of payment set forth in Section 9.5.1.

§ 14.2.6 Upon termination of the Contract under Section 14.2, the Owner expressly declines to accept performance of the Contract from Contractor's trustee in bankruptcy, if any, as contemplated by U.S.C. Title 11, Section 365. This declination shall not affect the Owner's rights under any bonds furnished by the Contractor.

§ 14.2.7 If, after notice of termination for failure to fulfill the Contract obligations, it is determined that the Contractor had not defaulted, termination shall be deemed to have been effected for the convenience of the Owner and the Contractor shall be paid in accordance with Section 14.3.

§ 14.2.8 Under Section 14.1, the Contractor will be paid only the value of Work completed and material supplied as of the date of termination, and shall not be paid for anticipated lost profits or consequential damages arising out of or resulting from such termination.

§ 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.

(Paragraphs deleted)

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§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of 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 If the Owner terminates the Contract for convenience, the following shall be the Contractor's exclusive remedy:

.1 Reimbursement of all actual expenditures and costs approved in writing by the Owner as having been made or incurred in performing the Work;

.2 Reimbursement of expenditures made and costs incurred with the Owner's prior written approval in settling or discharging outstanding commitments entered into by the Contractor in performing the Contract; and

.3 Payment of profit, in so far as profit is realized hereunder, of an amount equal to the estimated profit on the entire Contract at the time of termination multiplied by the percentage of completion of the Work. In no event shall the Contractor be entitled to anticipated fees or profits on Work not required to be performed following termination.

§ 14.4.3 All obligations of the Contractor under the Contract with respect to completion of the Work, including but not limited to, all warranties, guarantees and indemnities, shall apply to all Work completed or substantially completed by the Contractor prior to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the Contractor shall be without prejudice to any claims or legal remedies that the Owner may have against the Contractor for any cause.

§ 14.4.4 Upon a determination that a termination of this Contract, other than a termination for convenience under this Section 14.4, was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under this Section 14.4, and the Contractor's remedy for such wrongful termination shall be limited to the recoveries specified under Section 14.4.2.

§ 14.4.5 In the event that Contractor is terminated, whether for cause or convenience, the Contractor's sole remedy shall be for damages subject to the terms, conditions and limitations described herein. In no event shall Contractor be entitled to reinstatement or other equitable relief from a court.

§ 14.4.6 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract 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. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. Claims must be made by written notice.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, within the period specified by

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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 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, including litigation, 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.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 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 in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 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. Contractor confirms that prior to submitting its bid for this Project and in preparing the Contractor's Construction Schedule required under Section 3.10.1, that it understands that inclement weather is not an excuse for delay. Adjustments to the Contract Time may be made in the event of unusually severe weather, provided that such weather conditions and the effects on the Project and the progress of the Work are properly documented by Contractor.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party files for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate with respect to the initial decision.

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

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

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to 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

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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.

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

§ 15.3.4 The parties agree to conduct and conclude Mediation proceedings under this Section 15.3 within sixty (60) days from the designation of the mediator. In the event that mediation proceedings do not resolve the Claim within such period, either party may initiate other means of dispute resolution with respect to the Claim. Notwithstanding any other provision herein, no Claim shall be subject to any form of arbitration.

(Paragraphs deleted)

§15.4 Jurisdiction and Venue. Owner and Contractor agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in state courts located in the County of Hamilton, State of Ohio having subject matter jurisdiction over the matter in controversy. The parties further agree that this choice of venue is to be considered mandatory, and not permissive in nature, thereby precluding the possibility of litigation in any venue or jurisdiction other than that specified in this Section 15.4. The parties agree that any final judgment rendered in any such action or such proceeding as provided herein shall be conclusive as to the subject matter of such final judgment, subject only to any right of appeal provided by the laws of the State of Ohio, and that once any such right of appeal has been exhausted or waived, such final judgment may be enforced in other jurisdictions in any manner provided by law.

ARTICLE 16. CERTAIN WARRANTIES AND OBLIGATIONS OF CONTRACTOR

§ 16.1 CONTRACTOR'S WARRANTIES

§ 16.1.1 The Contractor hereby represents and warrants to the Owner that subject to the provisions of the Contract Documents, (a) the Work will be fully and finally completed in accordance with the terms of the Contract Documents at a cost not to exceed the Contract Sum, (b) all material and equipment incorporated into the Work will be new and free from any and all claims, liens, and security interest of any third parties, (c) the Project will be free from defects (whether latent or patent) in workmanship and materials furnished or installed by the Contractor, (d) the Contractor possesses a high level of expertise in the administration, construction, management and superintendence of projects of the type, nature, and general locality of the Project, and will perform the Work with the care, skill and diligence of such a contractor, (e) the Contractor and its Subcontractors are financially solvent, able to pay debts as they mature, and the financial statements and information furnished to the Owner by Contractor present fairly the Contractor's and, if applicable, Subcontractors' respective financial conditions, and they are possessed of sufficient working capital to complete the Contract, (f) the Contractor is able to furnish the plant, tools, labor, materials, and equipment necessary to complete the Work, and (g) the Contractor and its Subcontractors are qualified to perform the Work, authorized to transact business in the jurisdiction in which the Project is located, and possesses or have obtained and shall possess all necessary licenses, permits, and approvals required to perform the Work. The Contractor will promptly notify the Owner of the occurrence of any event or circumstances which renders the foregoing representations or warranties materially untrue. The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to Contractor's duties, obligations and performance hereunder. The Contractor's liability hereunder shall survive the Owner's final acceptance of and payment for the Work. All representations and warranties set forth in the Contract Documents shall survive the final completion of the Work or the earlier termination of the Contract. If the Owner finds the materials furnished, Work performed, or the finished product are not in reasonably close conformity with the Contract Documents and have resulted in an unacceptable finished product, the affected Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Owner's written orders. The term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the Work in accordance with the Contract Documents, plans, and specifications. For the purpose of this Article, the term "reasonably close conformity" is intended to allow the Owner to use good engineering judgment in its determinations as to acceptance of Work that is not in strict conformity but will provide a finished product equal to or better than that intended by the requirements of the Contract Documents.

§ 16.2 OBLIGATIONS OF CONTRACTOR

§ 16.2.1 The Contractor shall promptly correct or cause to be corrected promptly any defect in the Work. The Contractor shall and does hereby assign to the Owner the benefits of any warranties of all Subcontractors, materialmen and suppliers, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the

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Contract Documents. No payment made by the Owner to the Contractor, nor any acceptance, use or occupancy of the Work by the Owner or any other person, shall constitute acceptance of any defective Work or any Work not in compliance with the Contract Documents. Nothing contained herein shall be construed to define or limit any rights or remedies provided the Owner by the Contract Documents, at law, equity, or otherwise in the event any defect in the Work occurs.

§ 16.2.2 The Contractor and its Subcontractors, and their respective employees shall not make any public disclosure, press release or public presentation containing any information relating to the Project without the prior written consent of the Owner.

§ 16.2.3 No signage shall be placed on the Project Site without the Owner's prior written consent. Architect shall coordinate Project signage size, style, content and location, if any, with Owner.

ARTICLE 17. SUPREMACY OF APPLICABLE LAW; REFORMATION OF CONTRACT DOCUMENTS

§ 17.1 It is the intent of Owner and Contractor that the Contract Documents comply, in all manners of form and substance, with the requirements of Chapter 153 of the Ohio Revised Code and other applicable law with respect to contracts for public improvements. In the event of any ambiguity, inconsistency or conflict between the any provision contained herein or in the Contract Documents and the requirements of applicable governing law, the requirements of applicable governing law shall control in all respects, and any such offending provision contained in the Contract Documents shall be deemed redrafted and reformed to the extent necessary to comply with applicable governing law.

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