B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT Northern District of Texas | **PROOF OF CLAIM**

Name of Debtor: Erickson Retirement Communities, LLC

Case Number: 09-37010

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Braun Construction Group, Inc.

Name and address where notices should be sent:
Braun Construction Group, Inc.
c/o Kasey Ingram, Esq., 191 W. Nationwide Blvd., Suite 300, Columbus, Ohio 43215

Telephone number:
(614) 628-6880

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:_____
(*If known*)

Filed on:_____

Name and address where payment should be sent (if different from above):
Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100, Farmington Hills, MI 48331

Telephone number:
(248) 848-0567

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 9,178,231.29

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: Goods sold and servicesperformed
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☑ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $ unknown **Annual Interest Rate** __%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** mechanics' liens

Amount of Secured Claim: $ 9,178,231.29 **Amount Unsecured:** $_____

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BMC GROUP

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date: 11/20/09

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

Erickson Ret. Comm. LLC
00118

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	:	
	:	Case No. 09-37010
ERICKSON RETIREMENT	:	
COMMUNITIES, LLC, et al.	:	Chapter 11
	:	
Debtors	:	(Jointly Administered)

ADDENDUM TO PROOF OF CLAIM OF BRAUN CONSTRUCTION GROUP, INC.

Braun Construction Group, Inc. ("Braun") performed construction services and furnished labor and materials, pursuant to five identical contracts with Columbus Campus, LLC. Copies of those contracts are attached as Exhibits 1-A through 1-E.

Braun is owed the sum of $9,178,231.29. Copies of billing summaries, which include invoices numbers and invoice dates, amounts paid, and amounts unpaid, are attached, collectively, as Exhibit 2.

Braun's interest is evidenced by five Affidavits for Mechanics' Lien, each duly and properly filed for record with the Office of the Recorder of Franklin County, Ohio on June 29, 2009. The instrument number and amount of each lien is set forth in the chart below.

Instrument Number	Amount
200906290094010	$1,728,296.76
200906290094011	2,894,608.85
200906290094012	4,471,917.59
200906290094013	32,659.54
200906290094014	50,748.55
TOTAL	$9,178,231.29

Copies of all five Affidavits for Mechanics' Lien are attached, collectively, as Exhibit 3.

AIA® Document A111™ – 1997

Standard Form of Agreement Between Owner and Contractor
where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the 24th day of January in the year 2008
(In words, indicate day, month and year)

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

Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

and the Contractor:
(Name, address and other information)

J.M. Olson Corporation
26210 Harper Avenue
St. Clair Shore, Michigan 48081

The Project is:
(Name and location)

Hickory Chase, Sitework Phase 1

~~The Architect~~ The Architect/Engineer is:
(Name, address and other information)

Evans, Mechwart, Hambleton & Tilton, Inc.
5500 New Albany Road
Columbus, Ohio 43054

The Owner and Contractor agree as follows.

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

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America.

EXHIBIT 1-A

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern. The form of the General Conditions of the Contract is attached hereto as Exhibit A; the Supplementary General Conditions are attached hereto as Exhibit B; the Drawings, Plans and Specifications for the Work are listed on Exhibit C attached hereto; the Contractor's Qualifications are attached hereto as Exhibit D; the Schedule of Values is attached hereto as Exhibit E; and the Insurance Addendum is attached hereto as Exhibit F.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. A general description of the Work is as follows:

Complete all Work associated with the Project in accordance with the Drawings and Specifications attached hereto as Exhibit C and the Qualifications/Scope of Work attached hereto as Exhibit D.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor acknowledges that Owner intends to hire a developer (hereinafter, the "Developer") to assist Owner in performing Owner's obligations under this Contract. At present, Owner intends to hire Erickson Retirement Communities, LLC as the Developer. Erickson Retirement Communities, LLC has an address of 701 Maiden Choice Lane, Baltimore, Maryland 21228. Attn: Michael A. Wagner, Executive Vice President. Owner reserves the right to remove or to replace Developer at any time and from time to time and may effect such removal or replacement by giving Contractor written notice of the name and address of the new Developer. All communications by Contractor to Owner shall be directed to Developer. Owner acknowledges and agrees that Developer is Owner's agent in connection with the execution, interpretation and performance of this Contract.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be no later than March 1, 2008. Notwithstanding the foregoing, this Agreement shall not commence until Owner receives construction financing for the Project.

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ~~days from the date of commencement, or as follows:~~May 1, 2013.

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As used in this Agreement and the Other Contract Documents, Substantial Completion shall mean: (1) with respect to the interior of residential units, that all Work has been completed, including final punchlist items, such that no additional entry into such unit is required for completion of the Work, (ii) public spaces are substantially complete with only minor punchlist items remaining to be performed, (iii) Owner can utilize the Project for its intended purposes, and (iv) an unconditional certificate of occupancy has been issued.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

~~Portion of Work~~ ~~Substantial Completion date~~

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

Time is of the essence in this Agreement. There is no allowance for weather days, and Contractor agrees to complete the Project by the dates identified above without any time extensions or extra costs allowed for weather related conditions, with the exception of extraordinary events which may be classified as "Acts of God". Such events may include floods, tornadoes, extreme snowfalls, etc. that affect a delay to the critical path of the schedule, either on or off the site. In such an event, the Completion Date shall be extended on a day for day basis for the effect of the incident.

No provisions for time extensions for delays resulting from work stoppages caused by contract labor negotiations are included in this Agreement. In such an event the Contractor and Owner mutually agree to work together to eliminate or minimize any such delays.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

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

§ 5.1.2 The Contractor's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

A fee of four percent (4%) of the cost of the Work, amounting to Five Hundred Twelve Thousand Seventy Nine Dollars ($512,079.00), is included in the Contract Sum.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed ($); ~~Thirteen Million Three Hundred Fourteen Thousand Fifty One Dollars ($13,314,051.00)~~, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

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See Exhibit E attached hereto.

§ 5.2.3 Unit prices, if any, are as follows:

See Exhibit E attached hereto. The Contract Sum includes a lump sum for all of the General Contractor's General Conditions in the amount of Five Hundred Sixty Eight Thousand Six Hundred Forty Seven Dollars ($568,647.00). Costs which would cause the lump sum for General Conditions to be exceeded shall be paid by Contractor without reimbursement by Owner.

Description	Units	Price ($ 0.00)

§ 5.2.4 Allowances, if any, are as follows
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)
Owner and Contractor acknowledge and agree that the Owner's Allowances (if any) set forth in the Schedule of Values shall only be released to Contractor upon written approval by Owner. Owner reserves the right prior to releasing any Owner's Allowance, to review and approve how Contractor proposes to expend the Owner's Allowance.

Allowance	Amount ($ 0.00)	Included Items

§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

See Exhibit D attached hereto. The Contractor is required to provide a 100% Payment Bond and a 100% Performance Bond for the full value of the Contract Sum, which bonds shall be in form and content reasonably satisfactory to Owner. The cost of such bonds is included in the Guaranteed Maximum Price.

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

§ 6.4 If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining ~~agreements and, for personnel not covered by such~~ agreements, ~~customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,~~ provided such costs are based on wages and salaries included in the Cost of the Work under ~~Sections 7.2.1 through 7.2.3.~~Section 7.2.1.

§ 7.3 SUBCONTRACT COSTS

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

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

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

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

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

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ 7.5.3 ~~Costs of removal of debris from the site.~~

§ 7.5.4 ~~Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

§ 7.5.5 ~~That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.~~

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§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance ~~by the Owner~~ in writing by the Owner, which consent may be conditioned upon receipt by Owner of indicia of ownership of such materials by Owner, proof that such materials are not subject to any liens or other encumbrances, proof that such materials are covered by insurance, and such other requirements as Owner or any lender of all or any portion of the Project may require.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

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

§ 7.6.4 Fees of laboratories for tests required to be performed by Contractor by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 ~~Data processing costs related to the Work.~~

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

§ 7.6.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.~~

§ 7.6.9 ~~Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.~~

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document ~~A201-1997~~ A201-1997, to the extent not caused by Contractor's fault or negligence.

§ 7.7.3 ~~Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.~~

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

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§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site ~~office, except as specifically provided in Sections 7.2.2 and 7.2.3 or as may be provided in Article 14~~ office.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as specifically provided in Section ~~7.5.2~~ Article 7.

§ 8.1.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 8.1.7 Any cost not specifically and expressly described in Article 7.

§ 8.1.8 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase

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orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th (or earlier if the 25th is not a working day) day of a month, the Owner shall make payment to the Contractor not later than the ~~day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~20th day of the next month.

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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

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

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

.1 take ~~that~~ the lesser of (i) the Cost of the Work for completed work and (ii) the portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

.2 add that portion of the ~~Guaranteed Maximum Price~~ Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by ~~the Owner,~~ the Owner in accordance with the terms of Section 7.5.6, suitably stored off the site at a location agreed upon in writing;

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.3 add the Contractor's Fee, less retainage of ten percent (10%).The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its ~~completion;~~completion (Owner and Contractor agree that upon any distinct portion of the Work, as determined by Owner, reaching 50% completion (and provided such portion is on schedule and has been performed in accordance with the terms of the Contract Documents), the retainage for such portion of the Work shall be reduced to 5% and all subsequent Applications for Payment for such portion of the Work shall be subject to a 5% retainage);

.4 subtract the aggregate of previous payments made by the Owner;

.5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of ~~not less than ( )~~ ten percent (10%), except that Subcontractors shall be subject to the same retainage as applied to Contractor's Applications for Payment pursuant to Paragraph 12.1.7 above. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

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

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Owner, or, if requested by Owner, the Architect.

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

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the ~~Architect~~ Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

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§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to ~~demand~~ request arbitration of the disputed amount without a further decision of the Architect. Such ~~demand~~ request for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to ~~demand~~ request arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the ~~Owner for convenience,~~ Owner, as provided in Article 14 of AIA Document A201-1997. ~~However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

§ 13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

§ 13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

§ 13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

§ 13.2.3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner or the Contract may be terminated by Owner as provided in Article 14 of AIA Document ~~A201-1997, in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 and Section 6.4 of this Agreement.~~ A201-1997. The Owner may terminate the contract at its convenience for any reason, at any time by giving Contractor written notice of such termination. Termination for default, if wrongfully made, shall be treated as a termination for convenience. In the event that the Contract is terminated for the convenience of the Owner, the Contractor shall be paid a pro-rata percentage of the Contract Sum equal to the percentage of Work completed by Contractor. In no event shall Contractor be entitled to receive payment for anticipated profit for unperformed Work.

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ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear no interest from the date payment is ~~due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~due.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:
(Name, address and other information.)

Erickson Retirement Communities, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228
Attention: Garrett Power, Development Director

§ 14.4 The Contractor's representative is:
(Name, address and other information.)

J.M. Olson Corporation
26210 Harper Avenue
St. Clair Shore, Michigan 48081
Attention: Steve Braun, President

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

§ 14.6 Other provisions:

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document ~~A201-1997.~~A201-1997, in the form attached hereto as Exhibit A.

§ 15.1.3 The Supplementary ~~and other Conditions of the Contract are those contained in the Project Manual dated —, and are as follows:~~Conditions of the Contract are attached hereto as Exhibit B.

Document	Title	Pages

§ 15.1.4 The ~~Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows:~~Drawings and Specifications are those listed on Exhibit C attached hereto.

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

Section	Title	Pages

§ 15.1.5 The Drawings are as follows, and are dated unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

§ 15.1.6 The Addenda, if any, are as follows:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:
Contractor's Qualifications attached hereto as Exhibit D, the Schedule of Values attached hereto as Exhibit E, and the Insurance Addendum attached hereto as Exhibit F.

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

Type of Insurance	Limit of Liability ($ 0.00)

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

OWNER *(Signature)*	CONTRACTOR *(Signature)*
COLUMBUS CAMPUS, LLC By: Erickson Retirement Communities, LLC, Member	J.M. OLSON CORPORATION By: Steve Braun, President
(Printed name and title)	*(Printed name and title)*
Michael A. Wagner, Executive Vice President	Steven L. Braun, President

APPROVED AS TO LEGAL SUFFICIENCY GFD

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND J.M. OLSON CORPORATION

EXHIBIT A
GENERAL CONDITIONS

AIA® Document A201™ – 1997

General Conditions of the Contract for Construction

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

THE OWNER:
(Name and address):
Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

THE ~~ARCHITECT~~ ARCHITECT/ENGINEER:
(Name and address):
Evans, Mechwart, Hambleton & Tilton, Inc.
5500 New Albany Road
Columbus, Ohio 43054

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

This document has been approved and endorsed by The Associated General Contractors of America

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). Architect may from time to time issue additional Drawings and Specifications to provide coordination and conforming details and otherwise issue additional Drawings and Specifications necessary to complete the Project (all such additional Drawings and Specifications are in this Agreement and in the Contract Documents referred to as "Additional Drawings and Specifications").

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Without in any way limiting the foregoing, Contractor shall provide and/or perform and the Work shall include (i) all materials, supplies, apparatus, appliances, implements, tools, equipment, sanitary facilities and all other facilities necessary in the performance of the Work (collectively, "Materials"), and (ii) all labor, supervision, transportation, light, power, water, utilities, storage, and all other services (collectively, "Services") required in the construction of and/or normally performed by contractor and subcontractors in connection with the construction of a project similar to the Work.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

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consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.4 Where a conflict exists within or between parts of the Contract Documents, or between the Contract Documents and applicable standards under codes or ordinances promulgated by governmental bodies having jurisdiction over the Project, the more stringent or higher quality requirements shall apply. Large-scaled Drawings shall control over smaller-scaled Drawings, figured dimensions on the Drawings shall control over scaled dimensions, and noted materials shall control over graphic representations. Where a conflict exists between the terms of the standard AIA General Conditions Form No. A-201, and the amendments made thereto in this document, the amendments shall control. Further, where a conflict exists between the terms and conditions of the Agreement between Owner and Contractor and these General Conditions, the Agreement between Owner and Contractor shall control.

§ 1.2.5 Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that reference to the Drawings is made unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as reviewed," "as accepted," "as approved," "as selected" or words of similar import are used, it shall be understood that the direction, requirement, permission, authorization, review, acceptance, approval, selection of the Architect and/or Owner is intended, unless otherwise stated.

§ 1.2.6 As used in the Contract Documents, "provide" shall be understood to mean "provide complete in place," that is, to furnish, install, fabricate, deliver, install, and erect, including all labor, materials, equipment, apparatus, appurtenances, and expenses necessary to complete in place, ready for operation and use. The use of the term "shall" in the Contract Documents means as prescribed by the Contract Documents, the use of the term "as necessary" in the Contract Documents means all action essential to the completion of the Work. The Specifications are of the abbreviated type and may include incomplete sentences. Omissions of phrases such as "the Contractor shall" or "conforming to the requirements" are intentional in order to save space, but such limited words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings. Words in the singular shall include the plural however applicable, unless the context otherwise indicates.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

§ 1.4.1 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 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

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

§ 1.6.1 ~~The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described.~~ All Drawings, Plans and Specifications, renderings and models prepared with respect to the

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Project are and shall be the property of Owner and may not be used by any person, party or entity on any other project unless expressly authorized in advance by Owner in writing. The Contractor may retain one record set. set of Drawings, Specifications and other documents prepared by the Architect. 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 or the Architect's ~~consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights.~~ consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the ~~Architect,~~ Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, 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, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' copyrights or other reserved rights.~~ Owner's copyrights or other reserved rights.

§ 1.6.2 All Shop Drawings prepared by Contractor exclusively for the Work shall be the property of the Owner and may not be used by any person, party or entity unless expressly authorized in advance by Owner in writing.

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. Owner intends to hire a development company to assist Owner in the development of the Project (the "Developer"). The initial Developer shall be Erickson Retirement Communities, LLC, having an address at 701 Maiden Choice Lane, Baltimore, Maryland 21228, Attn: Michael A. Wagner. Owner hereby reserves the right to replace and appoint Developers from time to time throughout the term of the Project, which right may be exercised by Owner giving Contractor written notice of the name and address of the newly appointed Developer. Throughout the Contract Documents, wherever an obligation is imposed on Owner (other than the obligation to pay money), Owner may, at its option, assign such obligation to Developer.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. ~~Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, 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.

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

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which 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, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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 term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect may require.

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§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the ~~Architect,~~ Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly ~~to the Architect~~ to the Architect and Owner at once. Notwithstanding the foregoing, Contractor shall not be obligated to perform additional studies or tests of field conditions, except as expressly set forth in the Contract Documents.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 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.~~ accepts the relationship of trust and confidence established between the Contractor and the Owner by the Contract Documents. Contractor covenants with the Owner (i) to furnish his best skill and judgment and to cooperate with the Architect in furthering the interest of the Owner; (ii) to furnish efficient business administration and superintendence; (iii) to use his best efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best way and in the most expeditious and economic manner consistent with the interests of the Owner. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. ~~If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.~~

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

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

§ 3.3.4 At least once a month a meeting on the site involving Contractor and Owner shall be held to review progress and coordinate work schedules for the weeks ahead. Contractor shall have in attendance at these meetings a job superintendent or another person authorized to make decisions for the Contractor.

§ 3.3.5 Contractor shall check all Materials and Services entering into the Work, including but not limited to quality and quantity, and shall keep full and detailed records and accounts in accordance with industry standards, including but not limited to said records and accounts as may be necessary to determine the Cost of the Work.

§ 3.3.6 Contractor shall keep current a detailed Schedule of Values of the various portions of the Work, divided so as to identify the portion of the Work to be provided by each Subcontractor and to facilitate payments to Subcontractors, prepared in a format and with such detail as is acceptable to and approved by Owner and Architect. The Schedule of Values shall include a detailed statement of Project overhead costs.

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§ 3.3.7 As general contractor for the Project, Contractor shall use reasonable efforts to accomplish the following:

(a) the avoidance of conflicts among the various trades;

(b) the efficient organization of construction activities, including location and size of activities, location and size of storage areas, staging areas and field offices, traffic patterns, delivery schedules, hoisting, safety and the like; and

(c) efficient scheduling of the Work to be performed by Subcontractors to avoid inefficient or unsafe performance of the Work performed and to be performed by all Subcontractors.

§ 3.3.8 Contractor shall prepare a Manual describing the methods of material-handling and the methods for the movement of personnel that are to be used on the Site. The Contractor shall ensure that these methods are understood and followed by all subcontractors in the construction of the Project.

§ 3.3.9 Contractor shall prepare a written safety program to govern all activity on the Site.

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.5.2 The Contractor shall and does hereby assign to the Owner the benefits of any warranties and guarantees of all Subcontractors, Material Suppliers and Manufacturers, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the Contract Documents. Notwithstanding the foregoing assignment, prior to final acceptance of the Work by Owner, Contractor shall deliver to Owner three (3) bound volumes of all guarantees and warranties on Materials furnished by all manufacturers and suppliers to Contractor and all Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, ~~the Contractor~~ Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and

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inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when ~~bids are received or negotiations concluded~~ the Contract is executed and delivered. Notwithstanding the foregoing, Contractor shall not be obligated to pay for impact fees, sewer connection or water tap fees, or other similar utility fees.

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

§ 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.~~ withApplicable Laws. 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.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to ~~laws, statutes, ordinances, building codes, and rules and regulations~~ Applicable Laws without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to ~~correction~~correction, without an increase in the Contract Sum and such costs shall not be a Cost of the Work.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.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 in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding~~ Contractor shall employ all competent staff necessary for the proper execution of the Work, and shall see that members of such staff shall be in attendance at the site during the progress of the Work as may be necessary or appropriate under the circumstances. Such staff shall be under the direction of a project manager (who will devote, if necessary, all of his time and efforts to the Project) satisfactory to the Owner who shall not be changed without prior written consent of Owner unless such project manager is no longer employed by Contractor. The project manager shall represent the Contractor and all communications given to the project manager shall be as binding on the Contractor as if given to the Contractor. ~~Important communications shall be confirmed in writing. Other communications shall be similarly confirmed~~ Communications will be confirmed on written request in each case. The project staff shall consist of persons capable of filling such positions and/or performing such functions that the Owner and the Contractor may reasonably require under the circumstances, although a single person may perform more than one function if he or she is able to do so capably and efficiently.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, ~~promptly~~ prior to or immediately after being awarded the Contract, shall prepare and submit for the Owner's and ~~Architect's information a Contractor's construction schedule for the Work. The schedule shall~~ information and approval, a schedule (as same may be revised from time to time, herein called the "Schedule") for all parts of the Work. The Schedule shall initially be an estimate of the time requirement for all of the Work, incorporating such information as design services, Owner related activity, governmental approvals, and the like. The Contractor and each major Subcontractor shall cooperate fully and provide detailed information as required in order to achieve the most logical Schedule for the Work that will be acceptable to Owner and Contractor. The Schedule shall (i) not exceed time limits current under the Contract Documents, (ii) shall be revised by Contractor at appropriate intervals as required by the conditions of the Work and Project, subject to Owner's approval, (iii) shall be related to the entire Project to the extent required by the Contract Documents, and (iv) shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 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~~ Schedule and allows the Architect reasonable time to review submittals.

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

§ 3.10.4 From the initially approved Schedule and other information developed, the Contractor, in cooperation with the Owner, Architect, and major Subcontractors, will monitor, and shall revise and update monthly, the Schedule. The Schedule shall be further revised or expanded to provide more detailed information concerning the time requirements for all parts of the Work and other elements of the Project as such information is developed and approved by the Owner. Contractor and each Subcontractor, materialman, and supplier shall provide revised data in order to assist the Contractor in determining the most appropriate and acceptable Schedule and acceleration opportunities for the Work and to update the Schedule, in order to assure that the Work shall be completed on or before the Substantial Completion Date set forth in the Agreement.

§ 3.10.5 The Schedule shall set out, in addition to the elements set forth in Paragraphs 3.10.1 and 3.10.4 the following:

(a) a schedule of production of drawings, specifications and other documents required for the award of contracts for construction (providing for appropriate periods of review, which periods shall not exceed 10 days where practicable);

(b) a listing of all long-lead-time items and a schedule for the acquisition and delivery of such items;

(c) a detailed construction progress schedule showing the different stages of progress required in the Work;

(d) a schedule for the processing of shop drawings;

(e) a schedule for the acquisition and installation of all built-in furnishings, fixtures and equipment to be provided under this Agreement or to be provided by Owner and installed by Contractor; and

(f) a detailed schedule of the periods during which each Subcontractor's Work will be performed; and

(g) in the event that Contractor falls at least one week behind schedule, a detailed schedule setting forth all actions to be taken by the Contractor to get the Work back on schedule for completion within the Contract Time.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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~~submittal to the Owner upon completion of the Work.~~Owner. Contractor shall advise Owner on a current basis of all material changes in the Work made during construction.

§ 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.~~Contractor shall prepare, or cause to be prepared as part of the Work, all shop drawings and other detailed drawings not made a part of the Drawings or Specifications or Additional Drawings and Specifications and shall submit same to Architect for approval. Shop Drawings establish actual detail of manufactured and fabricated items, indicate proper relation to adjoining Work, amplify design details or mechanical and electrical equipment in proper relation to physical spaces, and incorporate minor changes or design and construction to suit actual conditions.

.1 fabricated items are items specifically assembled or made out of selected materials to individual design requirements.

.2 manufactured items are standard items usually mass assembled.

§ 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 which illustrate materials, equipment texture, finish, color, technique 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 Owner and Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings, Product Data, and Samples. Contractor shall review shop drawings, product data, and samples as required in this Section 3.12.6, prior to submittal to Architect. Submittals shall be stamped by Contractor or through some other means to clearly indicate to Architect that submittals have been reviewed and approved by the Contractor.

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

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

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or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval or review thereof.

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

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

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Owner prior to using any portion of the Site.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost ~~thereof~~ thereof, including overhead costs, shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

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

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§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by ~~law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall~~ law, the Contractor shall defend, indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and agents and employees of any of them~~ Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), ~~but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable,~~ regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 Contractor agrees to forward to Owner within 45 days following the first and third fiscal quarters, unaudited financial statements of Contractor for such fiscal quarter, including income statements, cash flow and balance sheets, certified as true, accurate and complete by an authorized officer of Contractor.

§ 3.18.4 Contractor agrees to forward to Owner within 120 days after the end of each year, annual audited financial statements of the Contractor for such fiscal year prepared in accordance with generally accepted accounting principles consistently applied, accompanied by a report of an independent public account approved by Owner.

§ 3.18.5 Owner, at Owner's cost and expense, shall be entitled upon ten (10) days advance notice to audit Contractor's performance on the Project, and in connection therewith Contractor agrees to provide to Owner at Contractor's principal place of business, all books, records, files and other data necessary to conduct such audit.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner ~~shall employ a new Architect against whom the Contractor has no reasonable objection and~~ may employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

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§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect and Developer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, and Developer will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work 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~~ neither the Architect nor the Developer will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Architect, the Owner and the Developer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The ~~Architect~~ Architect, the Owner and the Developer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The Architect~~ However, nothing contained in this Subsection is intended to relieve the Architect of its responsibilities or liabilities under the Contract Documents or its contract with the Owner. The Architect, the Owner and the Developer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract ~~Documents.~~ Documents, and as required by Applicable Laws. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. ~~Review~~ Except as may be required by Applicable Laws, 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

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under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. However, to the extent such submittals must be reviewed or approved by a licensed architect pursuant to Applicable Laws, the Architect shall provide all services necessary to satisfy such Applicable Laws.

§ 4.2.8 ~~The~~ Following consultation with Owner, the Architect will prepare ~~Change Orders and~~ Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect and Developer will at such times Architect and Developer deem appropriate and also upon request of Owner, conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

§ 4.2.11 The Architect will interpret and ~~decide~~ make recommendations on 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. If no agreement is made concerning the time within which ~~interpretations~~ recommendations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such ~~interpretations until 15~~ recommendations until ten (10) days after written request is made for them.

§ 4.2.12 ~~Interpretations and decisions~~ Recommendations 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 initial decisions,~~ recommendations, 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~~ recommendations so rendered in good faith.

§ 4.2.13 The Architect's ~~decisions~~ recommendations on matters relating to aesthetic effect will be final only if consistent with the intent expressed in the Contract ~~Documents.~~ Documents and will have no adverse effect on the Project budget or the Schedule.

§ 4.3 CLAIMS AND DISPUTES

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

§ 4.3.2 Time Limits on Claims. Claims by ~~either party~~ Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the

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Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment ~~shall~~ may be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice to Architect and Owner as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be ~~given.~~ given to Architect and Owner. 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.

~~§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.~~

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

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

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

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§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, ~~shall~~ may be referred initially to the Architect for decision. ~~An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~ Claims submitted to the Architect shall be solely for the purpose of obtaining the Architect's recommendation as to the resolution of the Claim.

§ 4.4.2 The Architect will review Claims submitted to Architect and within ten days of the receipt of the 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. ~~Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.~~

§ 4.4.5 The Architect will ~~approve or reject~~ make recommendations on Claims by written decision, which shall state the reasons ~~therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.~~ therefor.

§ 4.4.6 ~~When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.~~

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 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 ~~prior to resolution of the Claim by the Architect, by mediation or by arbitration.~~ deadlines.

~~§ 4.5 MEDIATION~~

~~§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.~~

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~~§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~§ 4.5.3 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.~~

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, ~~except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5~~ may, upon Owner's and Contractor's consent, be subject to arbitration.

§ 4.6.2 Claims ~~not resolved by mediation shall be decided~~ to be resolved by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The ~~demand~~ request for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 4.6.3 A ~~demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases~~ request for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of ~~limitations as determined pursuant to Section 13.7~~ limitations.

§ 4.6.4 Limitation on Consolidation or Joinder. ~~No~~ At Owner's option any and all arbitration arising out of or relating to ~~the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof~~ any of the Contract Documents or any breach thereof shall include by consolidation, joinder or joint filing, any additional person or entity not a party to the Owner-Contractor Agreement to the extent necessary for the final resolution of the matter in controversy.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of ~~demand~~ request for arbitration must assert in the ~~demand~~ request all Claims then known to that party on which arbitration is ~~permitted to be demanded~~ requested.

§ 4.6.6 Judgment on Final Award. ~~The~~ If the parties agree to arbitration the award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect will promptly~~ Owner will reply to the Contractor in writing stating whether or not the ~~Owner~~ Owner, Developer or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner ~~or Architect~~ to reply ~~promptly~~ 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~~ Owner, Developer 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. The Contractor shall contract with each and every Subcontractor solely in the name and on behalf of the Contractor, and no approval by Owner of any such Subcontract shall be construed as creating any contractual relationship between any Subcontractor and Owner.

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

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

§ 5.2.5 All Subcontracts and purchase agreements shall specifically provide that any and all guarantees or warranties of or from the Subcontractor or Supplier for the benefit of Contractor shall also be made to, and for the benefit of, Owner and otherwise comply with the provisions hereof.

§ 5.2.6 All Subcontracts shall contain provisions requiring the Subcontractor thereunder to perform its portion of the Work in accordance with the Contract Documents and shall require the Subcontractor to adhere to all Applicable Laws and applicable provisions contained in this Agreement, the General Conditions (which also shall be expressly made a part of each Subcontract) and the other Contract Documents.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 Each subcontractor shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-

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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.

§ 5.3.2 Upon request of Owner, Contractor will cause each Subcontractor and Sub-subcontractor to execute and deliver to Owner a waiver or waivers of mechanic's and/or materialmen's liens with respect to all Work which has been performed and paid for under such Subcontract or Sub-subcontract, or, to the extent permitted by law, to be performed. Such waiver or waivers shall be in form and substance satisfactory to Owner.

~~§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by those 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 which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract ~~by the Owner for cause pursuant to Section 14.2~~ and only for those subcontract agreements which 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.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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

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

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations~~

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~~and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the ~~Contractor,~~ Contractor and 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~~ Owner will equitably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

.1 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.

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§ 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,~~ or Developer, 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 7.3.6.~~

Owner shall request additive and deductive changes in the Work by giving Contractor a written "Additive Change Order Request" or "Deductive Change Order Request," as the case may be, through the Architect, setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Contractor shall forthwith (but in no event later than twenty-one (21) days after receipt of the Change Order Request) return to Owner and Architect two (2) completed copies of its "Additive Change Order Proposal" or "Deductive Change Order Proposal," as the case may be, setting forth in detail, with a suitable breakdown by trades and work classifications Contractor's estimate of the changes in the Contract Sum (together with the appropriate data acceptable to Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and a proposed adjustment of the Contract Time resulting from such Change Order Request. If Owner approves in writing Contractor's Additive Change Order Proposal or Deductive Change Order Proposal as the case may be, Owner will issue and Contractor will execute and accept a "Change Order" and the Contract Sum and the applicable Turnover Dates and the Date of Final Completion shall be adjusted as set forth in such Change Order. If Contractor's Additive Change Order Proposal is not agreed to by Owner and Owner nevertheless issues a "Construction Change Directive" directing Contractor to perform the requested change to the Work, Contractor shall proceed with the Work authorized by same and the increase in the Contract Sum as a result of such change in the Work shall be equal to (x) the actual cost of such change in the Work (which actual costs shall include only those costs permitted under Article 7 of the Agreement if the Agreement is in the form where the basis for payment is the Cost of the Work plus a fee) and (y) a Contractor's Fee as stated in, and subject to any limitations set forth in, the Agreement Between Owner and Contractor. After the cost of such change in the Work is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon cost. Contractor agrees to deliver to Owner within twenty (20) days after the completion of the Work covered by Construction Change Directive invoices, statements, payroll data and other evidence of such actual cost of the change in the Work that Owner may reasonably require. If Contractor's Deductive Change Order Proposal is not agreed to by Owner and Owner nevertheless directs Contractor to make and perform changes in the Work pursuant to a Construction Change Directive, Contractor shall proceed with the Work as changed by such Construction Change Directive and the decrease in the Contract Sum as a result of such change in the Work shall be equal to (a) the actual reduction in cost of the Work resulting from such change in the Work and (b) a Contractor's Fee as stated in, and subject to any limitations set forth in the Agreement Between Owner and Contractor. After the decrease in the Contract Sum is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon decrease. Contractor agrees to deliver to Owner within twenty (20) days after the Completion of the Work covered by such Construction Change Directive such evidence of decrease in the Cost of the Work resulting from such directive as Owner may reasonably require. Agreement on any Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to the terms of this Agreement. When both additions and credits covering related Work or substitutions are involved in any one change, the

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allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change. For purposes of this Paragraph 7.3.3, Contractor shall keep at the Project site complete and accurate financial records of all costs incurred in performing any Construction Change Directive, and shall make these records available to Owner and Architect for audit and copying. No amount under this Paragraph 7.3.3 shall be payable by Owner unless such records are kept and until such records are made available to Owner and Architect.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and 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.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. 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 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which 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.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

§ 7.3.9 When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract ~~Time~~ Time; not involving a change in the scope, quality or quantity of the Work; and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order delivered to Owner and Contractor and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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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 or the Schedule approved by Owner for Substantial Completion of the Work.

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the ~~Architect~~ Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the ~~Architect may determine.~~ Owner may determine. However, pursuant to Section 4.3 of the Contract, Contractor shall not be entitled to any allowances or extensions of time for delays caused by weather or labor disputes. Should any workers performing work covered by this contract engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Owner, may, at its option and without prejudice to any other remedies Owner may have, after forty-eight (48) hours written notice to Contractor, contract with or provide any such labor on its own and deduct the cost thereof from any monies then due or thereafter to become due Contractor. Further, Owner may, at its option, without prejudice to any other remedies it may have, terminate the employment of Contractor for the Work under this Contract and shall have the right to enter upon the premises and take possession for the purpose of completing the Work hereunder of all Contractor's materials, tools and equipment thereon and to finish the Work either with its own employees or other contractors. Contractor shall remain liable for any damages which Owner incurs as a result of any such stoppage of work.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.~~ Any claim for extension of time shall be made in writing to the Owner not more than twenty-one (21) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, one notice shall be made within ten (10) days of commencement of the delay and the claim for actual delay days incurred shall be made within ten (10) days after the termination of the delay. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Claims for extension of time shall be stated in whole or half days only.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ In the event Contractor is delayed at any time in the progress of the Work (i) by labor disputes, fire, unusual delays in transportation, unavoidable casualties or any other causes not solely the responsibility of Owner; or (ii) cumulatively for thirty (30) days or less by any other causes, extension of time shall be Contractor's sole remedy for any such delay. In the event Contract is delayed cumulatively by more than thirty

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(30) days in the progress of the Work by any causes that are solely the responsibility of Owner and the Contractor makes a timely claim, then the Contract Time and the Contract Sum shall be adjusted by Change Order in accordance with Article 7. This provision is intended to be, and shall be construed as consistent with and not in conflict with, Ohio Revised Code § 4113.62, to the fullest extent permitted.

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.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the ~~Architect,~~ Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, ~~but not yet included in Change Orders.~~ or by Change Orders. In no event may any Application for Payment include sums purportedly payable due to oral modifications to the Contract Sum or the Work, the parties agreeing that all such changes must be in writing, and signed by Owner.

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

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

§ 9.3.3 The Contractor warrants that title to all ~~Work~~ Work, including all materials and equipment, covered by an Application for Payment will pass to the Owner no later than the time ~~of payment.~~ of payment, free and clear of liens and encumbrances other than those created by Owner. 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,~~ shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 With each Application for Payment, the Contractor shall present (i) written evidence of payment, satisfactory to the Owner, of any and all claims of Subcontractors and (ii) releases and waivers for all constitutional, statutory and contractual liens, including but not limited to mechanics and materialmen's liens, from all Subcontractors, but only to the extent of all prior payments made by Owner to Contractor on account of Work performed by such Subcontractor. All such releases and waivers shall be in form and substance satisfactory to Owner and shall be signed and acknowledged by the payee and (iii) such other matters as are required in Article 12

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of the Contract to which these conditions are attached. In addition, in each Application for Payment Contractor shall certify to Owner that such Application for Payment represents a just estimate of cost reimbursable to Contractor under the terms of the Contract Documents and shall also certify in a form acceptable to the Owner that:

"There are no known mechanics or materialmen's liens outstanding at the date of the Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application for Payment, and that, except for such bills not paid so included, there is no known basis for the filing of any mechanic's or materialmen's liens on the Work."

For any payment received by the Contractor, the Contractor shall also deliver to the Owner a release and waiver of the Contractor's constitutional statutory and contractual liens, including but not limited to mechanics and materialmen's lien to the extent of such payment so received, and such releases shall be signed, sworn to and acknowledged by Contractor, and shall be in a form acceptable to Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

.1 defective Work not remedied;

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

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, ~~materials or equipment;~~materials, equipment, or services or for any other items for which payment has been made to Contractor;

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

.5 damage to the Owner or another contractor;

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

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

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for ~~Payment,~~ Payment in an amount approved by Owner, 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 promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. The Owner may, however, at its option, at any time after (i) Owner has given Contractor ten (10) days written notice of Contractor's default under the Contract Documents or under the applicable Subcontract; or (ii) a lien is filed by any Subcontractor or Sub-subcontractor against all or any portion of the Project and such lien is not released or bonded to the satisfaction of Owner within five (5) days after same has been filed, make payments directly to any Subcontractor or Sub-subcontractor and all such payment so made shall be deemed to be made directly to Contractor on account of the Contract Sum.

§ 9.6.5 Payment to material 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~~ Documents, or be construed or relied upon as any indication that the Work or Materials are in accordance with the Contract Documents, or that the amounts paid or certified therefore represent the correct cost or value of the Work or Materials or that such amount is in fact or law due to Contractor.

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

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. ~~The~~ If applicable, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Except as may be provided otherwise in the Agreement, Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner or subsequent contractor can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. In connection therewith, Contractor shall provide to Owner for Owner's written approval a schedule for completion of all such items, which schedule shall specify the number of personnel that will be dedicated each day to completion of such portion of the Work (the "Punchlist Schedule"). Contractor shall also designate a supervisor whose sole responsibility shall be to perform and complete such portion of the Work in accordance with the approved Punchlist Schedule. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the 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. All such additional items shall be incorporated by Contractor into the Punchlist Schedule, with no extension of time. 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 which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any ~~stage when such portion is designated by separate agreement with the Contractor,~~ stage, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the ~~Work.~~ Work, if required. 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.

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§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment and~~ payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner.~~ by the Owner, and (6) any other items required by the Contract Documents to be delivered by Contractor. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

~~.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~

~~.2 failure of the Work to comply with the requirements of the Contract Documents; or~~

~~.3 terms of special warranties required by the Contract Documents.~~

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

.1 employees on the Work and other persons who may be affected thereby;

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

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

.4 the Work of the Owner or the other contractors.

§ 10.2.2 The Contractor shall give notices and comply with ~~applicable laws, ordinances, rules, regulations and lawful orders of public authorities~~ Applicable Laws and state and federal regulations bearing on safety of persons or property or their protection from damage, injury ~~or loss~~ or loss and shall hold the Owner, Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their agents harmless from and against any fines or penalties levied in connection with the failure of Contractor to give such notices or to comply with any such Applicable Laws and state and federal regulations.

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

10.2.3.1 Contractor shall maintain exit doors and provide acceptable exitways from any building or buildings, shall not block or lock exit doors or in any manner prevent egress from exits, shall keep exitways through any building or buildings clear of materials and shall level surfaces to prevent accidents in case of egress from exits.

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

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

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

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.2.8 The Contractor shall employ such reasonable and customary practices as are necessary to protect all materials, equipment, completed and partially completed Work and all merchandise stored therein from loss and damage, including theft or damage by weather and, if necessary, shall provide suitable shelter therefor. The Contractor shall correct at its own expense any damage or disfigurement to work or property (whether or not located on the site) resulting from the fault, neglect or omission of the Contractor, any Subcontractor, any Sub-subcontractor or other person employed or hired by any of them.

§ 10.2.9 The Contractor shall take all reasonable precautions to keep the site free of safety hazards and shall comply with all Applicable Laws and insurance requirements relating to injury to persons and property on or about the site or any other location where any of the Work is performed, including but not limited to the regulations and directives of the federal and state Occupational Safety and Health Administrations and other governmental authorities having jurisdiction over the Project.

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§ 10.2.10 The Contractor shall on a daily basis keep the site free from any dangerous clutter or debris attributable to the Work and shall keep the site reasonably clean and orderly at all times in accordance with the nature of the Work. The Contractor shall clean up the site in a thorough and workmanlike manner to the satisfaction of the Owner at the completion of the Work.

§ 10.2.11 The Contractor shall be responsible for the security of the Work, the site and all Materials stored there or at any other location by the Contractor with the consent of Owner. The Contractor shall be responsible for all losses and expenses incurred by reason of failure to maintain reasonable security at the site or at the location where Materials are stored, and such expenses incurred shall not increase the Contract Sum. The Contractor shall comply with all reasonable security requirements of the Owner.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to 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. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

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

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the ~~Contractor unless such materials or substances were required by the Contract Documents.~~ Contractor.

§ 10.5 If, without negligence ~~on the part of the Contractor,~~ or misconduct on the part of the Contractor or the Contractor's employees, subcontractors, sub-subcontractors, agents, invitees or guests, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 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 Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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§ 11.1.1 The Contractor shall maintain throughout the term of the Agreement, and in some instances beyond the term of this Agreement, insurance of the types and in the minimum amounts set forth in this section 11 and on the Insurance Addendum.

§ 11.1.2 Insurance Carriers must be licensed to do business in all states applicable under the terms and scope of this Agreement, have an A.M. Best Company rating of not less than A-VI, and must be otherwise acceptable to Owner.

§ 11.1.3 If requested by Owner, Contractor shall provide certified copies of all such policies to Owner within 10 days of such request.

§ 11.1.4 Contractor must immediately notify Owner of any reduction or restriction in the required insurance regardless of whether it takes place prior to, during, or subsequent to, the term of this Agreement, and/or in the event the insurer notifies the Contractor of its intent to non-renew coverage. "Reduction of coverage" does not encompass depletion of insurance limit aggregates unless the current policy is or becomes depleted by 75% or more.

§ 11.1.5 Certificates of insurance, copies of additional insured endorsements from applicable insurance policies, and other required documentation, signed by a duly authorized agent of each insurance company shown and be otherwise acceptable to Owner, shall be filed with the Owner prior to the commencement of the Contractor's Work, and within ten (10) days of the expiration of any insurance policy required herein.

§ 11.1.6 The Owner, Developer, their parent and subsidiary companies, Hickory Chase, Inc., and their respective members, partners, directors, officers, employees, and agents are to be included as additional insureds with regard to all coverage obtained by the Contractor under Commercial General Liability, Automobile Liability, and the Umbrella/Excess insurance described on the Addendum. To the extent Contractor has insurance at levels greater than that set forth in the Addendum, the parties set forth herein shall be listed as additional insureds at such higher levels. The additional insured coverage is to be provided one of the following coverage forms: ISO Form CG2010 11-85; ISO Form CG2026; a combination of forms ISO Form CG2010 of a later version and CG2037; or other insurance form equivalent in coverage. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.7 Insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to indemnities and/or additional insureds under this Agreement. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.8 All policies are to be endorsed to provide for 30-day notice of cancellation or reduction of coverage to Owner. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.9 No payments shall be made to Contractor until satisfactory documentation as required herein is received and accepted by Owner.

§ 11.1.10 Approval of any insurance by Owner shall not relieve or decrease the liability of the Contractor. The Owner does not in any way represent that the insurance or limits of liability specified above are sufficient or adequate to protect the interests or liability of the Contractor and are only minimums.

§ 11.1.11 All required insurance policies shall contain a waiver of subrogation by the insurance carrier in favor of Owner.

§ 11.1.12 Self-insured retentions (deductibles) shall not be more than $10,000.

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

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.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;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

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

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing 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. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE

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~~§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

~~§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance 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 in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

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

~~§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.4.2 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.~~

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

BUILDER'S RISK COVERAGE

§ 11.4.11 The Owner shall purchase and maintain Builder's Risk Coverage protecting buildings and building materials against risks of direct physical loss or damage. Coverage will include the perils of fire, extended coverage,

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theft, vandalism, malicious mischief, collapse, flood and earthquake. Coverage will be applicable to property destined to become part of the building stored off-site and during transit, debris removal, and demolition occasioned by enforcement of any building, zoning, or land use ordinance or law. This insurance shall include the interests of the Owner, Contractor, Subcontractors and lower-tier subcontractors.

§ 11.4.12 This insurance will not include coverage for clothing of workers, tools, equipment, or property of a similar kind which will not become a permanent part of the building or structure. Contractor shall not be liable or responsible for any loss or damage to the items excluded. Coverage for transit, storage away from the project site, flood, earthquake, debris removal, and demolition have sub-limits or are otherwise limited by policy conditions. The Contractor, Subcontractors, and their lower-tier subcontractors shall hold harmless, indemnify, and defend Owner, its parent company, Hickory Chase, Inc., employees, members, directors, and agents from claims of damage or loss to such property excluded or limited.

§ 11.4.13 Coverage for transit and storage away from project site is limited to $500,000 per occurrence. For additional coverage, Owner has the option to report, obtain approval for, and pay additional cost for insurance under Contractor's program or obtain additional insurance elsewhere.

§ 11.4.14 Payments by the insurer for all losses covered under the Builder's Risk policy will be made to Owner, for the interest of all parties, subject to the requirements of any applicable mortgagee clause. Contractor shall pay such Subcontractor a just share of any insurance monies received by Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to lower-tier subcontractors in a similar manner.

§ 11.4.15 The Builder's Risk Insurance will be placed with a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. Such property insurance shall be maintained by the Owner, unless otherwise provided in the Agreement, or agreed in writing by the Contractor.

~~§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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~~§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. 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.~~

~~§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

~~§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising ~~thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract~~ thereunder, including, if requested by Owner, bonds for any Subcontractors designated by Owner. The costs of any bonds required to be delivered and not stipulated in the bidding requirements or other Contract Documents shall be a reimbursable expense of Contractor or any designated Subcontractor.

§ 11.5.2 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.

§ 11.5.3 It shall be the responsibility of the Contractor not to violate nor knowingly permit to be violated any conditions of the policies required hereunder, and it shall be the Contractor's duty and responsibility to impose upon each Subcontractor and have each Subcontractor impose upon each Sub-subcontractor the same responsibilities and obligations imposed upon the Contractor under the insurance provisions provided for herein.

§ 11.5.4 Contractor shall require each Subcontractor to provide the insurance coverage as stated in Paragraph 11.1.1 above.

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

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§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. If, within one year after the Date of Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any special warranty required by the Contract Documents, any of the Materials included in the Work are found to be defective or not in accordance with the Contract Documents, the Contractor shall correct same promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given Contractor an express written acceptance of such defective conditions. Contractor shall correct any defects in the Work or damage to other property caused by defects in the Work or the repairing of such defects with a minimum of inconvenience to Owner and other occupants of the Project and at times least disruptive to the operation or construction of the Project. Notwithstanding anything to the contrary contained herein, Contractor's obligations contained in this Paragraph 12.2.2.2 shall be in addition to all other obligations of Contractor contained in the Contract Documents in respect of warranties or correction of defects in Work.

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which 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 which the Contractor might have 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.

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

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.1.2 To the extent permitted by law, the Contractor and all Subcontractors (and each of their respective subcontractors and suppliers) are hereby subordinate to any and all statutory, constitutional and contractual liens, security interests and right each may now or in the future may have against the Project or any portion thereof to the liens, security interests, and rights of any lender having a lien against all or any portion of the Project, from time to time. Contractor and all subcontractors agree to execute and deliver to Owner, such documents as may be requested by Owner to acknowledge such subordination.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party~~ Contractor shall not assign the Contract in whole or in part without the prior written consent of the Owner. In the event Contractor shall assign the Contract in whole or in part, Contractor shall nevertheless remain legally responsible for all obligations ~~under the Contract~~ of "Contractor" under the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to ~~an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents.~~ any lender or lenders providing construction financing for all or any portion of the Project. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 ~~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.~~ All notices, requests, demands, and other communications hereunder shall be in writing except as expressly provided otherwise, and shall be personally delivered, or mailed certified or registered mail, postage prepaid, return receipt requested, to the party to which directed at the address stated in the Contract Documents and shall be deemed to have been given on the date of actual delivery thereof.

§ 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, Developer, 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 in writing.

§ 13.4.3 Owner and Contractor recognize that time is of the essence of this Contract and the Owner will suffer financial loss if the Work is not substantially completed in accordance with Section 4.2 of the Agreement. Owner and Contractor also recognize the delays, expense and difficulties involved in proving the actual losses suffered by Owner if the Work is not completed on time. Accordingly, in lieu of requiring such proof, Owner and Contractor agree that as liquidated damages for such delay (but not as a penalty), Contractor shall pay to Owner Ten Thousand Dollars ($10,000.00) for each day that expires beginning seven (7) days after the time specified in Section 4.2 of the Agreement for substantial completion of all or any portion of the Work, which sum is acknowledged and agreed to

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be a fair and reasonable estimate of the actual damages likely to be suffered by Owner in the event of a delay in substantial completion of the Work. There will be no claim for consequential damages in excess of the $10,000 per day liquidated damages. In the event that this Subsection 13.4.3 shall be deemed to be a penalty or shall otherwise be unenforceable, Owner and Contractor acknowledge and agree that Owner shall be entitled to all rights and remedies available at law or in equity arising due to the Contractor's failure to complete the Work in accordance with the time specified in the Agreement. Contractor and Owner acknowledge and agree that the liquidated damages provided for in this subsection do not preclude Owner from pursuing damages against Contractor for other potential damages suffered by Owner, including, but not limited to, damages incurred to fix non-conforming Work, or for completing the Work.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate ~~time. Unless otherwise provided,~~ time. To the extent permitted by Applicable Laws, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

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

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

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

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

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

§ 13.5.7 To the extent that Contractor is prohibited from performing, paying for or arranging for tests or studies pursuant to Applicable Laws, Owner shall be primarily responsible for performing such activities.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear ~~interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ no interest.

§ 13.8 In case any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in the Contract Documents shall not in any way be affected or impaired thereby.

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§ 13.9 Notwithstanding any other provision or inference to the contrary herein or in the Contract Documents contained, in the event of a dispute, controversy or question between the Owner and the Contractor or the Contractor and the Architect with respect to the interpretation of the Contract Documents, the performance of any portion of the Work, or the delivery of any materials, the payment of disputed monies or otherwise (the parties acknowledging that undisputed monies will be paid when due), the Owner and the Contractor agree that pending the resolution or settlement of such dispute, controversy or question, the Owner and the Contractor shall continue to perform the respective obligations under this Agreement without interruptions or delay, and the Contractor agrees not to directly or indirectly stop or delay the performance of the Work, including the delivery of materials to the Project site.

~~§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD~~

~~§ 13.7.1 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.~~

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

~~.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~.4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and ~~damages.~~damages, but in no event shall Contractor receive payment for Work not performed or for profit or overhead for Work not performed.

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

§ 14.1.5 If Owner fails to make any payment approved by Architect in accordance with the Contract Documents, through no fault of Contractor or a Subcontractor or their agents or employees or any other person performing portions of the Work under contract with the Contractor, Contractor may, upon thirty (30) days' written notice to Owner and provided Owner fails to cure such failure to pay within such thirty (30) day period, terminate the Agreement Between Owner and Contractor (subject to Owner's right to contest such termination through arbitration or other legal proceedings) and receive from Owner the aggregate of (i) the earned but unpaid cost of the Work as of the date of termination, and (ii) any additional direct damages sustained by Contractor, provided such damages were reasonably foreseeable by Owner on the date of execution of the Agreement Between Owner and Contractor. Notwithstanding Contractor's right to terminate the Agreement Between Owner and Contractor pursuant to the immediately-preceding sentence, it is expressly understood and agreed that Contractor shall not have the right to refuse to render further services or to terminate the Agreement Between Owner and Contractor by reason of nonpayment of specific items or elements of Contractor's statement of monies due if Owner (i) was permitted to withhold payment as provided in the Contract Documents or (ii) has reasonable grounds to challenge and does challenge such items or elements and if Owner issues payment for all items and elements which are not challenged by Owner.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

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

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

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

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

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

.1 take possession of the site and 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 (or any terminated portion thereof) by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 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~~ Owner, upon demand, and (to the extent not paid by Contractor to Owner) Owner shall be entitled to deduct such expenses from any sums due to Contractor under any other contracts by and between Owner and Contractor. This obligation for payment shall survive termination of the Contract.

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§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, upon request of Owner terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

ARTICLE 15

NON-DISCRIMINATION

§ 15.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall comply with all Applicable Laws, rules, regulations, writs, and orders of governmental authorities concerning non-discriminatory practices and employment.

ARTICLE 16

SUBORDINATION

§ 16.1 The Contractor, all Subcontractors (and each of their respective Subcontractors) are hereby subordinate to any and all statutory, constitutional, contractual and constitutional liens, security interests and rights it may now or in the future have against the Project or any portion thereof to the liens, security interests and rights of any lender (herein called "Lender") having a lien against all or any part of the Project. Contractor shall include this provision of this Article 16 in each agreement between Contractor and Subcontractor.

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User Notes: Columbus A201

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND J.M. OLSON CORPORATION

EXHIBIT B
SUPPLEMENTARY GENERAL CONDITIONS

EXHIBIT B

SUPPLEMENTARY GENERAL CONDITIONS

The GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION ("THE GENERAL CONDITIONS") dated January 24, 2008 by and between COLUMBUS CAMPUS, LLC and J.M. OLSON CORPORATION and are hereby amended by these GENERAL SUPPLEMENTARY CONDITIONS, as follows:

Certain provisions of the GENERAL CONDITIONS and SUPPLEMENTARY GENERAL CONDITIONS relating in general to administrative procedures and work of the Contractor and Subcontractors are supplemented in Division 1, GENERAL REQUIREMENTS of the specifications.

In the event of any conflict between the terms of the General Conditions and these Supplementary General Conditions, the terms of these Supplementary General Conditions shall control. Where a Paragraph, Subparagraph, or Clause of the Contract is modified or deleted by these supplements, the unaltered provisions of that Paragraph, Subparagraph, or Clause shall remain in effect.

1. These "Supplementary General Conditions" are in addition to the Supplementary General Conditions contained within the Project Specifications manual and related to the coordination of work on the site.

2. Contractor is responsible for coordination of its work with other Owner contractors so as not to delay or cause interference with the overall progress and final completion. Contractor understands and agrees to work closely and in harmony with various Site Work contractors and with the contractors that are constructing other buildings on site.

3. Contractor understands that all construction vehicles and employees must use the construction entrances as designated and park only in designated areas.

4. Contractor is responsible for keeping all its operations, storage, trailers, materials, etc. within designated staging areas. No equipment, materials, trailers, etc. can be stored outside the storage area without specific permission of the Owner.

5. Contractor's construction fence is to be built, maintained, and subsequently removed by Contractor. Contractor shall be responsible for repairing any damage to Owner's fence that is caused by Contractor's work.

6. Contractor is aware that emergency fire lanes existing within its staging area must be kept accessible at all times to allow vehicular traffic. Contractor must keep access open at all times. All costs relative to emergency fire lanes are included within Contractor's

responsibility. Any fencing changes required to accommodate emergency fire lanes are Contractor's responsibility.

7. Contractor is responsible for removing all construction debris from the site and preventing such debris from getting beyond the limits of Contractor's staging area. Contractor will be held responsible for Owner's costs of cleaning such debris if Contractor fails to comply with such obligation. Contractor shall be responsible to cause all concrete trucks wash-out within the limits of its staging area, and further, that all such waste concrete is removed from the jobsite.

8. Contractor shall take all necessary steps to assure all dirt is cleaned from tires of all vehicles prior to leaving the staging area and for cleaning any roads of such dirt on a continual basis. Since residents and employees of the Project use these same roads, Contractor must assure that no accumulation of dirt is allowed.

9. Contractor shall not install signs or other advertising on the fencing around its project, except those specifically required for safety or traffic purposes. Contractor and its Subcontractors are limited to one sign on their construction trailers; this sign shall be reasonably sized and shall not project above such trailers. Any and all signs are subject to Owner's approval and acceptance. Contractor shall not install signs on any building during the construction duration, except as those required for safety.

10. Contractor is responsible for all costs of protecting the site utilities from Contractor's operations and for restoring those that may be damaged.

11. Any stockpiled excavated materials must be stored within Contractor's designated staging area, or as otherwise allowed and directed by Owner. Contractor is responsible for returning any area used for such storage back to its original condition.

12. Contractor understands and agrees that the electrical transformer is located where shown on the site work drawings and that Contractor's Work includes all work to accommodate such location.

13. Contractor is responsible for providing Contractor's telephone lines for Contractor's construction needs. All temporary power and telephone lines must be removed upon project completion. All costs of removal are Contractor's responsibility.

14. Contractor shall repair any damage to the parking lot and curbs that were caused by Contractor's operations. All areas of the site within the staging area are to be returned to the original condition so that the Owner can proceed with sitework improvements.

15. Contractor understands that the Owner has the right to bring prospective residents into the

Project while it is under construction, as long as they are accompanied by one of Owner's employees, and it does not interfere with the execution of work under this Contract.

16. Any claim against Owner's Builder's Risk Insurance must be made within thirty (30) calendar days of Contractor's first knowledge of the event. Contractor shall place this same responsibility upon each of its Subcontractors. Any claim not so made shall be the sole responsibility of the Contractor, and Owner shall not be liable for any costs or damages arising from the incident, regardless of any other circumstances concerning this event.

17. The Owner's Builder's Risk Insurance coverage is for materials and equipment incorporated into the Work, properly stored on site, and for materials stored off-site for which Owner has previously given written approval for such off-site storage.

18. Contractor shall furnish to Owner within two (2) work days, the First Report of Injury form for any employee of Contractor, its Subcontractors and Vendors, and visitors to the site.

19. Contractor is responsible for protecting and maintaining all stabilized soil, sediment and erosion control and shall repair or replace any areas damaged as a result of the Contractor's activities.

20. No solicitation of employees of other Contractors engaged in work on the site will be permitted.

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND J.M. OLSON CORPORATION

EXHIBIT C
DRAWINGS, PLANS AND SPECIFICATIONS

PHASE 1 CONSTRUCTION DOCUMENTS

Sheet #	Sheet Index	Scale	# Sheets
00.000	Title sheet	N/A	1
00.001-00.002	Phase diagram		2
21.000	Overall sheet key	100	1
21.001	Overall sheet key	100	1
21.002-21.003	General notes, specifications & estimate of quantities	N/A	2
21.004	Legends and abbreviations	N/A	1
21.010-21.015	Existing conditions	40	6
21.030-21.035	Erosion control plan	40	6
21.050-21.055	Demolition and tree preservation plan	40	6
21.056	Marketing center demolition plan	40	1
21.100-21.103	Horizontal control plan	40	4
21.109	Overall layout plan	100	1
21.110-21.132	Layout plan	20	23
21.200	Overall storm sewer plan	100	1
21.201	Overall sanitary sewer plan	100	1
21.202	Overall watermain plan	100	1
21.210-21.232	Utility plan	20	23
21.300	Overall grading and utility plan	100	1
21.301	Gatehouse Detail	10	1
21.310-21.332	Grading and utility plan	20	23
21.400-21.412	Plan and Profile Loop Road	H:20/V:5	13
21.420-21.432	Storm drainage, sanitary sewerage and construction details	Varies	13
21.433	Stair details	2	1
21.434-21.436	Watermain construction details	Varies	3
21.450-21.455	Conduit and sleeve plan	40	6
21.460-21.465	Site lighting plan	40	6
21.466-21.467	Power tele/data conduit sections and details	Varies	2
21.480-21.494	Storm sewer profiles	H:20/V:5	15
21.510-21.516	Sanitary sewer plan	H:60/V:10	7
21.570	Phasing - construction detail trailer and parking	20	1
22.000	Orientation plan	No Scale	1
22.010-22.015	Tree preservation plan	20	16
22.110-22.132	Hardscape layout	20	23
22.210-22.221	Site hardscape details	Varies	22
22.310-22.332	Landscape layout	20	23
22.333	Landscape details	Varies	1
22.410-22.432	Signs	20	23
22.510-22.532	Irrigation	20	23

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND J.M. OLSON CORPORATION

EXHIBIT D
QUALIFICATIONS/SCOPE OF WORK

JM OLSON
CORPORATION

October 10, 2007

Hickory Chase
Site Work Phase 1
Hilliard, OH

CLARIFICATIONS

1. No overtime charges are included
2. Utility fees and consumption costs (power, phone, cable & gas) are not included
3. GC's based on a 1 year time frame
4. Re-charge well based on 6" diameter drilled 100ft deep.
5. Price is based on 2007 dollars. Although subs intend to hold price, the volatility of certain markets may prevent that.
6. All bond costs for subcontracts over $500,000 have been included

ALLOWANCES

1. Grass Pavers	$273,000	(unknown if community will allow the use)
2. Carports	$300,000	(12 @ 25,000 ea)

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND J.M. OLSON CORPORATION

EXHIBIT E
COST OF WORK/SCHEDULE OF VALUES

HICKORY CHASE
SITE WORK PHASE 1
10/9/2007

SPEC SEC	DESCRIPTION	TOTAL COST	SUBCONTRACTOR	REMARKS
1400	QUALITY CONTROL	By Owner		
1950	STRUCTURAL TESTS & INSPECTIONS	By Owner		
	STORM WATER POLLUTION PREVENTION PL	$2,000	EMH&T	
	SWPPP MAINTENANCE	$40,000	Stoltlemyer	
2080	BUILDING & SITE DEMOLITION	$47,250	Complete Clearing	
2081	TREE PROTECTION FENCING	$92,158	American Fence	
2100	SITE CLEARING & SOIL EROSION	$20,870	Complete Clearing	
2200	EARTHWORK	$805,070	Eramo	
2521	RCC / ASPHALT PAVING / CURBS	$1,504,615	Decker / Atlas	
2522	ASPHALT WALK	$74,688	Decker / Atlas	
2520	CONCRETE SIDEWALKS / SITE FOUNDATION	$625,188	Northeast Concrete	
2515	GRASS PAVERS	$273,000	WH Canon	JMOC Allowance
2520	SITE SIGNAGE	$26,000	Johnson Sign Co	
2600	SITE UTILITIES	$1,485,948	Eramo	
2670	RE-CHARGE WELLS	$13,500	Frontz Drilling	
2800	SITE FENCING	$470,438	Brickman	
2840	WOOD GUARD RAIL	$51,695	JMOC	
2850	TRELLIS	$65,000	JMOC / EMI	
2855	PAVILLION	$94,590	JMOC	
2860	CARPORTS	$300,000	JMOC	JMOC Allowance
2900	LANDSCAPE & IRRIGATION	$2,500,000	WH Canon	
2901	BOCCE COURT	$42,720	JMOC	
2902	PUTTING GREEN	$54,000	JMOC	
4200	MASONRY PIERS	$38,500	Pomponio	
5500	STAIR HANDRAILS	$17,030	JMOC	
16000	SITE ELECTRICAL	$1,350,000	Romanoff / Roehrenbeck	
17100	BOND RELEASE	$100,000		Erickson Allowance
17140	SNOW & MUD REMOVAL	$250,000		Erickson Allowance
17150	MAINTAIN EROSION CONTROLS	$75,000		Erickson Allowance
17160	MAINTAIN TEMPORARY ROADS	$150,000		Erickson Allowance
17200	TEMPORARY CONSTRUCTION FENCE	$250,000		Erickson Allowance
17250	UNSUITABLE SOIL REMOVAL	$750,000		Erickson Allowance
17260	CURB & GUTTER REPAIRS	$100,000		Erickson Allowance
17270	SIDEWALK REPAIRS	$100,000		Erickson Allowance
17280	TEMPORARY FACILITY MOBILIZATION	$100,000		Erickson Allowance
17290	SLEEVES / REPAIRS UNDER & TO RCC	$250,000		Erickson Allowance
17295	PATCHING OF ASPHALT	$100,000		Erickson Allowance
SUBTOTAL COST #1		$12,219,258		
SUBTOTAL COST #1 LESS ERICKSON ALLOWANCES		$9,994,258		
0.00%	CONTINGENCY	$0		
4.65%	GENERAL CONDITIONS	$568,647		
	WINTER PROTECTION	$0		
SUBTOTAL COST #2		$12,787,905		
SUBTOTAL COST #2 LESS ERICKSON ALLOWANCES		$10,562,905		
	BUILDING PERMIT	$0		By Owner
	BOND ON SUBCONTRACTORS	$0		Included in Individual Cont
0.11%	GENERAL LIABILITY INSURANCE	$14,067		
0.00%	BUILDERS RISK	$0		By Owner
SUBTOTAL COST #3		$12,801,972		
SUBTOTAL COST #3 LESS ERICKSON ALLOWANCES		$10,576,972		
4.00%	FEE ON ALLOWANCES	$89,000		
4.00%	FEE	$423,079		
TOTAL BUDGET		**$13,314,051**		
TOTAL BUDGET LESS ALLOWANCES		**$11,000,051**		

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND J.M. OLSON CORPORATION

EXHIBIT F
INSURANCE ADDENDUM

INSURANCE
ADDENDUM – GENERAL CONTRACTOR

TYPE OF COVERAGE	AMOUNT OF COVERAGE
AD.1 Worker's Compensation and Employer's Liability*	
(a) Worker's Compensation Insurance insuring Contractor's full liability under the Workers' Compensation laws of the state where the Project is located	Statutory Limits (set by states)
(b) Employer's Liability	Bodily Injury by Accident = $500,000. Ea. Accident Bodily Injury by Disease = $500,000. Policy limit Bodily Injury by Disease = $500,000. Ea. Employee
*Policy must include a Waiver of Subrogation endorsement in favor of indemnified parties	
AD.2 Commercial General Liability: written on ISO occurrence form CG 00 01 01 96 (or a more recent version, or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractual liability. Such policy will not contain limitations or exclusions for blasting, explosion, collapse or underground hazards or activities. (Additional Insured requirement section 11.1.6)	Occurrence Form, minimum required limits: General Aggregate Limit (other than Products/ Completed Operations): $1,000,000. Products/Completed Operations Aggregate Limit: $1,000,000. Each Occurrence Limit: $1,000,000. Personal Injury & Advertising Injury Limit: $1,000,000.
AD.3 Business Auto Liability: covering any automobile, including hired and non-owned auto's	Minimum required limits: Bodily Injury Each Person: $1,000,000. Bodily Injury Each Accident: $1,000,000. Property Damage Each Accident: $1,000,000. Or, $1,000,000. combined bodily injury and property damage each accident limit for all of the above
AD.4 Commercial Umbrella Insurance Policy: or Excess Liability coverage meeting the same coverage requirements stated above for AD.1, AD.2, and AD.3	Occurrence Form, minimum required limits: $10,000,000. each occurrence $10,000,000. aggregate
AD.5 Continuing Completed Operations Liability Insurance. Contractor shall maintain during the term of the contract, and for a period of three years after completion of contract, commercial general liability (CGL) and commercial excess or umbrella liability insurance with a limit of not less than $11,000,000 combined limits per occurrence.	

JM OLSON
CORPORATION

May 1, 2008

Mr. Michael Wagner
ERICKSON RETIREMENT COMMUNITIES
NOVI CAMPUS, LLC
703 Maiden Choice Lane
Baltimore, MD 21228

RE: Erickson Retirement Communities
Fox Run Village, Novi, Michigan
Hickory Chase, Hilliard, Ohio

Dear Mr. Wagner:

As you may or may not know, I have decided to retire. After leaving a legacy of many decades of hard work and the successful completion of dozens of major projects that continue to benefit our community, I am in the process of winding down JMOC's business and operations. With that legacy in mind, I have taken steps to allow for the prompt, complete, and skilled performance of our ongoing projects with you. In fact, several of JMOC's key people have formed a company known as Braun Construction Group, Inc. ("BCG"), and, under subcontract from JMOC, BCG will complete the remaining construction work to be performed on your job. I am confident that they will do so in a diligent manner, with no interruption in the pace of work and no change in your key contacts. I have taken all appropriate measures to facilitate a smooth and seamless transition.

All further correspondence should be sent to: Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite #100
Farmington Hills, MI 48331

On behalf of JM Olson Corporation, it has been our pleasure working with you.

Sincerely,

John Olson

John M. Olson, for
JM OLSON CORPORATION

On behalf of Braun Construction Group, Inc., we look forward to working with you, and to completing your project with the same diligence and skill that you have come to expect from JMOC. In the mean time, if you have any questions, you can reach me at 248-848-0567.

Sincerely,

Steven L. Braun

Steven L. Braun, for
Braun Construction Group, Inc.

Erickson®
Retirement Communities

MAY 22 2008
RECEIVED

May 16, 2008

John J. Morad, P.C.
30600 Telegraph Road, Suite 3250
Bingham Farms, Michigan 48025

Dear Mr. Morad,

We have received your letter of May 9, 2008 regarding the disposition of J. M. Olson Corporation and Braun Construction Services, Inc. As you may know, Erickson Retirement Communities is the developer of the Fox Run Campus in Detroit, Michigan and the Hickory Chase Campus in Hilliard, Ohio. Currently Erickson has open contracts on these two campuses.

We have also received Mr. John M. Olson's letter of May 1, 2008 regarding the completion of ongoing projects by Braun Construction Group, Inc. and look forward to completing the work on our two campuses with them.

Mr. Steve Braun has provided us with a copy of the Subcontract Agreement for completion of work for J. M. Olson Corporation. In the Subcontract Agreement section 3.1 Collection of Revenues, it is agreed that Braun Construction Group, Inc. will collect all payments made after the date of the agreement, April 24, 2008. In accordance with this provision Erickson will make future payments to Braun Construction Group, Inc. as requested and in accordance with the Subcontract Agreement.

Please call if you have any questions.

Sincerely,

William J. Brattain

cc: Mr. Steve Braun,
John M. Olson
Michael A. Wagner
Kent Madigan
Julia Schnell
Garrett Power

Erickson®
Retirement Communities

Gerald F. Doherty
(410) 402-2350

May 11, 2009

VIA CERTIFIED RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL

J.M. Olson Corporation
c/o Braun Construction Group, Inc.
Attn: Steve Braun, President
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331

Re: Construction Agreement with Columbus Campus, LLC
Sitework Phase 1

Dear Mr. Braun:

On or about January 24, 2008, J.M. Olson Corporation entered into a contract with Columbus Campus for Sitework Phase I. It is my understanding that when J.M. Olson went out of business, you purchased that business and assumed that contract and have been completing the Sitework Phase 1 construction.

In accordance with Article 13.4 of the contract for construction and General Conditions Article 14.3, you are hereby directed to suspend the Work for an indefinite period of time. You are more specifically directed to suspend the Work in whole except for specific work items which you will complete to such point as designated by Erickson Retirement Communities, and are further directed to not enter into any new subcontracts or purchase orders. Completion dates in Contract Article 4.3 will be revised when work is resumed.

Please provide your non-binding estimate of costs incurred to date, the estimated cost of the suspension and your recommendations for maintaining and protecting the work in place during the suspension.

Please feel free to call me directly if you have any questions.

Very truly yours,

Gerald F. Doherty
General Counsel

GFD:pb

cc: Conway

AIA® Document A111™ – 1997

Standard Form of Agreement Between Owner and Contractor

where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the 15th day of April in the year 2008
(In words, indicate day, month and year)

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

Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

and the Contractor:
(Name, address and other information)

Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331

The Project is:
(Name and location)

Hickory Chase, Community Building 1.0

The Architect is:
(Name, address and other information)

Dorsky, Hodgson, Parrish, Yue
23240 Chagrin Boulevard, Suite 300
Cleveland, Ohio 44122

The Owner and Contractor agree as follows.

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

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America.

EXHIBIT 1-B

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User Notes: Columbus A111 Community Building 1.0

(1823899297)

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern. The form of the General Conditions of the Contract is attached hereto as Exhibit A; the Supplementary General Conditions are attached hereto as Exhibit B; the Drawings, Plans and Specifications for the Work are listed on Exhibit C attached hereto; the Contractor's Qualifications are attached hereto as Exhibit D; the Schedule of Values is attached hereto as Exhibit E; and the Insurance Addendum is attached hereto as Exhibit F.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. A general description of the Work is as follows:

Complete all Work associated with the Project in accordance with the Drawings and Specifications attached hereto as Exhibit C and the Qualifications/Scope of Work attached hereto as Exhibit D.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor acknowledges that Owner intends to hire a developer (hereinafter, the "Developer") to assist Owner in performing Owner's obligations under this Contract. At present, Owner intends to hire Erickson Retirement Communities, LLC as the Developer. Erickson Retirement Communities, LLC has an address of 701 Maiden Choice Lane, Baltimore, Maryland 21228. Attn: Michael A. Wagner, Executive Vice President. Owner reserves the right to remove or to replace Developer at any time and from time to time and may effect such removal or replacement by giving Contractor written notice of the name and address of the new Developer. All communications by Contractor to Owner shall be directed to Developer. Owner acknowledges and agrees that Developer is Owner's agent in connection with the execution, interpretation and performance of this Contract.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be no later than April 15, 2008.

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.3 The Contractor shall achieve Substantial Completion ~~of the entire Work not later than — days from the above date of commencement, or as follows:~~ and issuance of Certificate of Occupancy no later than April 14, 2009.

As used in this Agreement and the Other Contract Documents, Substantial Completion shall mean, (1) with respect to the interior of residential units, that all Work has been completed, including final punchlist items, such that no

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additional entry into such unit is required for completion of the Work, (ii) public spaces are substantially complete with only minor punchlist items remaining to be performed, (iii) Owner can utilize the Project for its intended purposes, and (iv) an unconditional certificate of occupancy has been issued.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

~~Portion of Work~~ ~~Substantial Completion date~~

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

Time is of the essence in this Agreement. There is no allowance for weather days, and Contractor agrees to complete the Project by the dates identified above without any time extensions or extra costs allowed for weather related conditions, with the exception of extraordinary events which may be classified as "Acts of God". Such events may include floods, tornadoes, extreme snowfalls, etc. that affect a delay to the critical path of the schedule, either on or off the site. In such an event, the Completion Date shall be extended on a day for day basis for the effect of the incident.

No provisions for time extensions for delays resulting from work stoppages caused by contract labor negotiations are included in this Agreement. In such an event the Contractor and Owner mutually agree to work together to eliminate or minimize any such delays.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

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

§ 5.1.2 The Contractor's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

A fee of four percent (4%) of the cost of the Work, amounting to Four Hundred Sixty Six Thousand Four Hundred Thirty Seven Dollars ($466,437.00), is included in the Contract Sum.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed ($ ~~)~~ Twelve Million One Hundred Twenty Seven Thousand Three Hundred Sixty Six Dollars ($12,127,366.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See Exhibit E attached hereto.

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§ 5.2.3 Unit prices, if any, are as follows:

See Exhibit E attached hereto. The Contract Sum includes a lump sum for all of the General Contractor's General Conditions in the amount of Six Hundred Fifty Seven Thousand Six Hundred and One Dollar ($657,601.00). Costs which would cause the lump sum for General Conditions to be exceeded shall be paid by Contractor without reimbursement by Owner.

Description	Units	Price ($ 0.00)

§ 5.2.4 Allowances, if any, are as follows
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)
Owner and Contractor acknowledge and agree that the Owner's Allowances (if any) set forth in the Schedule of Values shall only be released to Contractor upon written approval by Owner. Owner reserves the right prior to releasing any Owner's Allowance, to review and approve how Contractor proposes to expend the Owner's Allowance.

Allowance	Amount ($ 0.00)	Included items

§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

See Exhibit D attached hereto. The Contractor is required to provide a 100% Payment Bond and a 100% Performance Bond for the full value of the Contract Sum, which bonds shall be in form and content reasonably satisfactory to Owner. The cost of such bonds is included in the Guaranteed Maximum Price.

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

§ 6.4 If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining ~~agreements and, for personnel not covered by such~~ agreements, ~~customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,~~ provided such costs are based on wages and salaries included in the Cost of the Work under ~~Sections 7.2.1 through 7.2.3~~ Section 7.2.1.

§ 7.3 SUBCONTRACT COSTS

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

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

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

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

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

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ 7.5.3 ~~Costs of removal of debris from the site.~~

§ 7.5.4 ~~Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

§ 7.5.5 ~~That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.~~

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§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance ~~by the Owner~~ in writing by the Owner, which consent may be conditioned upon receipt by Owner of indicia of ownership of such materials by Owner, proof that such materials are not subject to any liens or other encumbrances, proof that such materials are covered by insurance, and such other requirements as Owner or any lender of all or any portion of the Project may require.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

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

§ 7.6.4 Fees of laboratories for tests required to be performed by Contractor by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 ~~Data processing costs related to the Work.~~

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

§ 7.6.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.~~

§ 7.6.9 ~~Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.~~

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document ~~A201-1997~~ A201-1997, to the extent not caused by Contractor's fault or negligence.

§ 7.7.3 ~~Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.~~

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

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§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office~~, except as specifically provided in Sections 7.2.2 and 7.2.3 or as may be provided in Article 14~~.office.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as specifically provided in ~~Section 7.5.2.~~Article 7.

§ 8.1.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 8.1.7 Any cost not specifically and expressly described in Article 7.

§ 8.1.8 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase

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orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th (or earlier if the 25th is not a working day) day of a month, the Owner shall make payment to the Contractor not later than the ~~day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~ 20th day of the next month.

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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

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

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

.1 take ~~that~~ the lesser of (i) the Cost of the Work for completed work and (ii) the portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

.2 add that portion of the ~~Guaranteed Maximum Price~~ Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by ~~the Owner,~~ the Owner in accordance with the terms of Section 7.5 for suitably stored off the site at a location agreed upon in writing;

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.3 add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its ~~completion;~~completion (Owner and Contractor agree that upon any distinct portion of the Work, as determined by Owner, reaching 50% completion (and provided such portion is on schedule and has been performed in accordance with the terms of the Contract Documents), the retainage for such portion of the Work shall be reduced to 5% and all subsequent Applications for Payment for such portion of the Work shall be subject to a 5% retainage);

.4 subtract the aggregate of previous payments made by the Owner;

.5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of ~~not less than (—) ten~~ ten percent (10%), except that Subcontractors shall be subject to the same retainage as applied to Contractor's Applications for Payment pursuant to Paragraph 12.1.7 above. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

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

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Owner, or, if requested by Owner, the Architect.

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

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the ~~Architect~~ Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

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§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to ~~demand~~ request arbitration of the disputed amount without a further decision of the Architect. Such ~~demand~~ request for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to ~~demand~~ request arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the ~~Owner for convenience,~~ Owner, as provided in Article 14 of AIA Document A201-1997. ~~However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

§ 13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

§ 13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

§ 13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

§ 13.2.3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner or the Contract may be terminated by Owner as provided in Article 14 of AIA Document ~~A201-1997, in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 and Section 6.4 of this Agreement.~~ A201-1997. The Owner may terminate the contract at its convenience for any reason, at any time by giving Contractor written notice of such termination. Termination for default, if wrongfully made, shall be treated as a termination for convenience. In the event that the Contract is terminated for the convenience of the Owner, the Contractor shall be paid a pro-rata percentage of the Contract Sum equal to the percentage of Work completed by Contractor. In no event shall Contractor be entitled to receive payment for anticipated profit for unperformed Work.

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ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear no interest from the date payment is ~~due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ due.

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

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:
(Name, address and other information.)

Erickson Retirement Communities, LLC
c/o Hickory Chase Development Office
4383 Davidson Road
Hilliard, Ohio 43026
Attention: Garrett Power, Development Director

§ 14.4 The Contractor's representative is:
(Name, address and other information.)

Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331
Attention: Steve Braun, President

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

§ 14.6 Other provisions:

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document ~~A201-1997~~ A201-1997, in the form attached hereto as Exhibit A.

§ 15.1.3 The Supplementary ~~and other Conditions of the Contract are those contained in the Project Manual dated ——, and are as follows:~~ Conditions of the Contract are attached hereto as Exhibit B.

Document	Title	Pages

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§ 15.1.4 The ~~Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows:~~ Drawings and Specifications are those listed on Exhibit C attached hereto.

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

~~Section~~	~~Title~~	~~Pages~~

§ 15.1.5 ~~The Drawings are as follows, and are dated unless a different date is shown below:~~

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

~~Number~~	~~Title~~	~~Date~~

§ 15.1.6 ~~The Addenda, if any, are as follows:~~

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:
Contractor's Qualifications attached hereto as Exhibit D, the Schedule of Values attached hereto as Exhibit E, and the Insurance Addendum attached hereto as Exhibit F.

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

~~Type of insurance~~	~~Limit of liability ($ 0.00)~~

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

~~OWNER (Signature)~~

COLUMBUS CAMPUS, LLC
By: Erickson Retirement Communities, LLC, Member
(Printed name and title)

Michael A. Wagner, Executive Vice President

CONTRACTOR *(Signature)*

BRAUN CONSTRUCTION GROUP, INC.
By: Steve Braun, President
(Printed name and title)

APPROVED AS TO LEGAL SUFFICIENCY GPD

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT A
GENERAL CONDITIONS

AIA® Document A201™ – 1997

General Conditions of the Contract for Construction

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

THE OWNER:
(Name and address):
Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

THE ARCHITECT:
(Name and address):
Dorsky, Hodgson, Parrish, Yue
23240 Chagrin Boulevard, Suite 300
Cleveland, Ohio 44122

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

This document has been approved and endorsed by The Associated General Contractors of America

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). Architect may from time to time issue additional Drawings and Specifications to provide coordination and conforming details and otherwise issue additional Drawings and Specifications necessary to complete the Project (all such additional Drawings and Specifications are in this Agreement and in the Contract Documents referred to as "Additional Drawings and Specifications").

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Without in any way limiting the foregoing, Contractor shall provide and/or perform and the Work shall include (i) all materials, supplies, apparatus, appliances, implements, tools, equipment, sanitary facilities and all other facilities necessary in the performance of the Work (collectively, "Materials"), and (ii) all labor, supervision, transportation, light, power, water, utilities, storage, and all other services (collectively, "Services") required in the construction of and/or normally performed by contractor and subcontractors in connection with the construction of a project similar to the Work.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

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consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.4 Where a conflict exists within or between parts of the Contract Documents, or between the Contract Documents and applicable standards under codes or ordinances promulgated by governmental bodies having jurisdiction over the Project, the more stringent or higher quality requirements shall apply. Large-scaled Drawings shall control over smaller-scaled Drawings, figured dimensions on the Drawings shall control over scaled dimensions, and noted materials shall control over graphic representations. Where a conflict exists between the terms of the standard AIA General Conditions Form No. A-201, and the amendments made thereto in this document, the amendments shall control. Further, where a conflict exists between the terms and conditions of the Agreement between Owner and Contractor and these General Conditions, the Agreement between Owner and Contractor shall control.

§ 1.2.5 Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that reference to the Drawings is made unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as reviewed," "as accepted," "as approved," "as selected" or words of similar import are used, it shall be understood that the direction, requirement, permission, authorization, review, acceptance, approval, selection of the Architect and/or Owner is intended, unless otherwise stated.

§ 1.2.6 As used in the Contract Documents, "provide" shall be understood to mean "provide complete in place," that is, to furnish, install, fabricate, deliver, install, and erect, including all labor, materials, equipment, apparatus, appurtenances, and expenses necessary to complete in place, ready for operation and use. The use of the term "shall" in the Contract Documents means as prescribed by the Contract Documents, the use of the term "as necessary" in the Contract Documents means all action essential to the completion of the Work. The Specifications are of the abbreviated type and may include incomplete sentences. Omissions of phrases such as "the Contractor shall" or "conforming to the requirements" are intentional in order to save space, but such limited words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings. Words in the singular shall include the plural however applicable, unless the context otherwise indicates.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

§ 1.4.1 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 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

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

§ 1.6.1 ~~The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described.~~ All Drawings, Plans and Specifications, renderings and models prepared with respect to the

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Project are and shall be the property of Owner and may not be used by any person, party or entity on any other project unless expressly authorized in advance by Owner in writing. The Contractor may retain one record ~~set.~~ set of Drawings, Specifications and other documents prepared by the Architect. 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 or the Architect's ~~consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights.~~ consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the ~~Architect,~~ Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, 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, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' copyrights or other reserved rights.~~ Owner's copyrights or other reserved rights.

§ 1.6.2 All Shop Drawings prepared by Contractor exclusively for the Work shall be the property of the Owner and may not be used by any person, party or entity unless expressly authorized in advance by Owner in writing.

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. Owner intends to hire a development company to assist Owner in the development of the Project (the "Developer"). The initial Developer shall be Erickson Retirement Communities, LLC, having an address at 701 Maiden Choice Lane, Baltimore, Maryland 21228, Attn: Michael A. Wagner. Owner hereby reserves the right to replace and appoint Developers from time to time throughout the term of the Project, which right may be exercised by Owner giving Contractor written notice of the name and address of the newly appointed Developer. Throughout the Contract Documents, wherever an obligation is imposed on Owner (other than the obligation to pay money), Owner may, at its option, assign such obligation to Developer.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. ~~Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, 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.

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

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which 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, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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 term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect may require.

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§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the ~~Architect,~~ Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly ~~to the Architect~~ to the Architect and Owner at once. Notwithstanding the foregoing, Contractor shall not be obligated to perform additional studies or tests of field conditions, except as expressly set forth in the Contract Documents.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 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.~~ accepts the relationship of trust and confidence established between the Contractor and the Owner by the Contract Documents. Contractor covenants with the Owner (i) to furnish his best skill and judgment and to cooperate with the Architect in furthering the interest of the Owner; (ii) to furnish efficient business administration and superintendence; (iii) to use his best efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best way and in the most expeditious and economic manner consistent with the interests of the Owner. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. ~~If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.~~

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

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

§ 3.3.4 At least once a month a meeting on the site involving Contractor and Owner shall be held to review progress and coordinate work schedules for the weeks ahead. Contractor shall have in attendance at these meetings a job superintendent or another person authorized to make decisions for the Contractor.

§ 3.3.5 Contractor shall check all Materials and Services entering into the Work, including but not limited to quality and quantity, and shall keep full and detailed records and accounts in accordance with industry standards, including but not limited to said records and accounts as may be necessary to determine the Cost of the Work.

§ 3.3.6 Contractor shall keep current a detailed Schedule of Values of the various portions of the Work, divided so as to identify the portion of the Work to be provided by each Subcontractor and to facilitate payments to Subcontractors, prepared in a format and with such detail as is acceptable to and approved by Owner and Architect. The Schedule of Values shall include a detailed statement of Project overhead costs.

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§ 3.3.7 As general contractor for the Project, Contractor shall use reasonable efforts to accomplish the following:

(a) the avoidance of conflicts among the various trades;

(b) the efficient organization of construction activities, including location and size of activities, location and size of storage areas, staging areas and field offices, traffic patterns, delivery schedules, hoisting, safety and the like; and

(c) efficient scheduling of the Work to be performed by Subcontractors to avoid inefficient or unsafe performance of the Work performed and to be performed by all Subcontractors

§ 3.3.8 Contractor shall prepare a Manual describing the methods of material-handling and the methods for the movement of personnel that are to be used on the Site. The Contractor shall ensure that these methods are understood and followed by all subcontractors in the construction of the Project.

§ 3.3.9 Contractor shall prepare a written safety program to govern all activity on the Site.

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.5.2 The Contractor shall and does hereby assign to the Owner the benefits of any warranties and guarantees of all Subcontractors, Material Suppliers and Manufacturers, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the Contract Documents. Notwithstanding the foregoing assignment, prior to final acceptance of the Work by Owner, Contractor shall deliver to Owner three (3) bound volumes of all guarantees and warranties on Materials furnished by all manufacturers and suppliers to Contractor and all Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, ~~the Contractor~~ Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and

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inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when ~~bids are received or negotiations concluded~~ the Contract is executed and delivered. Notwithstanding the foregoing, Contractor shall not be obligated to pay for impact fees, sewer connection or water tap fees, or other similar utility fees.

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

§ 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~~ with Applicable Laws. 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.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to ~~laws, statutes, ordinances, building codes, and rules and regulations~~ Applicable Laws without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to ~~correction~~ correction, without an increase in the Contract Sum and such costs shall not be a Cost of the Work.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.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 in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding~~ Contractor shall employ all competent staff necessary for the proper execution of the Work, and shall see that members of such staff shall be in attendance at the site during the progress of the Work as may be necessary or appropriate under the circumstances. Such staff shall be under the direction of a project manager (who will devote, if necessary, all of his time and efforts to the Project) satisfactory to the Owner who shall not be changed without prior written consent of Owner unless such project manager is no longer employed by Contractor. The project manager shall represent the Contractor and all communications given to the project manager shall be as binding on the Contractor as if given to the Contractor. ~~Important communications shall be confirmed in writing. Other communications shall be similarly confirmed~~ Communications will be confirmed on written request in each case. The project staff shall consist of persons capable of filling such positions and/or performing such functions that the Owner and the Contractor may reasonably require under the circumstances, although a single person may perform more than one function if he or she is able to do so capably and efficiently.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, ~~promptly~~ prior to or immediately after being awarded the Contract, shall prepare and submit for the Owner's ~~and Architect's information a Contractor's construction schedule for the Work. The schedule shall~~ information and approval, a schedule (as same may be revised from time to time, herein called the "Schedule") for all parts of the Work. The Schedule shall initially be an estimate of the time requirement for all of the Work, incorporating such information as design services, Owner related activity, governmental approvals, and the like. The Contractor and each major Subcontractor shall cooperate fully and provide detailed information as required in order to achieve the most logical Schedule for the Work that will be acceptable to Owner and Contractor. The Schedule shall (i) not exceed time limits current under the Contract Documents, (ii) shall be revised by Contractor at appropriate intervals as required by the conditions of the Work and Project, subject to Owner's approval, (iii) shall be related to the entire Project to the extent required by the Contract Documents, and (iv) shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 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~~ Schedule and allows the Architect reasonable time to review submittals.

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

§ 3.10.4 From the initially approved Schedule and other information developed, the Contractor, in cooperation with the Owner, Architect, and major Subcontractors, will monitor, and shall revise and update monthly, the Schedule. The Schedule shall be further revised or expanded to provide more detailed information concerning the time requirements for all parts of the Work and other elements of the Project as such information is developed and approved by the Owner. Contractor and each Subcontractor, materialman, and supplier shall provide revised data in order to assist the Contractor in determining the most appropriate and acceptable Schedule and acceleration opportunities for the Work and to update the Schedule, in order to assure that the Work shall be completed on or before the Substantial Completion Date set forth in the Agreement.

§ 3.10.5 The Schedule shall set out, in addition to the elements set forth in Paragraphs 3.10.1 and 3.10.4 the following:

(a) a schedule of production of drawings, specifications and other documents required for the award of contracts for construction (providing for appropriate periods of review, which periods shall not exceed 10 days where practicable);

(b) a listing of all long-lead-time items and a schedule for the acquisition and delivery of such items;

(c) a detailed construction progress schedule showing the different stages of progress required in the Work;

(d) a schedule for the processing of shop drawings;

(e) a schedule for the acquisition and installation of all built-in furnishings, fixtures and equipment to be provided under this Agreement or to be provided by Owner and installed by Contractor; and

(f) a detailed schedule of the periods during which each Subcontractor's Work will be performed; and

(g) in the event that Contractor falls at least one week behind schedule, a detailed schedule setting forth all actions to be taken by the Contractor to get the Work back on schedule for completion within the Contract Time.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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~~submittal to the Owner upon completion of the Work.~~Owner. Contractor shall advise Owner on a current basis of all material changes in the Work made during construction.

§ 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.~~Contractor shall prepare, or cause to be prepared as part of the Work, all shop drawings and other detailed drawings not made a part of the Drawings or Specifications or Additional Drawings and Specifications and shall submit same to Architect for approval. Shop Drawings establish actual detail of manufactured and fabricated items, indicate proper relation to adjoining Work, amplify design details or mechanical and electrical equipment in proper relation to physical spaces, and incorporate minor changes or design and construction to suit actual conditions.

.1 fabricated items are items specifically assembled or made out of selected materials to individual design requirements.

.2 manufactured items are standard items usually mass assembled.

§ 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 which illustrate materials, equipment texture, finish, color, technique 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 Owner and Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings, Product Data, and Samples. Contractor shall review shop drawings, product data, and samples as required in this Section 3.12.6, prior to submittal to Architect. Submittals shall be stamped by Contractor or through some other means to clearly indicate to Architect that submittals have been reviewed and approved by the Contractor.

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

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

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or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval or review thereof.

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

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

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Owner prior to using any portion of the Site.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost ~~thereof~~ thereof, including overhead costs, shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

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

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§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by ~~law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall~~ law, the Contractor shall defend, indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and agents and employees of any of them~~ Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), ~~but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable,~~ regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 Contractor agrees to forward to Owner within 45 days following the first and third fiscal quarters, unaudited financial statements of Contractor for such fiscal quarter, including income statements, cash flow and balance sheets, certified as true, accurate and complete by an authorized officer of Contractor.

§ 3.18.4 Contractor agrees to forward to Owner within 120 days after the end of each year, annual audited financial statements of the Contractor for such fiscal year prepared in accordance with generally accepted accounting principles consistently applied, accompanied by a report of an independent public account approved by Owner.

§ 3.18.5 Owner, at Owner's cost and expense, shall be entitled upon ten (10) days advance notice to audit Contractor's performance on the Project, and in connection therewith Contractor agrees to provide to Owner at Contractor's principal place of business, all books, records, files and other data necessary to conduct such audit.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner ~~shall employ a new Architect against whom the Contractor has no reasonable objection and~~ may employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

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§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect and Developer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, and Developer will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work 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~~ neither the Architect nor the Developer will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Architect, the Owner and the Developer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The ~~Architect~~ Architect, the Owner and the Developer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The Architect~~ However, nothing contained in this Subsection is intended to relieve the Architect of its responsibilities or liabilities under the Contract Documents or its contract with the Owner. The Architect, the Owner and the Developer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract ~~Documents~~ Documents, and as required by Applicable Laws. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. ~~Review~~ Except as may be required by Applicable Laws, 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

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under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. However, to the extent such submittals must be reviewed or approved by a licensed architect pursuant to Applicable Laws, the Architect shall provide all services necessary to satisfy such Applicable Laws.

§ 4.2.8 ~~The~~ Following consultation with Owner, the Architect will prepare ~~Change Orders and~~ Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect and Developer will at such times Architect and Developer deem appropriate and also upon request of Owner, conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

§ 4.2.11 The Architect will interpret and ~~decide~~ make recommendations on 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. If no agreement is made concerning the time within which ~~interpretations~~ recommendations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such ~~interpretations until 15~~ recommendations until ten (10) days after written request is made for them.

§ 4.2.12 ~~Interpretations and decisions~~ Recommendations 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 initial decisions,~~ recommendations, 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~~ recommendations so rendered in good faith.

§ 4.2.13 The Architect's ~~decisions~~ recommendations on matters relating to aesthetic effect will be final only if consistent with the intent expressed in the Contract ~~Documents~~ Documents and will have no adverse effect on the Project budget or the Schedule.

§ 4.3 CLAIMS AND DISPUTES

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

§ 4.3.2 Time Limits on Claims. Claims by ~~either party~~ Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the

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Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment ~~shall~~ may be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice to Architect and Owner as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be ~~given~~ given to Architect and Owner. 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.

~~§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.~~

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

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

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

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§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, ~~shall~~ may be referred initially to the Architect for decision. ~~An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~ Claims submitted to the Architect shall be solely for the purpose of obtaining the Architect's recommendation as to the resolution of the Claim.

§ 4.4.2 The Architect will review Claims submitted to Architect and within ten days of the receipt of the 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. ~~Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.~~

§ 4.4.5 The Architect will ~~approve or reject~~ make recommendations on Claims by written decision, which shall state the reasons ~~therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.~~ therefor.

§ 4.4.6 ~~When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.~~

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 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 prior to resolution of the Claim by the Architect, by mediation or by arbitration~~ deadlines.

~~§ 4.5 MEDIATION~~

~~§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.~~

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~~§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~§ 4.5.3 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.~~

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, ~~except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5~~ may, upon Owner's and Contractor's consent, be subject to arbitration.

§ 4.6.2 Claims ~~not resolved by mediation shall be decided~~ to be resolved by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The ~~demand~~ request for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 4.6.3 A ~~demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases~~ request for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of ~~limitations as determined pursuant to Section 13.7~~ limitations.

§ 4.6.4 Limitation on Consolidation or Joinder. ~~No~~ At Owner's option any and all arbitration arising out of or relating to ~~the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~ any of the Contract Documents or any breach thereof shall include by consolidation, joinder or joint filing, any additional person or entity not a party to the Owner-Contractor Agreement to the extent necessary for the final resolution of the matter in controversy.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of ~~demand~~ request for arbitration must assert in the ~~demand~~ request all Claims then known to that party on which arbitration is ~~permitted to be demanded~~ requested.

§ 4.6.6 Judgment on Final Award. ~~The~~ If the parties agree to arbitration the award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect will promptly~~ Owner will reply to the Contractor in writing stating whether or not the ~~Owner~~ Owner, Developer or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner ~~or Architect~~ to reply ~~promptly~~ 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~~ Owner, Developer 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. The Contractor shall contract with each and every Subcontractor solely in the name and on behalf of the Contractor, and no approval by Owner of any such Subcontract shall be construed as creating any contractual relationship between any Subcontractor and Owner.

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

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

§ 5.2.5 All Subcontracts and purchase agreements shall specifically provide that any and all guarantees or warranties of or from the Subcontractor or Supplier for the benefit of Contractor shall also be made to, and for the benefit of, Owner and otherwise comply with the provisions hereof.

§ 5.2.6 All Subcontracts shall contain provisions requiring the Subcontractor thereunder to perform its portion of the Work in accordance with the Contract Documents and shall require the Subcontractor to adhere to all Applicable Laws and applicable provisions contained in this Agreement, the General Conditions (which also shall be expressly made a part of each Subcontract) and the other Contract Documents.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 Each subcontractor shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-

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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.

§ 5.3.2 Upon request of Owner, Contractor will cause each Subcontractor and Sub-subcontractor to execute and deliver to Owner a waiver or waivers of mechanic's and/or materialmen's liens with respect to all Work which has been performed and paid for under such Subcontract or Sub-subcontract, or, to the extent permitted by law, to be performed. Such waiver or waivers shall be in form and substance satisfactory to Owner.

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract ~~by the Owner for cause pursuant to Section 14.2~~ and only for those subcontract agreements which 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.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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

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

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations~~

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~~and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the ~~Contractor,~~ Contractor and 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~~ Owner will equitably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

.1 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.

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§ 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,~~ or Developer, 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 7.3.6.~~

Owner shall request additive and deductive changes in the Work by giving Contractor a written "Additive Change Order Request" or "Deductive Change Order Request," as the case may be, through the Architect, setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Contractor shall forthwith (but in no event later than twenty-one (21) days after receipt of the Change Order Request) return to Owner and Architect two (2) completed copies of its "Additive Change Order Proposal" or "Deductive Change Order Proposal," as the case may be, setting forth in detail, with a suitable breakdown by trades and work classifications Contractor's estimate of the changes in the Contract Sum (together with the appropriate data acceptable to Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and a proposed adjustment of the Contract Time resulting from such Change Order Request. If Owner approves in writing Contractor's Additive Change Order Proposal or Deductive Change Order Proposal as the case may be, Owner will issue and Contractor will execute and accept a "Change Order" and the Contract Sum and the applicable Turnover Dates and the Date of Final Completion shall be adjusted as set forth in such Change Order. If Contractor's Additive Change Order Proposal is not agreed to by Owner and Owner nevertheless issues a "Construction Change Directive" directing Contractor to perform the requested change to the Work, Contractor shall proceed with the Work authorized by same and the increase in the Contract Sum as a result of such change in the Work shall be equal to (x) the actual cost of such change in the Work (which actual costs shall include only those costs permitted under Article 7 of the Agreement if the Agreement is in the form where the basis for payment is the Cost of the Work plus a fee) and (y) a Contractor's Fee as stated in, and subject to any limitations set forth in, the Agreement Between Owner and Contractor. After the cost of such change in the Work is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon cost. Contractor agrees to deliver to Owner within twenty (20) days after the completion of the Work covered by Construction Change Directive invoices, statements, payroll data and other evidence of such actual cost of the change in the Work that Owner may reasonably require. If Contractor's Deductive Change Order Proposal is not agreed to by Owner and Owner nevertheless directs Contractor to make and perform changes in the Work pursuant to a Construction Change Directive, Contractor shall proceed with the Work as changed by such Construction Change Directive and the decrease in the Contract Sum as a result of such change in the Work shall be equal to (a) the actual reduction in cost of the Work resulting from such change in the Work and (b) a Contractor's Fee as stated in, and subject to any limitations set forth in the Agreement Between Owner and Contractor. After the decrease in the Contract Sum is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon decrease. Contractor agrees to deliver to Owner within twenty (20) days after the Completion of the Work covered by such Construction Change Directive such evidence of decrease in the Cost of the Work resulting from such directive as Owner may reasonably require. Agreement on any Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to the terms of this Agreement. When both additions and credits covering related Work or substitutions are involved in any one change, the

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allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change. For purposes of this Paragraph 7.3.3, Contractor shall keep at the Project site complete and accurate financial records of all costs incurred in performing any Construction Change Directive, and shall make these records available to Owner and Architect for audit and copying. No amount under this Paragraph 7.3.3 shall be payable by Owner unless such records are kept and until such records are made available to Owner and Architect.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and 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.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. 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 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which 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.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

§ 7.3.9 When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract ~~Time~~ Time; not involving a change in the scope, quality or quantity of the Work; and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order delivered to Owner and Contractor and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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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 or the Schedule approved by Owner for Substantial Completion of the Work.

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the ~~Architect~~ Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the ~~Architect may determine~~ Owner may determine. However, pursuant to Section 4.3 of the Contract, Contractor shall not be entitled to any allowances or extensions of time for delays caused by weather or labor disputes. Should any workers performing work covered by this contract engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Owner, may, at its option and without prejudice to any other remedies Owner may have, after forty-eight (48) hours written notice to Contractor, contract with or provide any such labor on its own and deduct the cost thereof from any monies then due or thereafter to become due Contractor. Further, Owner may, at its option, without prejudice to any other remedies it may have, terminate the employment of Contractor for the Work under this Contract and shall have the right to enter upon the premises and take possession for the purpose of completing the Work hereunder of all Contractor's materials, tools and equipment thereon and to finish the Work either with its own employees or other contractors. Contractor shall remain liable for any damages which Owner incurs as a result of any such stoppage of work.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.~~ Any claim for extension of time shall be made in writing to the Owner not more than twenty-one (21) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, one notice shall be made within ten (10) days of commencement of the delay and the claim for actual delay days incurred shall be made within ten (10) days after the termination of the delay. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Claims for extension of time shall be stated in whole or half days only.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ In the event Contractor is delayed at any time in the progress of the Work (i) by labor disputes, fire, unusual delays in transportation, unavoidable casualties or any other causes not solely the responsibility of Owner; or (ii) cumulatively for thirty (30) days or less by any other causes, extension of time shall be Contractor's sole remedy for any such delay. In the event Contract is delayed cumulatively by more than thirty

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(30) days in the progress of the Work by any causes that are solely the responsibility of Owner and the Contractor makes a timely claim, then the Contract Time and the Contract Sum shall be adjusted by Change Order in accordance with Article 7. This provision is intended to be, and shall be construed as consistent with and not in conflict with, Ohio Revised Code § 4113.62, to the fullest extent permitted.

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.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the ~~Architect,~~ Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, ~~but not yet included in Change Orders,~~ or by Change Orders. In no event may any Application for Payment include sums purportedly payable due to oral modifications to the Contract Sum or the Work, the parties agreeing that all such changes must be in writing, and signed by Owner.

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

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

§ 9.3.3 The Contractor warrants that title to all ~~Work~~ Work, including all materials and equipment, covered by an Application for Payment will pass to the Owner no later than the time ~~of payment~~ of payment, free and clear of liens and encumbrances other than those created by Owner. 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,~~ shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 With each Application for Payment, the Contractor shall present (i) written evidence of payment, satisfactory to the Owner, of any and all claims of Subcontractors and (ii) releases and waivers for all constitutional, statutory and contractual liens, including but not limited to mechanics and materialmen's liens, from all Subcontractors, but only to the extent of all prior payments made by Owner to Contractor on account of Work performed by such Subcontractor. All such releases and waivers shall be in form and substance satisfactory to Owner and shall be signed and acknowledged by the payee and (iii) such other matters as are required in Article 12

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of the Contract to which these conditions are attached. In addition, in each Application for Payment Contractor shall certify to Owner that such Application for Payment represents a just estimate of cost reimbursable to Contractor under the terms of the Contract Documents and shall also certify in a form acceptable to the Owner that:

"There are no known mechanics or materialmen's liens outstanding at the date of the Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application for Payment, and that, except for such bills not paid so included, there is no known basis for the filing of any mechanic's or materialmen's liens on the Work."

For any payment received by the Contractor, the Contractor shall also deliver to the Owner a release and waiver of the Contractor's constitutional statutory and contractual liens, including but not limited to mechanics and materialmen's lien to the extent of such payment so received, and such releases shall be signed, sworn to and acknowledged by Contractor, and shall be in a form acceptable to Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

.1 defective Work not remedied;

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

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, ~~materials or equipment~~ materials, equipment, or services or for any other items for which payment has been made to Contractor;

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

.5 damage to the Owner or another contractor;

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

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

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for ~~Payment,~~ Payment in an amount approved by Owner, 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 promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. The Owner may, however, at its option, at any time after (i) Owner has given Contractor ten (10) days written notice of Contractor's default under the Contract Documents or under the applicable Subcontract; or (ii) a lien is filed by any Subcontractor or Sub-subcontractor against all or any portion of the Project and such lien is not released or bonded to the satisfaction of Owner within five (5) days after same has been filed, make payments directly to any Subcontractor or Sub-subcontractor and all such payment so made shall be deemed to be made directly to Contractor on account of the Contract Sum.

§ 9.6.5 Payment to material 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~~ Documents, or be construed or relied upon as any indication that the Work or Materials are in accordance with the Contract Documents, or that the amounts paid or certified therefore represent the correct cost or value of the Work or Materials or that such amount is in fact or law due to Contractor.

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

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. ~~The~~ If applicable, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Except as may be provided otherwise in the Agreement, Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner or subsequent contractor can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. In connection therewith, Contractor shall provide to Owner for Owner's written approval a schedule for completion of all such items, which schedule shall specify the number of personnel that will be dedicated each day to completion of such portion of the Work (the "Punchlist Schedule"). Contractor shall also designate a supervisor whose sole responsibility shall be to perform and complete such portion of the Work in accordance with the approved Punchlist Schedule. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the 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. All such additional items shall be incorporated by Contractor into the Punchlist Schedule, with no extension of time. 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 which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any ~~stage when such portion is designated by separate agreement with the Contractor,~~ stage, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the ~~Work.~~ Work, if required. 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.

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§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment and~~ payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner.~~ by the Owner, and (6) any other items required by the Contract Documents to be delivered by Contractor. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

~~.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~

~~.2 failure of the Work to comply with the requirements of the Contract Documents; or~~

~~.3 terms of special warranties required by the Contract Documents.~~

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

.1 employees on the Work and other persons who may be affected thereby;

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

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

.4 the Work of the Owner or the other contractors.

§ 10.2.2 The Contractor shall give notices and comply with ~~applicable laws, ordinances, rules, regulations and lawful orders of public authorities~~ Applicable Laws and state and federal regulations bearing on safety of persons or property or their protection from damage, injury ~~or loss~~ or loss and shall hold the Owner, Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their agents harmless from and against any fines or penalties levied in connection with the failure of Contractor to give such notices or to comply with any such Applicable Laws and state and federal regulations.

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

10.2.3.1 Contractor shall maintain exit doors and provide acceptable exitways from any building or buildings, shall not block or lock exit doors or in any manner prevent egress from exits, shall keep exitways through any building or buildings clear of materials and shall level surfaces to prevent accidents in case of egress from exits.

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

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

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

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.2.8 The Contractor shall employ such reasonable and customary practices as are necessary to protect all materials, equipment, completed and partially completed Work and all merchandise stored therein from loss and damage, including theft or damage by weather and, if necessary, shall provide suitable shelter therefor. The Contractor shall correct at its own expense any damage or disfigurement to work or property (whether or not located on the site) resulting from the fault, neglect or omission of the Contractor, any Subcontractor, any Sub-subcontractor or other person employed or hired by any of them.

§ 10.2.9 The Contractor shall take all reasonable precautions to keep the site free of safety hazards and shall comply with all Applicable Laws and insurance requirements relating to injury to persons and property on or about the site or any other location where any of the Work is performed, including but not limited to the regulations and directives of the federal and state Occupational Safety and Health Administrations and other governmental authorities having jurisdiction over the Project.

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§ 10.2.10 The Contractor shall on a daily basis keep the site free from any dangerous clutter or debris attributable to the Work and shall keep the site reasonably clean and orderly at all times in accordance with the nature of the Work. The Contractor shall clean up the site in a thorough and workmanlike manner to the satisfaction of the Owner at the completion of the Work.

§ 10.2.11 The Contractor shall be responsible for the security of the Work, the site and all Materials stored there or at any other location by the Contractor with the consent of Owner. The Contractor shall be responsible for all losses and expenses incurred by reason of failure to maintain reasonable security at the site or at the location where Materials are stored, and such expenses incurred shall not increase the Contract Sum. The Contractor shall comply with all reasonable security requirements of the Owner.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to 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. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

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

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the ~~Contractor unless such materials or substances were required by the Contract Documents~~ Contractor.

§ 10.5 If, without negligence ~~on the part of the Contractor,~~ or misconduct on the part of the Contractor or the Contractor's employees, subcontractors, sub-subcontractors, agents, invitees or guests, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 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 Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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§ 11.1.1 The Contractor shall maintain throughout the term of the Agreement, and in some instances beyond the term of this Agreement, insurance of the types and in the minimum amounts set forth in this section 11 and on the Insurance Addendum.

§ 11.1.2 Insurance Carriers must be licensed to do business in all states applicable under the terms and scope of this Agreement, have an A.M. Best Company rating of not less than A-VI, and must be otherwise acceptable to Owner.

§ 11.1.3 If requested by Owner, Contractor shall provide certified copies of all such policies to Owner within 10 days of such request.

§ 11.1.4 Contractor must immediately notify Owner of any reduction or restriction in the required insurance regardless of whether it takes place prior to, during, or subsequent to, the term of this Agreement, and/or in the event the insurer notifies the Contractor of its intent to non-renew coverage. "Reduction of coverage" does not encompass depletion of insurance limit aggregates unless the current policy is or becomes depleted by 75% or more.

§ 11.1.5 Certificates of insurance, copies of additional insured endorsements from applicable insurance policies, and other required documentation, signed by a duly authorized agent of each insurance company shown and be otherwise acceptable to Owner, shall be filed with the Owner prior to the commencement of the Contractor's Work, and within ten (10) days of the expiration of any insurance policy required herein.

§ 11.1.6 The Owner, Developer, their parent and subsidiary companies, Hickory Chase, Inc., and their respective members, partners, directors, officers, employees, and agents are to be included as additional insureds with regard to all coverage obtained by the Contractor under Commercial General Liability, Automobile Liability, and the Umbrella/Excess insurance described on the Addendum. To the extent Contractor has insurance at levels greater than that set forth in the Addendum, the parties set forth herein shall be listed as additional insureds at such higher levels. The additional insured coverage is to be provided one of the following coverage forms: ISO Form CG2010 11-85; ISO Form CG2026; a combination of forms ISO Form CG2010 of a later version and CG2037; or other insurance form equivalent in coverage. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.7 Insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to indemnities and/or additional insureds under this Agreement. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.8 All policies are to be endorsed to provide for 30-day notice of cancellation or reduction of coverage to Owner. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.9 No payments shall be made to Contractor until satisfactory documentation as required herein is received and accepted by Owner.

§ 11.1.10 Approval of any insurance by Owner shall not relieve or decrease the liability of the Contractor. The Owner does not in any way represent that the insurance or limits of liability specified above are sufficient or adequate to protect the interests or liability of the Contractor and are only minimums.

§ 11.1.11 All required insurance policies shall contain a waiver of subrogation by the insurance carrier in favor of Owner.

§ 11.1.12 Self-insured retentions (deductibles) shall not be more than $10,000.

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

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.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;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

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

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing 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. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE

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~~§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

~~§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance 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 in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

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

~~§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.4.2 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.~~

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

BUILDER'S RISK COVERAGE

§ 11.4.11 The Owner shall purchase and maintain Builder's Risk Coverage protecting buildings and building materials against risks of direct physical loss or damage. Coverage will include the perils of fire, extended coverage,

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theft, vandalism, malicious mischief, collapse, flood and earthquake. Coverage will be applicable to property destined to become part of the building stored off-site and during transit, debris removal, and demolition occasioned by enforcement of any building, zoning, or land use ordinance or law. This insurance shall include the interests of the Owner, Contractor, Subcontractors and lower-tier subcontractors.

§ 11.4.12 This insurance will not include coverage for clothing of workers, tools, equipment, or property of a similar kind which will not become a permanent part of the building or structure. Contractor shall not be liable or responsible for any loss or damage to the items excluded. Coverage for transit, storage away from the project site, flood, earthquake, debris removal, and demolition have sub-limits or are otherwise limited by policy conditions. The Contractor, Subcontractors, and their lower-tier subcontractors shall hold harmless, indemnify, and defend Owner, its parent company, Hickory Chase, Inc., employees, members, directors, and agents from claims of damage or loss to such property excluded or limited.

§ 11.4.13 Coverage for transit and storage away from project site is limited to $500,000 per occurrence. For additional coverage, Owner has the option to report, obtain approval for, and pay additional cost for insurance under Contractor's program or obtain additional insurance elsewhere.

§ 11.4.14 Payments by the insurer for all losses covered under the Builder's Risk policy will be made to Owner, for the interest of all parties, subject to the requirements of any applicable mortgagee clause. Contractor shall pay such Subcontractor a just share of any insurance monies received by Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to lower-tier subcontractors in a similar manner.

§ 11.4.15 The Builder's Risk Insurance will be placed with a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. Such property insurance shall be maintained by the Owner, unless otherwise provided in the Agreement, or agreed in writing by the Contractor.

~~§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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~~§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. 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.~~

~~§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

~~§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising ~~thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract~~ thereunder, including, if requested by Owner, bonds for any Subcontractors designated by Owner. The costs of any bonds required to be delivered and not stipulated in the bidding requirements or other Contract Documents shall be a reimbursable expense of Contractor or any designated Subcontractor.

§ 11.5.2 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.

§ 11.5.3 It shall be the responsibility of the Contractor not to violate nor knowingly permit to be violated any conditions of the policies required hereunder, and it shall be the Contractor's duty and responsibility to impose upon each Subcontractor and have each Subcontractor impose upon each Sub-subcontractor the same responsibilities and obligations imposed upon the Contractor under the insurance provisions provided for herein.

§ 11.5.4 Contractor shall require each Subcontractor to provide the insurance coverage as stated in Paragraph 11.1.1 above.

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

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§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. If, within one year after the Date of Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any special warranty required by the Contract Documents, any of the Materials included in the Work are found to be defective or not in accordance with the Contract Documents, the Contractor shall correct same promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given Contractor an express written acceptance of such defective conditions. Contractor shall correct any defects in the Work or damage to other property caused by defects in the Work or the repairing of such defects with a minimum of inconvenience to Owner and other occupants of the Project and at times least disruptive to the operation or construction of the Project. Notwithstanding anything to the contrary contained herein, Contractor's obligations contained in this Paragraph 12.2.2.2 shall be in addition to all other obligations of Contractor contained in the Contract Documents in respect of warranties or correction of defects in Work.

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which 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 which the Contractor might have 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.

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

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.1.2 To the extent permitted by law, the Contractor and all Subcontractors (and each of their respective subcontractors and suppliers) are hereby subordinate to any and all statutory, constitutional and contractual liens, security interests and right each may now or in the future may have against the Project or any portion thereof to the liens, security interests, and rights of any lender having a lien against all or any portion of the Project, from time to time. Contractor and all subcontractors agree to execute and deliver to Owner, such documents as may be requested by Owner to acknowledge such subordination.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party~~ Contractor shall not assign the Contract in whole or in part without the prior written consent of the Owner. In the event Contractor shall assign the Contract in whole or in part, Contractor shall nevertheless remain legally responsible for all obligations ~~under the Contract of~~ "Contractor" under the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to ~~an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents.~~ any lender or lenders providing construction financing for all or any portion of the Project. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 ~~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.~~ All notices, requests, demands, and other communications hereunder shall be in writing except as expressly provided otherwise, and shall be personally delivered, or mailed certified or registered mail, postage prepaid, return receipt requested, to the party to which directed at the address stated in the Contract Documents and shall be deemed to have been given on the date of actual delivery thereof.

§ 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, Developer, 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 in writing.

§ 13.4.3 Owner and Contractor recognize that time is of the essence of this Contract and the Owner will suffer financial loss if the Work is not substantially completed in accordance with Section 4.2 of the Agreement. Owner and Contractor also recognize the delays, expense and difficulties involved in proving the actual losses suffered by Owner if the Work is not completed on time. Accordingly, in lieu of requiring such proof, Owner and Contractor agree that as liquidated damages for such delay (but not as a penalty), Contractor shall pay to Owner Ten Thousand Dollars ($10,000.00) for each day that expires beginning seven (7) days after the time specified in Section 4.2 of the Agreement for substantial completion of all or any portion of the Work, which sum is acknowledged and agreed to

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be a fair and reasonable estimate of the actual damages likely to be suffered by Owner in the event of a delay in substantial completion of the Work. There will be no claim for consequential damages in excess of the $10,000 per day liquidated damages. In the event that this Subsection 13.4.3 shall be deemed to be a penalty or shall otherwise be unenforceable, Owner and Contractor acknowledge and agree that Owner shall be entitled to all rights and remedies available at law or in equity arising due to the Contractor's failure to complete the Work in accordance with the time specified in the Agreement. Contractor and Owner acknowledge and agree that the liquidated damages provided for in this subsection do not preclude Owner from pursuing damages against Contractor for other potential damages suffered by Owner, including, but not limited to, damages incurred to fix non-conforming Work, or for completing the Work.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate ~~time. Unless otherwise provided,~~ time. To the extent permitted by Applicable Laws, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

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

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

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

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

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

§ 13.5.7 To the extent that Contractor is prohibited from performing, paying for or arranging for tests or studies pursuant to Applicable Laws, Owner shall be primarily responsible for performing such activities.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear ~~interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ no interest.

§ 13.8 In case any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in the Contract Documents shall not in any way be affected or impaired thereby.

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§ 13.9 Notwithstanding any other provision or inference to the contrary herein or in the Contract Documents contained, in the event of a dispute, controversy or question between the Owner and the Contractor or the Contractor and the Architect with respect to the interpretation of the Contract Documents, the performance of any portion of the Work, or the delivery of any materials, the payment of disputed monies or otherwise (the parties acknowledging that undisputed monies will be paid when due), the Owner and the Contractor agree that pending the resolution or settlement of such dispute, controversy or question, the Owner and the Contractor shall continue to perform the respective obligations under this Agreement without interruptions or delay, and the Contractor agrees not to directly or indirectly stop or delay the performance of the Work, including the delivery of materials to the Project site.

~~§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD~~

~~§ 13.7.1 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.~~

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

~~.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~.4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and ~~damages~~ damages, but in no event shall Contractor receive payment for Work not performed or for profit or overhead for Work not performed.

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

§ 14.1.5 If Owner fails to make any payment approved by Architect in accordance with the Contract Documents, through no fault of Contractor or a Subcontractor or their agents or employees or any other person performing portions of the Work under contract with the Contractor, Contractor may, upon thirty (30) days' written notice to Owner and provided Owner fails to cure such failure to pay within such thirty (30) day period, terminate the Agreement Between Owner and Contractor (subject to Owner's right to contest such termination through arbitration or other legal proceedings) and receive from Owner the aggregate of (i) the earned but unpaid cost of the Work as of the date of termination, and (ii) any additional direct damages sustained by Contractor, provided such damages were reasonably foreseeable by Owner on the date of execution of the Agreement Between Owner and Contractor. Notwithstanding Contractor's right to terminate the Agreement Between Owner and Contractor pursuant to the immediately-preceding sentence, it is expressly understood and agreed that Contractor shall not have the right to refuse to render further services or to terminate the Agreement Between Owner and Contractor by reason of nonpayment of specific items or elements of Contractor's statement of monies due if Owner (i) was permitted to withhold payment as provided in the Contract Documents or (ii) has reasonable grounds to challenge and does challenge such items or elements and if Owner issues payment for all items and elements which are not challenged by Owner.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

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

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

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

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

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

.1 take possession of the site and 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 (or any terminated portion thereof) by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 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~~ Owner, upon demand, and (to the extent not paid by Contractor to Owner) Owner shall be entitled to deduct such expenses from any sums due to Contractor under any other contracts by and between Owner and Contractor. This obligation for payment shall survive termination of the Contract.

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§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, upon request of Owner terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

ARTICLE 15

NON-DISCRIMINATION

§ 15.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall comply with all Applicable Laws, rules, regulations, writs, and orders of governmental authorities concerning non-discriminatory practices and employment.

ARTICLE 16

SUBORDINATION

§ 16.1 The Contractor, all Subcontractors (and each of their respective Subcontractors) are hereby subordinate to any and all statutory, constitutional, contractual and constitutional liens, security interests and rights it may now or in the future have against the Project or any portion thereof to the liens, security interests and rights of any lender (herein called "Lender") having a lien against all or any part of the Project. Contractor shall include this provision of this Article 16 in each agreement between Contractor and Subcontractor.

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT B
SUPPLEMENTARY GENERAL CONDITIONS

EXHIBIT B

SUPPLEMENTARY GENERAL CONDITIONS

The GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION ("THE GENERAL CONDITIONS") dated April 15, 2008 by and between COLUMBUS CAMPUS, LLC and BRAUN CONSTRUCTION GROUP, INC. and are hereby amended by these GENERAL SUPPLEMENTARY CONDITIONS, as follows:

Certain provisions of the GENERAL CONDITIONS and SUPPLEMENTARY GENERAL CONDITIONS relating in general to administrative procedures and work of the Contractor and Subcontractors are supplemented in Division 1, GENERAL REQUIREMENTS of the specifications.

In the event of any conflict between the terms of the General Conditions and these Supplementary General Conditions, the terms of these Supplementary General Conditions shall control. Where a Paragraph, Subparagraph, or Clause of the Contract is modified or deleted by these supplements, the unaltered provisions of that Paragraph, Subparagraph, or Clause shall remain in effect.

1. These "Supplementary General Conditions" are in addition to the Supplementary General Conditions contained within the Project Specifications manual and related to the coordination of work on the site.

2. Contractor is responsible for coordination of its work with other Owner contractors so as not to delay or cause interference with the overall progress and final completion. Contractor understands and agrees to work closely and in harmony with various Site Work contractors and with the contractors that are constructing other buildings on site.

3. Contractor understands that all construction vehicles and employees must use the construction entrances as designated and park only in designated areas.

4. Contractor is responsible for keeping all its operations, storage, trailers, materials, etc. within designated staging areas. No equipment, materials, trailers, etc. can be stored outside the storage area without specific permission of the Owner.

5. Contractor's construction fence is to be built, maintained, and subsequently removed by Contractor. Contractor shall be responsible for repairing any damage to Owner's fence that is caused by Contractor's work.

6. Contractor is aware that emergency fire lanes existing within its staging area must be kept accessible at all times to allow vehicular traffic. Contractor must keep access open at all times. All costs relative to emergency fire lanes are included within Contractor's

responsibility. Any fencing changes required to accommodate emergency fire lanes are Contractor's responsibility.

7. Contractor is responsible for removing all construction debris from the site and preventing such debris from getting beyond the limits of Contractor's staging area. Contractor will be held responsible for Owner's costs of cleaning such debris if Contractor fails to comply with such obligation. Contractor shall be responsible to cause all concrete trucks wash-out within the limits of its staging area, and further, that all such waste concrete is removed from the jobsite.

8. Contractor shall take all necessary steps to assure all dirt is cleaned from tires of all vehicles prior to leaving the staging area and for cleaning any roads of such dirt on a continual basis. Since residents and employees of the Project use these same roads, Contractor must assure that no accumulation of dirt is allowed.

9. Contractor shall not install signs or other advertising on the fencing around its project, except those specifically required for safety or traffic purposes. Contractor and its Subcontractors are limited to one sign on their construction trailers; this sign shall be reasonably sized and shall not project above such trailers. Any and all signs are subject to Owner's approval and acceptance. Contractor shall not install signs on any building during the construction duration, except as those required for safety.

10. Contractor is responsible for all costs of protecting the site utilities from Contractor's operations and for restoring those that may be damaged.

11. Any stockpiled excavated materials must be stored within Contractor's designated staging area, or as otherwise allowed and directed by Owner. Contractor is responsible for returning any area used for such storage back to its original condition.

12. Contractor understands and agrees that the electrical transformer is located where shown on the site work drawings and that Contractor's Work includes all work to accommodate such location.

13. Contractor is responsible for providing Contractor's telephone lines for Contractor's construction needs. All temporary power and telephone lines must be removed upon project completion. All costs of removal are Contractor's responsibility.

14. Contractor shall repair any damage to the parking lot and curbs that were caused by Contractor's operations. All areas of the site within the staging area are to be returned to the original condition so that the Owner can proceed with sitework improvements.

15. Contractor understands that the Owner has the right to bring prospective residents into the

Project while it is under construction, as long as they are accompanied by one of Owner's employees, and it does not interfere with the execution of work under this Contract.

16. Any claim against Owner's Builder's Risk Insurance must be made within thirty (30) calendar days of Contractor's first knowledge of the event. Contractor shall place this same responsibility upon each of its Subcontractors. Any claim not so made shall be the sole responsibility of the Contractor, and Owner shall not be liable for any costs or damages arising from the incident, regardless of any other circumstances concerning this event.

17. The Owner's Builder's Risk Insurance coverage is for materials and equipment incorporated into the Work, properly stored on site, and for materials stored off-site for which Owner has previously given written approval for such off-site storage.

18. Contractor shall furnish to Owner within two (2) work days, the First Report of Injury form for any employee of Contractor, its Subcontractors and Vendors, and visitors to the site.

19. Contractor is responsible for protecting and maintaining all stabilized soil, sediment and erosion control and shall repair or replace any areas damaged as a result of the Contractor's activities.

20. No solicitation of employees of other Contractors engaged in work on the site will be permitted.

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT C
DRAWINGS, PLANS AND SPECIFICATIONS

Drawings Dated January 4, 2008

ARCHITECTURAL

00.00 COVER SHEET
00.01 CODE REVIEW SHEET
00.03 PARKING COUNT AND PHASING DIAGRAM
00.04 CAMPUS WIDE BUILDING ELEVATIONS
20.01 OVERALL SITE PLAN FFE – LINKS AND BRIDGES
30.00 OVERALL FIRST FLOOR PLAN
30.01 PARTIAL FIRST FLOOR PLAN – AREA "A"
30.02 PARTIAL FIRST floor PLAN – AREA "B"
30.03 OVERALL SECOND FLOOR PLAN
30.04 PARTIAL SECOND FLOOR PLAN "A"
30.05 PARTIAL SECOND FLOOR PLAN "B"
30.06 BUILDOUT FIRST FLOOR PLAN
30.07 OVERALL ROOF PLAN AND DETAILS
31.01 EXTERIOR ELEVATIONS
31.02 EXTERIOR ELEVATIONS
31.03 LINK PLANS AND ELEVATIONS
32.01 BUILDING SECTIONS
32.02 BUILDING SECTIONS
32.03 BUILDING SECTIONS THROUGH LINKS
33.01 WALL SECTIONS
33.02 WALL SECTIONS
33.03 WALL SECTIONS
33.04 WALL SECTIONS
33.05 WALL SECTIONS
33.06 WALL SECTIONS THROUGH LINKS
33.07 NOT USED
33.08 PLAN DETAILS
33.09 SECTION DETAILS
34.01 ELEVATOR PLAN AND SECTIONS
34.02 STAIR SECTIONS, PLANS AND DETAILS
35.01 WALL TYPE LEGEND
35.02 DOOR SCHEDULE
35.03 WINDOW SCHEDULE AND WINDOW ELEVATIONS
35.04 WINDOW DETAILS
35.05 DOOR HEAD JAMB AND SILL DETAILS
35.06 FINISH & TRIM DETAILS
36.01 INTERIOR ELEVATIONS RECEPTION DESK
36.02 INTERIOR ELEVATIONS MARKET PLACE & CAFE
36.03 INTERIOR ELEVATIONS SUB-MEDICAL
36.04 INTERIOR ELEVATIONS MAIL ROOM AND MESSAGE BOXES
36.05 INTERIOR ELEVATIONS SALON AND SPA
36.06 INTERIOR ELEVATIONS RESTAURANT (CASUAL SPECIALTY)
36.07 INTERIOR ELEVATIONS CLASSROOM AND MUSIC ROOM
36.08 INTERIOR ELEVATIONS LOCKER AND TOILET ROOMS
36.09 INTERIOR ELEVATIONS ADDITIONAL TOILET ROOMS
36.10 INTERIOR ELEVATIONS BANK
36.11 INTERIOR ELEVATIONS LIVING ROOM & SECONDARY
36.12 INTERIOR ELEVATIONS RESTAURANT & GRAND STAIR
36.13 INTERIOR ELEVATIONS DINING LINK
36.14 PREFABRICATED POOL STRUCTURE PLAN, SECTIONS AND ELEVATIONS
36.15 PREFABRICATED POOL STRUCTURE DETAILS
36.16 COOLING TOWER PLAN & ELEVATIONS
38.00 FIRST FLOOR REFLECTED CEILING PLAN
38.01 PARTIAL FIRST FLOOR PLAN "A"
38.02 PARTIAL FIRST FLOOR PLAN "B & C"
38.03 SECOND FLOOR REFLECTED CEILING PLAN
38.04 PARTIAL SECOND FLOOR REFLECTED CEILING PLAN "A"
38.05 PARTIAL SECOND FLOOR REFLECTED CEILING PLAN "B"
38.06 BUILDOUT FIRST FLOOR REFLECTED CEILING PLAN

INTERIORS

40.01 FIRST FLOOR FINISH PLAN
40.02 SECOND FLOOR FINISH PLAN
40.03 BUILDOUT FIRST FLOOR FINISH PLAN & ENLARGED FLOOR FINISH PLANS
41.01 FIRST FLOOR WALL FINISH PLAN
41.02 SECOND FLOOR WALL FINISH PLAN
41.03 BUILDOUT FIRST FLOOR WALL FINISH PLAN
45.00 FINISH SCHEDULE
45.01 FINISH SCHEDULE NOTES
48.01 FIRST FLOOR SIGNAGE PLAN
48.02 SECOND FLOOR SIGNAGE PLAN
48.03 BUILDOUT FIRST FLOOR SIGNAGE PLAN
49.01 FIRST FLOOR FURNITURE PLAN
49.02 SECOND FLOOR FURNITURE PLAN
49.03 BUILDOUT FIRST FLOOR FURNITURE PLAN

KITCHEN

50.00 ENLARGED KITCHEN PLAN
50.01 FOOD SERVICE EQUIPMENT PLAN
50.02 FOOD SERVICE PLUMBING PLAN
50.03 FOOD SERVICE ELECTRICAL PLAN
50.04 FOOD SERVICE VENTILATION PLAN

POOL

55.00 POOL EQUIPMENT PLAN AND DETAILS

STRUCTURAL

60.01 FOUNDATION PLAN
60.02 SECOND FLOOR FRAMING PLAN
60.03 ROOF FRAMING PLAN
60.04 LINK FRAMING PLANS
61.01 SECTIONS AND DETAILS
61.02 SECTIONS AND DETAILS
61.03 SECTIONS AND DETAILS
62.01 SECTIONS AND DETAILS
62.02 SECTIONS AND DETAILS
62.03 SECTIONS AND DETAILS
63.01 SECTIONS AND DETAILS
64.01 SECTIONS AND DETAILS
64.02 SECTIONS AND DETAILS
66.01 GENERAL NOTES
66.02 GENERAL NOTES
66.03 GENERAL NOTES

PLUMBING

70.00 PLUMBING NOTES AND DETAILS
70.01 PARTIAL FOUNDATION PLUMBING PLAN "A"
70.02 PARTIAL FOUNDATION PLUMBING PLAN "B&C"
70.03 PARTIAL FIRST FLOOR PLUMBING PLAN "A"
70.04 PARTIAL FIRST FLOOR PLUMBING PLAN "B&C"
70.05 PARTIAL SECOND FLOOR PLUMBING "A"
70.06 PARTIAL SECOND FLOOR PLUMBING "B"
70.07 BUILDOUT FIRST FLOOR PLUMBING PLANS
71.01 ENLARGED BOILER ROOM PLUMBING PLAN
71.02 ENLARGED KITCHEN FLOOR PLUMBING PLAN
71.03 KITCHEN SCHEDULES NOTES & DETAILS
72.01 PLUMBING DETAILS
72.02 PLUMBING DETAILS
73.01 PLUMBING SANITARY RISER DIAGRAMS
73.02 PLUMBING SANITARY RISER DIAGRAMS
73.03 PLUMBING SANITARY RISER DIAGRAMS
74.01 PLUMBING SCHEDULES

MECHANICAL

80.00 ABBREVIATIONS AND SYMBOLS
80.01 PARTIAL FIRST FLOOR DUCTWORK PLAN "A"
80.02 PARTIAL FIRST FLOOR DUCTWORK PLAN "B"
80.03 PARTIAL SECOND FLOOR DUCTWORK PLAN "A"
80.04 PARTIAL SECOND FLOOR DUCTWORK PLAN "B"
80.05 PARTIAL ATTIC FLOOR DUCTWORK PLAN "A"
80.06 PARTIAL ATTIC FLOOR DUCTWORK PLAN "B"
80.07 PARTIAL FIRST FLOOR PLAN "A" - HVAC PIPING
80.08 PARTIAL FIRST FLOOR PLAN "B" - HVAC PIPING
80.09 PARTIAL SECOND FLOOR PLAN "A" - HVAC PIPING
80.10 PARTIAL SECOND FLOR PLAN "B" - HVAC PIPING
80.11 BUILDOUT FIRST FLOOR HVAC PLAN
80.12 FIRST & SECOND FLOOR LINK MECHANICAL PLANS
81.01 ENLARGED BOILER ROOM PLAN- DUCTWORK
81.02 ENLARGED BOILER ROOM PLAN- HVAC PIPING
81.03 ENLARGED POOL AREA FLOOR PLAN
81.04 ENLARGED KITCHEN FLOOR PLAN - HVAC
81.06 ENLARGED FIRST MECHANICAL ROOM PLANS
81.07 ENLARGED SECOND MECHANICAL ROOM PLANS
82.01 DUCTWORK DETAILS
82.02 PIPING DETAILS
82.03 PIPING DETAILS
83.01 FLOW CHART - PIPING SCHEMATIC
83.02 CWS & CWR ROUTING & DISTRIBUTION SITE PLAN
84.01 MECHANICAL SCHEDULES
84.02 MECHANICAL SCHEDULES

ELECTRICAL

90.00 ELECTRICAL SYMBOLS, LEGEND AND NOTES
90.01 PARTIAL FIRST FLOOR LIGHTING PLAN "A"
90.02 PARTIAL FIRST FLOOR LIGHTING PLAN "B"
90.03 PARTIAL FIRST FLOOR LIGHTING PLAN "C" POOL AREA
90.04 PARTIAL SECOND FLOOR LIGHTING PLAN "A"
90.05 PARTIAL SECOND FLOOR LIGHTING PLAN "B"
90.06 BUILDOUT FIRST FLOOR LIGHTING PLANS
90.07 PARTIAL FIRST FLOOR POWER PLAN "A"
90.08 PARTIAL FIRST FLOOR POWER PLAN "B"
90.09 PARTIAL FIRST FLOOR POWER PLAN "C" POOL AREA
90.10 PARTIAL SECOND FLOOR POWER PLAN "A"
90.11 PARTIAL SECOND FLOOR POWER PLAN "B"
90.12 BUILD OUT FIRST FLOOR POWER PLANS
90.13 FIRST AND SECOND FLOOR LINK POWER & LIGHTING
91.01 ENLARGED FIRST FLOOR POWER PLAN
91.02 ENLARGED SECOND FLOOR POWER PLAN
91.03 KITCHEN EQUIPMENT POWER PLAN
91.04 KITCHEN EQUIPMENT SCHEDULE
92.01 ELECTRICAL & COMMUNICATION CONDUIT ROUTING PLAN
92.02 SCHEMATIC DIAGRAMS & DETAILS
92.03 ELECTRICAL DETAILS
92.04 SCHEMATIC DIAGRAMS
92.05 COMMUNICATION DETAILS & DIAGRAMS
93.01 ONE - LINE DIAGRAM & DETAILS
94.01 PANEL SCHEDULES
94.02 PANEL SCHEDULES
94.03 MECHANICAL EQUIPMENT SCHEDULES

BID & PERMIT QUALIFICATIOINS
DRAWINGS DATED 1-4-08

CB-1.0

1. We have not included the awnings in CB-1.0 at the Restaurant or as found on sheets 36.02 and 36.13 as indicated by others.
2. Interior finishes have been based on the Finish Schedule, not the finish plans.
3. We have not included the cost for the sub-medical build-out
4. Mortar to be standard gray. No color has been figured
5. We have not included a curtain on the cubicle track
6. Gutters to be 6" K-style, downspouts to be 3" X 4"
7. Utility fees and consumption costs (power, phone, cable & gas) are not included in this proposal
8. All bond costs for subcontracts over $500,000.00 have been included
9. Plywood sheathing on the roof is standard plywood, not FRT
10. Elevators to be holeless. One to be Otis Model LVM3500L and the other LVM5000L
11. We have included an allowance of $950,000.00 for the food service equipment.
12. Residential style aluminum windows have been quoted as an allowance. To install Aluminum Storefront, ADD $120,000.00

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT E
COST OF WORK/SCHEDULE OF VALUES

BRAUN CONSTRUCTION GROUP - BID PERMIT ESTIMATE

Erickson Retirement Communities

Hickory Chase

Hilliard, Ohio

Date: 15-Apr-08

Based on Plans Dated 1/4/08 by DHPY

CB 1.0 64,824

Bid & Permit Estimate

SPEC SEC	DESCRIPTION	CB 1.0 TOTAL COST	SF COST 64,824	REMARKS
1020	ALLOWANCES & UNIT COSTS	$0	$0.00	
1400	QUALITY CONTROL	$0	$0.00	By Owner
1500	TEMPORARY FACILITIES & CONDITIONS	$0	$0.00	BCG
3300	CAST IN PLACE CONCRETE	$376,900	$5.81	Northeast
3540	CEMENTITIOUS UNDERLAYMENT	N/A	$0.00	
4200	MASONRY	$526,607	$8.12	Karst & Sons
5120	STRUCTURAL STEEL & JOISTS	$723,970	$11.17	Service Iron
5300	METAL DECK	w/ 5120	$0.00	
5500	METAL FABRICATIONS	$32,824	$0.51	BCG
5810	EXPANSION JOINT COVER ASSEMBLIES	$3,000	$0.05	BCG
6100	ROUGH CARPENTRY & LUMBER	$348,290	$5.37	Judson Lumber
6192	Prefabricated Wood Trusses	w/6100	$0.00	
6200	FINISH CARPENTRY & MILLWORK	$411,521	$6.35	Landry Carpentry
7111	WATERPROOFING	$21,510	$0.33	SealTech
7210	BUILDING INSULATION	W/9255	$0.00	
7241	EIFS	$11,160	$0.17	BCG
7250	SPRAYED-ON-FIREPROOFING	$16,250	$0.25	BCG
7311	FIBERGLASS SHINGLES	$57,417	$0.89	Emerson / Apco
7400	METAL ROOF	$20,000	$0.31	BCG
7410	PREFABRICATED POOL ENCLOSURE	$294,950	$4.55	Structures Unlimited
7531	EPDM SINGLE-PLY ROOFING	$6,000	$0.09	BCG
7901	JOINT SEALANTS	w/7111	$0.00	
8111	METAL DOORS AND FRAMES	$155,223	$2.39	Tupper Door
8211	FLUSH WOOD DOORS	w/8111	$0.00	
8300	ELEVATOR SMOKE CONTAINMENT	N/A	$0.00	
8305	ACCESS DOORS	W/TRADES	$0.00	
8410	ALUM ENTRANCES & STOREFRONT	$59,100	$0.91	Ohio Glass
8561	ALUMINUM WINDOWS	$95,008	$1.47	ALLOWANCE
8710	FINISH HARDWARE	W/8111	$0.00	
8800	GLAZING	W/8410	$0.00	
9255	GYPSUM BOARD ASSEMBLIES	$711,300	$10.97	Columbus Drywall
9300	CERAMIC TILE	$184,000	$2.84	B&B Tile
9511	ACOUSTICAL TILE CEILINGS	W/9255	$0.00	
9660	RESILIENT TILE FLOORING	W/9680	$0.00	
9680	CARPET	$263,316	$4.06	BCG
9900	PAINTING & WALLCOVERINGS	$157,700	$2.43	Madias
10150	CUBICLE CURTAINS, TRACKS AND HOOKS	$795	$0.01	Construction Systems
10155	TOILET PARTITIONS	$9,505	$0.15	Tri State Supply
10200	LOUVERS & VENTS	$0	$0.00	
10265	WALL SURFACE PROTECTION SYSTEMS	N/A	$0.00	
10426	SIGNAGE & GRAPHICS	$28,523	$0.44	BCG
10501	LOCKERS	$22,500	$0.35	BCG
10522	FIRE EXTINGUISHERS / CABINETS	$3,425	$0.05	Tri State Supply
10550	POSTAL SPECIALTIES	$63,600	$0.98	CS Systems
10536	FABRIC COVERED AWNINGS	N/A	$0.00	
10605	WIRE MESH PARTITIONS	N/A	$0.00	
10670	STORAGE SHELVING	N/A	$0.00	
10800	TOILET & BATH ACCESSORIES	$6,793	$0.10	CS Systems
10900	CLOSET SHELVING	N/A	$0.00	
11132	PROJECT SCREENS / MARKER BOARDS	$8,615	$0.13	IBP
11160	LOADING DOCK EQUIPMENT	$1,750	$0.03	BCG
11400	FOOD SERVICE EQUIPMENT	$965,879	$14.90	Wasserstrom
11410	SALON EQUIPMENT	$42,474	$0.66	Belvedere

BRAUN CONSTRUCTION GROUP - BID PERMIT ESTIMATE

Erickson Retirement Communities

Hickory Chase

Hilliard, Ohio

Date: 15-Apr-08

Based on Plans Dated 1/4/08 by DHPY

CB 1.0 64,824

Bid & Permit Estimate

SPEC SEC	DESCRIPTION	CB 1.0 TOTAL COST	SF COST 64,824	REMARKS
11410	FIREPLACE	$5,215	$0.08	
11452	RESIDENTIAL EQUIPMENT	$1,380	$0.02	
11480	RECREATION EQUIPMENT	$1,500	$0.02	
12690	FLOOR MATS & FRAMES	W/9680	$0.00	
13090	RADIATION SHIELDING	N/A	$0.00	
13151	SWIMMING POOL & SPA	$120,000	$1.85	BCG
	CAR PORTS	not included	$0.00	
14200	HYDRAULIC ELEVATORS	$111,970	$1.73	Otis
15000	HVAC SYSTEMS	$2,367,500	$36.52	Metro Air
15430	PLUMBING	$462,620	$7.14	Meutzel / Freeland
15500	FIRE PROTECTION	$208,725	$3.22	Tri Star
16000	ELECTRICAL	$956,700	$14.76	Accurate Electric
16740	INTERIOR TELEHONE CABLING/DISTRIBUTION	w/ 16000	$0.00	
16744	CATV CABLING DISTRIBUTION	w/ 16000	$0.00	
16751	E-CALL SYSTEM	w/ 16000	$0.00	
16900	FIRE ALARM SYSTEM	w/ 16000	$0.00	
17100	WINTER PROTECTIOIN	$150,000	$2.31	Erickson Allowance
17200	TEMPORARY HEAT	$150,000	$2.31	Erickson Allowance
17250	GRAND OPENING	$65,000	$1.00	Erickson Allowance
17300	ADDENDUM #1 & #2	$300,000	$4.63	Erickson Allowance
17400	ACCELERATION	$300,000	$4.63	Erickson Allowance
17500	GLASS BREAKAGE	$10,000	$0.15	Erickson Allowance
17600	UNSUITABLE SOILS	$150,000	$2.31	Erickson Allowance
SUBTOTAL		$10,990,515	$169.54	
0.00%	CONTINGENCY	$0	$0.00	
0.00%	GENERAL CONDITIONS	$657,601	$10.14	
0.00%	WINTER PROTECTION	excluded	$0.00	
SUBTOTAL		$11,648,116	$179.69	
0.00%	BUILDING PERMIT	$0	$0.00	By Owner
0.11%	GENERAL LIABILITY INSURANCE	$12,813	$0.20	
0.00%	BUILDERS RISK	byowner	$0.00	
SUBTOTAL		$11,660,929	$179.89	
4.00%	OH & P	$466,437	$7.20	
0.00%	ESCALATION			
PRELIMINARY TOTAL BUDGET		$12,127,366	$187.08	

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT F
INSURANCE ADDENDUM

INSURANCE
ADDENDUM – GENERAL CONTRACTOR

TYPE OF COVERAGE	AMOUNT OF COVERAGE
AD.1 Worker's Compensation and Employer's Liability*	
(a) Worker's Compensation Insurance insuring Contractor's full liability under the Workers' Compensation laws of the state where the Project is located	Statutory Limits (set by states)
(b) Employer's Liability	Bodily Injury by Accident = $500,000. Ea. Accident Bodily Injury by Disease = $500,000. Policy limit Bodily Injury by Disease = $500,000. Ea. Employee
*Policy must include a Waiver of Subrogation endorsement in favor of indemnified parties	
AD.2 Commercial General Liability: written on ISO occurrence form CG 00 01 01 96 (or a more recent version, or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractual liability. Such policy will not contain limitations or exclusions for blasting, explosion, collapse or underground hazards or activities. (Additional Insured requirement section 11.1.6)	Occurrence Form, minimum required limits: General Aggregate Limit (other than Products/ Completed Operations): $1,000,000. Products/Completed Operations Aggregate Limit: $1,000,000. Each Occurrence Limit: $1,000,000. Personal Injury & Advertising Injury Limit: $1,000,000.
AD.3 Business Auto Liability: covering any automobile, including hired and non-owned auto's	Minimum required limits: Bodily Injury Each Person: $1,000,000. Bodily Injury Each Accident: $1,000,000. Property Damage Each Accident: $1,000,000. Or, $1,000,000. combined bodily injury and property damage each accident limit for all of the above
AD.4 Commercial Umbrella Insurance Policy: or Excess Liability coverage meeting the same coverage requirements stated above for AD.1, AD.2, and AD.3	Occurrence Form, minimum required limits: $10,000,000. each occurrence $10,000,000. aggregate
AD.5 Continuing Completed Operations Liability Insurance. Contractor shall maintain during the term of the contract, and for a period of three years after completion of contract, commercial general liability (CGL) and commercial excess or umbrella liability insurance with a limit of not less than $11,000,000 combined limits per occurrence.	

AIA® Document A111™ – 1997

Standard Form of Agreement Between Owner and Contractor

where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the 15th day of April in the year 2008
(In words, indicate day, month and year)

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

Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

and the Contractor:
(Name, address and other information)

Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331

The Project is:
(Name and location)

Hickory Chase, Residential Building 1.1

The Architect is:
(Name, address and other information)

Dorsky, Hodgson, Parrish, Yue
23240 Chagrin Boulevard, Suite 300
Cleveland, Ohio 44122

The Owner and Contractor agree as follows.

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

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America.

EXHIBIT 1-C

Init.

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User Notes: Columbus A111 Residential Building 1.1
(2722040968)

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern. The form of the General Conditions of the Contract is attached hereto as Exhibit A; the Supplementary General Conditions are attached hereto as Exhibit B; the Drawings, Plans and Specifications for the Work are listed on Exhibit C attached hereto; the Contractor's Qualifications are attached hereto as Exhibit D; the Schedule of Values is attached hereto as Exhibit E; and the Insurance Addendum is attached hereto as Exhibit F.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. A general description of the Work is as follows:

Complete all Work associated with the Project in accordance with the Drawings and Specifications attached hereto as Exhibit C and the Qualifications/Scope of Work attached hereto as Exhibit D.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor acknowledges that Owner intends to hire a developer (hereinafter, the "Developer") to assist Owner in performing Owner's obligations under this Contract. At present, Owner intends to hire Erickson Retirement Communities, LLC as the Developer. Erickson Retirement Communities, LLC has an address of 701 Maiden Choice Lane, Baltimore, Maryland 21228, Attn: Michael A. Wagner, Executive Vice President. Owner reserves the right to remove or to replace Developer at any time and from time to time and may effect such removal or replacement by giving Contractor written notice of the name and address of the new Developer. All communications by Contractor to Owner shall be directed to Developer. Owner acknowledges and agrees that Developer is Owner's agent in connection with the execution, interpretation and performance of this Contract.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be no later than April 15, 2008.

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.3 The Contractor shall achieve Substantial Completion ~~of the entire Work not later than __ days from the date of commencement, or as follows:~~ and issuance of Certificate of Occupancy no later than April 14, 2009.

As used in this Agreement and the Other Contract Documents, Substantial Completion shall mean: (1) with respect to the interior of residential units, that all Work has been completed, including final punchlist items, such that no

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additional entry into such unit is required for completion of the Work, (ii) public spaces are substantially complete with only minor punchlist items remaining to be performed, (iii) Owner can utilize the Project for its intended purposes, and (iv) an unconditional certificate of occupancy has been issued.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

~~Portion of Work~~ ~~Substantial Completion date~~

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

Time is of the essence in this Agreement. There is no allowance for weather days, and Contractor agrees to complete the Project by the dates identified above without any time extensions or extra costs allowed for weather related conditions, with the exception of extraordinary events which may be classified as "Acts of God". Such events may include floods, tornadoes, extreme snowfalls, etc. that affect a delay to the critical path of the schedule, either on or off the site. In such an event, the Completion Date shall be extended on a day for day basis for the effect of the incident.

No provisions for time extensions for delays resulting from work stoppages caused by contract labor negotiations are included in this Agreement. In such an event the Contractor and Owner mutually agree to work together to eliminate or minimize any such delays.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

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

§ 5.1.2 The Contractor's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

A fee of four percent (4%) of the cost of the Work, amounting to Five Hundred Sixty Thousand Three Hundred Eighty Seven Dollars ($560,387.00), is included in the Contract Sum.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed ($ ~~)~~ Fourteen Million Five Hundred Seventy Thousand Sixty Seven Dollars ($14,570,067.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See Exhibit E attached hereto.

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§ 5.2.3 Unit prices, if any, are as follows:

See Exhibit E attached hereto. The Contract Sum includes a lump sum for all of the General Contractor's General Conditions in the amount of Seven Hundred Eighty Two Thousand Eight Hundred Fifty Three Dollars ($782,853.00). Costs which would cause the lump sum for General Conditions to be exceeded shall be paid by Contractor without reimbursement by Owner.

Description	Units	Price ($ 0.00)

§ 5.2.4 Allowances, if any, are as follows

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Owner and Contractor acknowledge and agree that the Owner's Allowances (if any) set forth in the Schedule of Values shall only be released to Contractor upon written approval by Owner. Owner reserves the right prior to releasing any Owner's Allowance, to review and approve how Contractor proposes to expend the Owner's Allowance.

Allowance	Amount ($ 0.00)	Included items

§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

See Exhibit D attached hereto. The Contractor is required to provide a 100% Payment Bond and a 100% Performance Bond for the full value of the Contract Sum, which bonds shall be in form and content reasonably satisfactory to Owner. The cost of such bonds is included in the Guaranteed Maximum Price.

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

§ 6.4 If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining ~~agreements and, for personnel not covered by such~~ agreements, ~~customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,~~ provided such costs are based on wages and salaries included in the Cost of the Work under ~~Sections 7.2.1 through 7.2.3.~~Section 7.2.1.

§ 7.3 SUBCONTRACT COSTS

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

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

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

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

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

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ 7.5.3 ~~Costs of removal of debris from the site.~~

§ 7.5.4 ~~Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

§ 7.5.5 ~~That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.~~

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§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance ~~by the Owner~~ in writing by the Owner, which consent may be conditioned upon receipt by Owner of indicia of ownership of such materials by Owner, proof that such materials are not subject to any liens or other encumbrances, proof that such materials are covered by insurance, and such other requirements as Owner or any lender of all or any portion of the Project may require.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

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

§ 7.6.4 Fees of laboratories for tests required to be performed by Contractor by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 ~~Data processing costs related to the Work.~~

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

§ 7.6.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.~~

§ 7.6.9 ~~Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.~~

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document ~~A201-1997~~ A201-1997, to the extent not caused by Contractor's fault or negligence.

§ 7.7.3 ~~Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.~~

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

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§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site ~~office, except as specifically provided in Sections 7.2.2 and 7.2.3 or as may be provided in Article 14~~ office.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as specifically provided in ~~Section 7.5.2~~ Article 7.

§ 8.1.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 8.1.7 Any cost not specifically and expressly described in Article 7.

§ 8.1.8 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase

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orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th (or earlier if the 25th is not a working day) day of a month, the Owner shall make payment to the Contractor not later than the ~~day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~ 20th day of the next month.

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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

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

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

.1 take ~~that~~ the lesser of (i) the Cost of the Work for completed work and (ii) the portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

.2 add that portion of the ~~Guaranteed Maximum Price~~ Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by ~~the Owner,~~ the Owner in accordance with the terms of Section 7.5.6, suitably stored off the site at a location agreed upon in writing;

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.3 add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its ~~completion;~~completion (Owner and Contractor agree that upon any distinct portion of the Work, as determined by Owner, reaching 50% completion (and provided such portion is on schedule and has been performed in accordance with the terms of the Contract Documents), the retainage for such portion of the Work shall be reduced to 5% and all subsequent Applications for Payment for such portion of the Work shall be subject to a 5% retainage);

.4 subtract the aggregate of previous payments made by the Owner;

.5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of ~~not less than ( )~~ ten percent (10%), except that Subcontractors shall be subject to the same retainage as applied to Contractor's Applications for Payment pursuant to Paragraph 12.1.7 above. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

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

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Owner, or, if requested by Owner, the Architect.

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

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the ~~Architect~~ Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

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§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to ~~demand~~ request arbitration of the disputed amount without a further decision of the Architect. Such ~~demand~~ request for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to ~~demand~~ request arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the ~~Owner for convenience,~~ Owner, as provided in Article 14 of AIA Document A201-1997. ~~However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

§ 13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

§ 13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

§ 13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

§ 13.2.3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner or the Contract may be terminated by Owner as provided in Article 14 of AIA Document ~~A201-1997, in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 and Section 6.4 of this Agreement.~~ A201-1997. The Owner may terminate the contract at its convenience for any reason, at any time by giving Contractor written notice of such termination. Termination for default, if wrongfully made, shall be treated as a termination for convenience. In the event that the Contract is terminated for the convenience of the Owner, the Contractor shall be paid a pro-rata percentage of the Contract Sum equal to the percentage of Work completed by Contractor. In no event shall Contractor be entitled to receive payment for anticipated profit for unperformed Work.

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ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear no interest from the date payment is ~~due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located~~ due.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:
(Name, address and other information.)

Erickson Retirement Communities, LLC
c/o Hickory Chase Development Office
4383 Davidson Road
Hilliard, Ohio 43026
Attention: Garrett Power, Development Director

§ 14.4 The Contractor's representative is:
(Name, address and other information.)

Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331
Attention: Steve Braun, President

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

§ 14.6 Other provisions:

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document ~~A201-1997~~ A201-1997, in the form attached hereto as Exhibit A.

§ 15.1.3 The Supplementary ~~and other Conditions of the Contract are those contained in the Project Manual dated ___, and are as follows:~~ Conditions of the Contract are attached hereto as Exhibit B.

Document	Title	Pages

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§ 15.1.4 The ~~Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows:~~Drawings and Specifications are those listed on Exhibit C attached hereto.

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

~~Section~~	~~Title~~	~~Pages~~

§ 15.1.5 ~~The Drawings are as follows, and are dated unless a different date is shown below:~~

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

~~Number~~	~~Title~~	Date

§ 15.1.6 ~~The Addenda, if any, are as follows:~~

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:
Contractor's Qualifications attached hereto as Exhibit D, the Schedule of Values attached hereto as Exhibit E, and the Insurance Addendum attached hereto as Exhibit F.

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

~~Type of Insurance~~	~~Limit of liability ($ 0.00)~~

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

OWNER *(Signature)*

COLUMBUS CAMPUS, LLC
By: Erickson Retirement Communities, LLC, Member
(Printed name and title)

Michael A. Wagner, Executive Vice President

CONTRACTOR *(Signature)*

BRAUN CONSTRUCTION GROUP, INC.
By: Steve Braun, President
(Printed name and title)

APPROVED AS TO LEGAL SUFFICIENCY GFD

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT A
GENERAL CONDITIONS

AIA® Document A201™ – 1997

General Conditions of the Contract for Construction

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

THE OWNER:
(Name and address):
Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

THE ARCHITECT:
(Name and address):
Dorsky, Hodgson, Parrish, Yue
23240 Chagrin Boulevard, Suite 300
Cleveland, Ohio 44122

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

This document has been approved and endorsed by The Associated General Contractors of America

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). Architect may from time to time issue additional Drawings and Specifications to provide coordination and conforming details and otherwise issue additional Drawings and Specifications necessary to complete the Project (all such additional Drawings and Specifications are in this Agreement and in the Contract Documents referred to as "Additional Drawings and Specifications").

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Without in any way limiting the foregoing, Contractor shall provide and/or perform and the Work shall include (i) all materials, supplies, apparatus, appliances, implements, tools, equipment, sanitary facilities and all other facilities necessary in the performance of the Work (collectively, "Materials"), and (ii) all labor, supervision, transportation, light, power, water, utilities, storage, and all other services (collectively, "Services") required in the construction of and/or normally performed by contractor and subcontractors in connection with the construction of a project similar to the Work.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

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consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.4 Where a conflict exists within or between parts of the Contract Documents, or between the Contract Documents and applicable standards under codes or ordinances promulgated by governmental bodies having jurisdiction over the Project, the more stringent or higher quality requirements shall apply. Large-scaled Drawings shall control over smaller-scaled Drawings, figured dimensions on the Drawings shall control over scaled dimensions, and noted materials shall control over graphic representations. Where a conflict exists between the terms of the standard AIA General Conditions Form No. A-201, and the amendments made thereto in this document, the amendments shall control. Further, where a conflict exists between the terms and conditions of the Agreement between Owner and Contractor and these General Conditions, the Agreement between Owner and Contractor shall control.

§ 1.2.5 Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that reference to the Drawings is made unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as reviewed," "as accepted," "as approved," "as selected" or words of similar import are used, it shall be understood that the direction, requirement, permission, authorization, review, acceptance, approval, selection of the Architect and/or Owner is intended, unless otherwise stated.

§ 1.2.6 As used in the Contract Documents, "provide" shall be understood to mean "provide complete in place," that is, to furnish, install, fabricate, deliver, install, and erect, including all labor, materials, equipment, apparatus, appurtenances, and expenses necessary to complete in place, ready for operation and use. The use of the term "shall" in the Contract Documents means as prescribed by the Contract Documents, the use of the term "as necessary" in the Contract Documents means all action essential to the completion of the Work. The Specifications are of the abbreviated type and may include incomplete sentences. Omissions of phrases such as "the Contractor shall" or "conforming to the requirements" are intentional in order to save space, but such limited words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings. Words in the singular shall include the plural however applicable, unless the context otherwise indicates.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

§ 1.4.1 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 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

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

§ 1.6.1 ~~The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described.~~ All Drawings, Plans and Specifications, renderings and models prepared with respect to the

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Project are and shall be the property of Owner and may not be used by any person, party or entity on any other project unless expressly authorized in advance by Owner in writing. The Contractor may retain one record ~~set~~ set of Drawings, Specifications and other documents prepared by the Architect. 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 or the Architect's ~~consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights.~~ consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the ~~Architect,~~ Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, 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, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' copyrights or other reserved rights.~~ Owner's copyrights or other reserved rights.

§ 1.6.2 All Shop Drawings prepared by Contractor exclusively for the Work shall be the property of the Owner and may not be used by any person, party or entity unless expressly authorized in advance by Owner in writing.

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. Owner intends to hire a development company to assist Owner in the development of the Project (the "Developer"). The initial Developer shall be Erickson Retirement Communities, LLC, having an address at 701 Maiden Choice Lane, Baltimore, Maryland 21228, Attn: Michael A. Wagner. Owner hereby reserves the right to replace and appoint Developers from time to time throughout the term of the Project, which right may be exercised by Owner giving Contractor written notice of the name and address of the newly appointed Developer. Throughout the Contract Documents, wherever an obligation is imposed on Owner (other than the obligation to pay money), Owner may, at its option, assign such obligation to Developer.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. ~~Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, 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.

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

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which 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, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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 term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect may require.

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§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the ~~Architect,~~ Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly ~~to the Architect.~~ to the Architect and Owner at once. Notwithstanding the foregoing, Contractor shall not be obligated to perform additional studies or tests of field conditions, except as expressly set forth in the Contract Documents.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 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.~~ accepts the relationship of trust and confidence established between the Contractor and the Owner by the Contract Documents. Contractor covenants with the Owner (i) to furnish his best skill and judgment and to cooperate with the Architect in furthering the interest of the Owner; (ii) to furnish efficient business administration and superintendence; (iii) to use his best efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best way and in the most expeditious and economic manner consistent with the interests of the Owner. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. ~~If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.~~

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

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

§ 3.3.4 At least once a month a meeting on the site involving Contractor and Owner shall be held to review progress and coordinate work schedules for the weeks ahead. Contractor shall have in attendance at these meetings a job superintendent or another person authorized to make decisions for the Contractor.

§ 3.3.5 Contractor shall check all Materials and Services entering into the Work, including but not limited to quality and quantity, and shall keep full and detailed records and accounts in accordance with industry standards, including but not limited to said records and accounts as may be necessary to determine the Cost of the Work.

§ 3.3.6 Contractor shall keep current a detailed Schedule of Values of the various portions of the Work, divided so as to identify the portion of the Work to be provided by each Subcontractor and to facilitate payments to Subcontractors, prepared in a format and with such detail as is acceptable to and approved by Owner and Architect. The Schedule of Values shall include a detailed statement of Project overhead costs.

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§ 3.3.7 As general contractor for the Project, Contractor shall use reasonable efforts to accomplish the following:

(a) the avoidance of conflicts among the various trades;

(b) the efficient organization of construction activities, including location and size of activities, location and size of storage areas, staging areas and field offices, traffic patterns, delivery schedules, hoisting, safety and the like; and

(c) efficient scheduling of the Work to be performed by Subcontractors to avoid inefficient or unsafe performance of the Work performed and to be performed by all Subcontractors.

§ 3.3.8 Contractor shall prepare a Manual describing the methods of material-handling and the methods for the movement of personnel that are to be used on the Site. The Contractor shall ensure that these methods are understood and followed by all subcontractors in the construction of the Project.

§ 3.3.9 Contractor shall prepare a written safety program to govern all activity on the Site.

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.5.2 The Contractor shall and does hereby assign to the Owner the benefits of any warranties and guarantees of all Subcontractors, Material Suppliers and Manufacturers, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the Contract Documents. Notwithstanding the foregoing assignment, prior to final acceptance of the Work by Owner, Contractor shall deliver to Owner three (3) bound volumes of all guarantees and warranties on Materials furnished by all manufacturers and suppliers to Contractor and all Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, ~~the Contractor~~ Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and

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inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when ~~bids are received or negotiations concluded.~~ the Contract is executed and delivered. Notwithstanding the foregoing, Contractor shall not be obligated to pay for impact fees, sewer connection or water tap fees, or other similar utility fees.

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

§ 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.~~ with Applicable Laws. 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.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to ~~laws, statutes, ordinances, building codes, and rules and regulations~~ Applicable Laws without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to ~~correction.~~ correction, without an increase in the Contract Sum and such costs shall not be a Cost of the Work.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.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 in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding~~ Contractor shall employ all competent staff necessary for the proper execution of the Work, and shall see that members of such staff shall be in attendance at the site during the progress of the Work as may be necessary or appropriate under the circumstances. Such staff shall be under the direction of a project manager (who will devote, if necessary, all of his time and efforts to the Project) satisfactory to the Owner who shall not be changed without prior written consent of Owner unless such project manager is no longer employed by Contractor. The project manager shall represent the Contractor and all communications given to the project manager shall be as binding on the Contractor as if given to the Contractor. ~~Important communications shall be confirmed in writing. Other communications shall be similarly confirmed~~ Communications will be confirmed on written request in each case. The project staff shall consist of persons capable of filling such positions and/or performing such functions that the Owner and the Contractor may reasonably require under the circumstances, although a single person may perform more than one function if he or she is able to do so capably and efficiently.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, ~~promptly~~ prior to or immediately after being awarded the Contract, shall prepare and submit for the Owner's ~~and Architect's information a Contractor's construction schedule for the Work. The schedule shall~~ information and approval, a schedule (as same may be revised from time to time, herein called the "Schedule") for all parts of the Work. The Schedule shall initially be an estimate of the time requirement for all of the Work, incorporating such information as design services, Owner related activity, governmental approvals, and the like. The Contractor and each major Subcontractor shall cooperate fully and provide detailed information as required in order to achieve the most logical Schedule for the Work that will be acceptable to Owner and Contractor. The Schedule shall (i) not exceed time limits current under the Contract Documents, (ii) shall be revised by Contractor at appropriate intervals as required by the conditions of the Work and Project, subject to Owner's approval, (iii) shall be related to the entire Project to the extent required by the Contract Documents, and (iv) shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 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~~ Schedule and allows the Architect reasonable time to review submittals.

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

§ 3.10.4 From the initially approved Schedule and other information developed, the Contractor, in cooperation with the Owner, Architect, and major Subcontractors, will monitor, and shall revise and update monthly, the Schedule. The Schedule shall be further revised or expanded to provide more detailed information concerning the time requirements for all parts of the Work and other elements of the Project as such information is developed and approved by the Owner. Contractor and each Subcontractor, materialman, and supplier shall provide revised data in order to assist the Contractor in determining the most appropriate and acceptable Schedule and acceleration opportunities for the Work and to update the Schedule, in order to assure that the Work shall be completed on or before the Substantial Completion Date set forth in the Agreement.

§ 3.10.5 The Schedule shall set out, in addition to the elements set forth in Paragraphs 3.10.1 and 3.10.4 the following:

(a) a schedule of production of drawings, specifications and other documents required for the award of contracts for construction (providing for appropriate periods of review, which periods shall not exceed 10 days where practicable);

(b) a listing of all long-lead-time items and a schedule for the acquisition and delivery of such items;

(c) a detailed construction progress schedule showing the different stages of progress required in the Work;

(d) a schedule for the processing of shop drawings;

(e) a schedule for the acquisition and installation of all built-in furnishings, fixtures and equipment to be provided under this Agreement or to be provided by Owner and installed by Contractor; and

(f) a detailed schedule of the periods during which each Subcontractor's Work will be performed; and

(g) in the event that Contractor falls at least one week behind schedule, a detailed schedule setting forth all actions to be taken by the Contractor to get the Work back on schedule for completion within the Contract Time.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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~~submittal to the Owner upon completion of the Work.~~Owner. Contractor shall advise Owner on a current basis of all material changes in the Work made during construction.

§ 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.~~Contractor shall prepare, or cause to be prepared as part of the Work, all shop drawings and other detailed drawings not made a part of the Drawings or Specifications or Additional Drawings and Specifications and shall submit same to Architect for approval. Shop Drawings establish actual detail of manufactured and fabricated items, indicate proper relation to adjoining Work, amplify design details or mechanical and electrical equipment in proper relation to physical spaces, and incorporate minor changes or design and construction to suit actual conditions.

.1 fabricated items are items specifically assembled or made out of selected materials to individual design requirements.

.2 manufactured items are standard items usually mass assembled.

§ 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 which illustrate materials, equipment texture, finish, color, technique 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 Owner and Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings, Product Data, and Samples. Contractor shall review shop drawings, product data, and samples as required in this Section 3.12.6, prior to submittal to Architect. Submittals shall be stamped by Contractor or through some other means to clearly indicate to Architect that submittals have been reviewed and approved by the Contractor.

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

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

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or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval or review thereof.

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

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

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Owner prior to using any portion of the Site.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost ~~thereof~~ thereof, including overhead costs, shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

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

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§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by ~~law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall~~ law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, ~~Architect's consultants, and agents and employees of any of them~~ Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but ~~only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable,~~ regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 Contractor agrees to forward to Owner within 45 days following the first and third fiscal quarters, unaudited financial statements of Contractor for such fiscal quarter, including income statements, cash flow and balance sheets, certified as true, accurate and complete by an authorized officer of Contractor.

§ 3.18.4 Contractor agrees to forward to Owner within 120 days after the end of each year, annual audited financial statements of the Contractor for such fiscal year prepared in accordance with generally accepted accounting principles consistently applied, accompanied by a report of an independent public account approved by Owner.

§ 3.18.5 Owner, at Owner's cost and expense, shall be entitled upon ten (10) days advance notice to audit Contractor's performance on the Project, and in connection therewith Contractor agrees to provide to Owner at Contractor's principal place of business, all books, records, files and other data necessary to conduct such audit.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner ~~shall employ a new Architect against whom the Contractor has no reasonable objection and~~ may employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

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§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect and Developer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, and Developer will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work 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 neither the Architect nor the Developer will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect Architect, the Owner and the Developer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Architect Architect, the Owner and the Developer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect However, nothing contained in this Subsection is intended to relieve the Architect of its responsibilities or liabilities under the Contract Documents or its contract with the Owner. The Architect, the Owner and the Developer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents Documents, and as required by Applicable Laws. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review Except as may be required by Applicable Laws, 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

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under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. However, to the extent such submittals must be reviewed or approved by a licensed architect pursuant to Applicable Laws, the Architect shall provide all services necessary to satisfy such Applicable Laws.

§ 4.2.8 ~~The~~ Following consultation with Owner, the Architect will prepare ~~Change Orders and~~ Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect and Developer will at such times Architect and Developer deem appropriate and also upon request of Owner, conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

§ 4.2.11 The Architect will interpret and ~~decide~~ make recommendations on 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. If no agreement is made concerning the time within which ~~interpretations~~ recommendations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such ~~interpretations until 15~~ recommendations until ten (10) days after written request is made for them.

§ 4.2.12 ~~Interpretations and decisions~~ Recommendations 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 initial decisions,~~ recommendations, 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~~ recommendations so rendered in good faith.

§ 4.2.13 The Architect's ~~decisions~~ recommendations on matters relating to aesthetic effect will be final only if consistent with the intent expressed in the Contract ~~Documents~~ Documents and will have no adverse effect on the Project budget or the Schedule.

§ 4.3 CLAIMS AND DISPUTES

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

§ 4.3.2 Time Limits on Claims. Claims by ~~either party~~ Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the

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Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment ~~shall~~ may be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice to Architect and Owner as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. ~~given~~ to Architect and Owner. 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.

~~§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.~~

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

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

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

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§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, ~~shall~~ may be referred initially to the Architect for decision. ~~An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~ Claims submitted to the Architect shall be solely for the purpose of obtaining the Architect's recommendation as to the resolution of the Claim.

§ 4.4.2 The Architect will review Claims submitted to Architect and within ten days of the receipt of the 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. ~~Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.~~

§ 4.4.5 The Architect will ~~approve or reject~~ make recommendations on Claims by written decision, which shall state the reasons ~~therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.~~ therefor.

§ 4.4.6 ~~When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.~~

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 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 prior to resolution of the Claim by the Architect, by mediation or by arbitration.~~ deadlines.

~~§ 4.5 MEDIATION~~

~~§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.~~

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~~§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~§ 4.5.3 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.~~

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, except ~~Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5~~ may, upon Owner's and Contractor's consent, be subject to arbitration.

§ 4.6.2 Claims ~~not resolved by mediation shall be decided~~ to be resolved by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The ~~demand~~ request for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 4.6.3 ~~A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases~~ request for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of ~~limitations as determined pursuant to Section 13.7~~ limitations.

§ 4.6.4 Limitation on Consolidation or Joinder. ~~No~~ At Owner's option any and all arbitration arising out of or relating to the ~~Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof~~ any of the Contract Documents or any breach thereof shall include by consolidation, joinder or joint filing, any additional person or entity not a party to the Owner-Contractor Agreement to the extent necessary for the final resolution of the matter in controversy.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of ~~demand~~ request for arbitration must assert in the ~~demand~~ request all Claims then known to that party on which arbitration is ~~permitted to be demanded~~ requested.

§ 4.6.6 Judgment on Final Award. ~~The~~ If the parties agree to arbitration the award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect will promptly~~ Owner will reply to the Contractor in writing stating whether or not the ~~Owner~~ Owner, Developer or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner ~~or Architect~~ to reply ~~promptly~~ 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~~ Owner, Developer 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. The Contractor shall contract with each and every Subcontractor solely in the name and on behalf of the Contractor, and no approval by Owner of any such Subcontract shall be construed as creating any contractual relationship between any Subcontractor and Owner.

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

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

§ 5.2.5 All Subcontracts and purchase agreements shall specifically provide that any and all guarantees or warranties of or from the Subcontractor or Supplier for the benefit of Contractor shall also be made to, and for the benefit of, Owner and otherwise comply with the provisions hereof.

§ 5.2.6 All Subcontracts shall contain provisions requiring the Subcontractor thereunder to perform its portion of the Work in accordance with the Contract Documents and shall require the Subcontractor to adhere to all Applicable Laws and applicable provisions contained in this Agreement, the General Conditions (which also shall be expressly made a part of each Subcontract) and the other Contract Documents.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 Each subcontractor shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-

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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.

§ 5.3.2 Upon request of Owner, Contractor will cause each Subcontractor and Sub-subcontractor to execute and deliver to Owner a waiver or waivers of mechanic's and/or materialmen's liens with respect to all Work which has been performed and paid for under such Subcontract or Sub-subcontract, or, to the extent permitted by law, to be performed. Such waiver or waivers shall be in form and substance satisfactory to Owner.

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract ~~by the Owner for cause pursuant to Section 14.2~~ and only for those subcontract agreements which 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.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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

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

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations~~

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~~and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the ~~Contractor,~~ Contractor and 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~~ Owner will equitably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

.1 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.

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§ 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,~~ or Developer, 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 7.3.6.~~

Owner shall request additive and deductive changes in the Work by giving Contractor a written "Additive Change Order Request" or "Deductive Change Order Request," as the case may be, through the Architect, setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Contractor shall forthwith (but in no event later than twenty-one (21) days after receipt of the Change Order Request) return to Owner and Architect two (2) completed copies of its "Additive Change Order Proposal" or "Deductive Change Order Proposal," as the case may be, setting forth in detail, with a suitable breakdown by trades and work classifications Contractor's estimate of the changes in the Contract Sum (together with the appropriate data acceptable to Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and a proposed adjustment of the Contract Time resulting from such Change Order Request. If Owner approves in writing Contractor's Additive Change Order Proposal or Deductive Change Order Proposal as the case may be, Owner will issue and Contractor will execute and accept a "Change Order" and the Contract Sum and the applicable Turnover Dates and the Date of Final Completion shall be adjusted as set forth in such Change Order. If Contractor's Additive Change Order Proposal is not agreed to by Owner and Owner nevertheless issues a "Construction Change Directive" directing Contractor to perform the requested change to the Work, Contractor shall proceed with the Work authorized by same and the increase in the Contract Sum as a result of such change in the Work shall be equal to (x) the actual cost of such change in the Work (which actual costs shall include only those costs permitted under Article 7 of the Agreement if the Agreement is in the form where the basis for payment is the Cost of the Work plus a fee) and (y) a Contractor's Fee as stated in, and subject to any limitations set forth in, the Agreement Between Owner and Contractor. After the cost of such change in the Work is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon cost. Contractor agrees to deliver to Owner within twenty (20) days after the completion of the Work covered by Construction Change Directive invoices, statements, payroll data and other evidence of such actual cost of the change in the Work that Owner may reasonably require. If Contractor's Deductive Change Order Proposal is not agreed to by Owner and Owner nevertheless directs Contractor to make and perform changes in the Work pursuant to a Construction Change Directive, Contractor shall proceed with the Work as changed by such Construction Change Directive and the decrease in the Contract Sum as a result of such change in the Work shall be equal to (a) the actual reduction in cost of the Work resulting from such change in the Work and (b) a Contractor's Fee as stated in, and subject to any limitations set forth in the Agreement Between Owner and Contractor. After the decrease in the Contract Sum is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon decrease. Contractor agrees to deliver to Owner within twenty (20) days after the Completion of the Work covered by such Construction Change Directive such evidence of decrease in the Cost of the Work resulting from such directive as Owner may reasonably require. Agreement on any Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to the terms of this Agreement. When both additions and credits covering related Work or substitutions are involved in any one change, the

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allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change. For purposes of this Paragraph 7.3.3, Contractor shall keep at the Project site complete and accurate financial records of all costs incurred in performing any Construction Change Directive, and shall make these records available to Owner and Architect for audit and copying. No amount under this Paragraph 7.3.3 shall be payable by Owner unless such records are kept and until such records are made available to Owner and Architect.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and 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.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. 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 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which 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.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

§ 7.3.9 When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract ~~Time~~ Time; not involving a change in the scope, quality or quantity of the Work; and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order delivered to Owner and Contractor and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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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 or the Schedule approved by Owner for Substantial Completion of the Work.

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the ~~Architect~~ Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the ~~Architect may determine.~~ Owner may determine. However, pursuant to Section 4.3 of the Contract, Contractor shall not be entitled to any allowances or extensions of time for delays caused by weather or labor disputes. Should any workers performing work covered by this contract engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Owner, may, at its option and without prejudice to any other remedies Owner may have, after forty-eight (48) hours written notice to Contractor, contract with or provide any such labor on its own and deduct the cost thereof from any monies then due or thereafter to become due Contractor. Further, Owner may, at its option, without prejudice to any other remedies it may have, terminate the employment of Contractor for the Work under this Contract and shall have the right to enter upon the premises and take possession for the purpose of completing the Work hereunder of all Contractor's materials, tools and equipment thereon and to finish the Work either with its own employees or other contractors. Contractor shall remain liable for any damages which Owner incurs as a result of any such stoppage of work.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.~~ Any claim for extension of time shall be made in writing to the Owner not more than twenty-one (21) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, one notice shall be made within ten (10) days of commencement of the delay and the claim for actual delay days incurred shall be made within ten (10) days after the termination of the delay. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Claims for extension of time shall be stated in whole or half days only.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ In the event Contractor is delayed at any time in the progress of the Work (i) by labor disputes, fire, unusual delays in transportation, unavoidable casualties or any other causes not solely the responsibility of Owner; or (ii) cumulatively for thirty (30) days or less by any other causes, extension of time shall be Contractor's sole remedy for any such delay. In the event Contract is delayed cumulatively by more than thirty

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(30) days in the progress of the Work by any causes that are solely the responsibility of Owner and the Contractor makes a timely claim, then the Contract Time and the Contract Sum shall be adjusted by Change Order in accordance with Article 7. This provision is intended to be, and shall be construed as consistent with and not in conflict with, Ohio Revised Code § 4113.62, to the fullest extent permitted.

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.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the ~~Architect,~~ Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, ~~but not yet included in Change Orders~~ or by Change Orders. In no event may any Application for Payment include sums purportedly payable due to oral modifications to the Contract Sum or the Work, the parties agreeing that all such changes must be in writing, and signed by Owner.

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

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

§ 9.3.3 The Contractor warrants that title to all ~~Work~~ Work, including all materials and equipment, covered by an Application for Payment will pass to the Owner no later than the time ~~of payment~~ of payment, free and clear of liens and encumbrances other than those created by Owner. 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,~~ shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 With each Application for Payment, the Contractor shall present (i) written evidence of payment, satisfactory to the Owner, of any and all claims of Subcontractors and (ii) releases and waivers for all constitutional, statutory and contractual liens, including but not limited to mechanics and materialmen's liens, from all Subcontractors, but only to the extent of all prior payments made by Owner to Contractor on account of Work performed by such Subcontractor. All such releases and waivers shall be in form and substance satisfactory to Owner and shall be signed and acknowledged by the payee and (iii) such other matters as are required in Article 12

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of the Contract to which these conditions are attached. In addition, in each Application for Payment Contractor shall certify to Owner that such Application for Payment represents a just estimate of cost reimbursable to Contractor under the terms of the Contract Documents and shall also certify in a form acceptable to the Owner that:

"There are no known mechanics or materialmen's liens outstanding at the date of the Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application for Payment, and that, except for such bills not paid so included, there is no known basis for the filing of any mechanic's or materialmen's liens on the Work."

For any payment received by the Contractor, the Contractor shall also deliver to the Owner a release and waiver of the Contractor's constitutional statutory and contractual liens, including but not limited to mechanics and materialmen's lien to the extent of such payment so received, and such releases shall be signed, sworn to and acknowledged by Contractor, and shall be in a form acceptable to Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

.1 defective Work not remedied;

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

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, ~~materials or equipment;~~ materials, equipment, or services or for any other items for which payment has been made to Contractor;

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

.5 damage to the Owner or another contractor;

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

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

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for ~~Payment,~~ Payment in an amount approved by Owner, 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 promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. The Owner may, however, at its option, at any time after (i) Owner has given Contractor ten (10) days written notice of Contractor's default under the Contract Documents or under the applicable Subcontract; or (ii) a lien is filed by any Subcontractor or Sub-subcontractor against all or any portion of the Project and such lien is not released or bonded to the satisfaction of Owner within five (5) days after same has been filed, make payments directly to any Subcontractor or Sub-subcontractor and all such payment so made shall be deemed to be made directly to Contractor on account of the Contract Sum.

§ 9.6.5 Payment to material 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~~ Documents, or be construed or relied upon as any indication that the Work or Materials are in accordance with the Contract Documents; or that the amounts paid or certified therefore represent the correct cost or value of the Work or Materials or that such amount is in fact or law due to Contractor.

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

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. ~~The~~ If applicable, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Except as may be provided otherwise in the Agreement, Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner or subsequent contractor can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. In connection therewith, Contractor shall provide to Owner for Owner's written approval a schedule for completion of all such items, which schedule shall specify the number of personnel that will be dedicated each day to completion of such portion of the Work (the "Punchlist Schedule"). Contractor shall also designate a supervisor whose sole responsibility shall be to perform and complete such portion of the Work in accordance with the approved Punchlist Schedule. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the 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. All such additional items shall be incorporated by Contractor into the Punchlist Schedule, with no extension of time. 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 which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any ~~stage when such portion is designated by separate agreement with the Contractor,~~ stage, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the ~~Work.~~ Work, if required. 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.

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§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment and~~ payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner~~ by the Owner, and (6) any other items required by the Contract Documents to be delivered by Contractor. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

~~.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~

~~.2 failure of the Work to comply with the requirements of the Contract Documents; or~~

~~.3 terms of special warranties required by the Contract Documents.~~

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

.1 employees on the Work and other persons who may be affected thereby;

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.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; ~~and~~

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

.4 the Work of the Owner or the other contractors.

§ 10.2.2 The Contractor shall give notices and comply with ~~applicable laws, ordinances, rules, regulations and lawful orders of public authorities~~ Applicable Laws and state and federal regulations bearing on safety of persons or property or their protection from damage, injury ~~or loss~~ or loss and shall hold the Owner, Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their agents harmless from and against any fines or penalties levied in connection with the failure of Contractor to give such notices or to comply with any such Applicable Laws and state and federal regulations.

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

10.2.3.1 Contractor shall maintain exit doors and provide acceptable exitways from any building or buildings, shall not block or lock exit doors or in any manner prevent egress from exits, shall keep exitways through any building or buildings clear of materials and shall level surfaces to prevent accidents in case of egress from exits.

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

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

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

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.2.8 The Contractor shall employ such reasonable and customary practices as are necessary to protect all materials, equipment, completed and partially completed Work and all merchandise stored therein from loss and damage, including theft or damage by weather and, if necessary, shall provide suitable shelter therefor. The Contractor shall correct at its own expense any damage or disfigurement to work or property (whether or not located on the site) resulting from the fault, neglect or omission of the Contractor, any Subcontractor, any Sub-subcontractor or other person employed or hired by any of them.

§ 10.2.9 The Contractor shall take all reasonable precautions to keep the site free of safety hazards and shall comply with all Applicable Laws and insurance requirements relating to injury to persons and property on or about the site or any other location where any of the Work is performed, including but not limited to the regulations and directives of the federal and state Occupational Safety and Health Administrations and other governmental authorities having jurisdiction over the Project.

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§ 10.2.10 The Contractor shall on a daily basis keep the site free from any dangerous clutter or debris attributable to the Work and shall keep the site reasonably clean and orderly at all times in accordance with the nature of the Work. The Contractor shall clean up the site in a thorough and workmanlike manner to the satisfaction of the Owner at the completion of the Work.

§ 10.2.11 The Contractor shall be responsible for the security of the Work, the site and all Materials stored there or at any other location by the Contractor with the consent of Owner. The Contractor shall be responsible for all losses and expenses incurred by reason of failure to maintain reasonable security at the site or at the location where Materials are stored, and such expenses incurred shall not increase the Contract Sum. The Contractor shall comply with all reasonable security requirements of the Owner.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to 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. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

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

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the ~~Contractor unless such materials or substances were required by the Contract Documents.~~Contractor.

§ 10.5 If, without negligence ~~on the part of the Contractor,~~ or misconduct on the part of the Contractor or the Contractor's employees, subcontractors, sub-subcontractors, agents, invitees or guests, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 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 Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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§ 11.1.1 The Contractor shall maintain throughout the term of the Agreement, and in some instances beyond the term of this Agreement, insurance of the types and in the minimum amounts set forth in this section 11 and on the Insurance Addendum.

§ 11.1.2 Insurance Carriers must be licensed to do business in all states applicable under the terms and scope of this Agreement, have an A.M. Best Company rating of not less than A-VI, and must be otherwise acceptable to Owner.

§ 11.1.3 If requested by Owner, Contractor shall provide certified copies of all such policies to Owner within 10 days of such request.

§ 11.1.4 Contractor must immediately notify Owner of any reduction or restriction in the required insurance regardless of whether it takes place prior to, during, or subsequent to, the term of this Agreement, and/or in the event the insurer notifies the Contractor of its intent to non-renew coverage. "Reduction of coverage" does not encompass depletion of insurance limit aggregates unless the current policy is or becomes depleted by 75% or more.

§ 11.1.5 Certificates of insurance, copies of additional insured endorsements from applicable insurance policies, and other required documentation, signed by a duly authorized agent of each insurance company shown and be otherwise acceptable to Owner, shall be filed with the Owner prior to the commencement of the Contractor's Work, and within ten (10) days of the expiration of any insurance policy required herein.

§ 11.1.6 The Owner, Developer, their parent and subsidiary companies, Hickory Chase, Inc., and their respective members, partners, directors, officers, employees, and agents are to be included as additional insureds with regard to all coverage obtained by the Contractor under Commercial General Liability, Automobile Liability, and the Umbrella/Excess insurance described on the Addendum. To the extent Contractor has insurance at levels greater than that set forth in the Addendum, the parties set forth herein shall be listed as additional insureds at such higher levels. The additional insured coverage is to be provided one of the following coverage forms: ISO Form CG2010 11-85; ISO Form CG2026; a combination of forms ISO Form CG2010 of a later version and CG2037; or other insurance form equivalent in coverage. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.7 Insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to indemnities and/or additional insureds under this Agreement. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.8 All policies are to be endorsed to provide for 30-day notice of cancellation or reduction of coverage to Owner. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.9 No payments shall be made to Contractor until satisfactory documentation as required herein is received and accepted by Owner.

§ 11.1.10 Approval of any insurance by Owner shall not relieve or decrease the liability of the Contractor. The Owner does not in any way represent that the insurance or limits of liability specified above are sufficient or adequate to protect the interests or liability of the Contractor and are only minimums.

§ 11.1.11 All required insurance policies shall contain a waiver of subrogation by the insurance carrier in favor of Owner.

§ 11.1.12 Self-insured retentions (deductibles) shall not be more than $10,000.

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

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.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;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

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

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing 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. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE

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~~§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

~~§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance 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 in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

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

~~§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.4.2 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.~~

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

BUILDER'S RISK COVERAGE

§ 11.4.11 The Owner shall purchase and maintain Builder's Risk Coverage protecting buildings and building materials against risks of direct physical loss or damage. Coverage will include the perils of fire, extended coverage,

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theft, vandalism, malicious mischief, collapse, flood and earthquake. Coverage will be applicable to property destined to become part of the building stored off-site and during transit, debris removal, and demolition occasioned by enforcement of any building, zoning, or land use ordinance or law. This insurance shall include the interests of the Owner, Contractor, Subcontractors and lower-tier subcontractors.

§ 11.4.12 This insurance will not include coverage for clothing of workers, tools, equipment, or property of a similar kind which will not become a permanent part of the building or structure. Contractor shall not be liable or responsible for any loss or damage to the items excluded. Coverage for transit, storage away from the project site, flood, earthquake, debris removal, and demolition have sub-limits or are otherwise limited by policy conditions. The Contractor, Subcontractors, and their lower-tier subcontractors shall hold harmless, indemnify, and defend Owner, its parent company, Hickory Chase, Inc., employees, members, directors, and agents from claims of damage or loss to such property excluded or limited.

§ 11.4.13 Coverage for transit and storage away from project site is limited to $500,000 per occurrence. For additional coverage, Owner has the option to report, obtain approval for, and pay additional cost for insurance under Contractor's program or obtain additional insurance elsewhere.

§ 11.4.14 Payments by the insurer for all losses covered under the Builder's Risk policy will be made to Owner, for the interest of all parties, subject to the requirements of any applicable mortgagee clause. Contractor shall pay such Subcontractor a just share of any insurance monies received by Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to lower-tier subcontractors in a similar manner.

§ 11.4.15 The Builder's Risk Insurance will be placed with a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. Such property insurance shall be maintained by the Owner, unless otherwise provided in the Agreement, or agreed in writing by the Contractor.

~~§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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~~§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. 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.~~

~~§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

~~§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising ~~thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~ thereunder, including, if requested by Owner, bonds for any Subcontractors designated by Owner. The costs of any bonds required to be delivered and not stipulated in the bidding requirements or other Contract Documents shall be a reimbursable expense of Contractor or any designated Subcontractor.

§ 11.5.2 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.

§ 11.5.3 It shall be the responsibility of the Contractor not to violate nor knowingly permit to be violated any conditions of the policies required hereunder, and it shall be the Contractor's duty and responsibility to impose upon each Subcontractor and have each Subcontractor impose upon each Sub-subcontractor the same responsibilities and obligations imposed upon the Contractor under the insurance provisions provided for herein.

§ 11.5.4 Contractor shall require each Subcontractor to provide the insurance coverage as stated in Paragraph 11.1.1 above.

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

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§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. If, within one year after the Date of Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any special warranty required by the Contract Documents, any of the Materials included in the Work are found to be defective or not in accordance with the Contract Documents, the Contractor shall correct same promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given Contractor an express written acceptance of such defective conditions. Contractor shall correct any defects in the Work or damage to other property caused by defects in the Work or the repairing of such defects with a minimum of inconvenience to Owner and other occupants of the Project and at times least disruptive to the operation or construction of the Project. Notwithstanding anything to the contrary contained herein, Contractor's obligations contained in this Paragraph 12.2.2.2 shall be in addition to all other obligations of Contractor contained in the Contract Documents in respect of warranties or correction of defects in Work.

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which 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 which the Contractor might have 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.

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

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.1.2 To the extent permitted by law, the Contractor and all Subcontractors (and each of their respective subcontractors and suppliers) are hereby subordinate to any and all statutory, constitutional and contractual liens, security interests and right each may now or in the future may have against the Project or any portion thereof to the liens, security interests, and rights of any lender having a lien against all or any portion of the Project, from time to time. Contractor and all subcontractors agree to execute and deliver to Owner, such documents as may be requested by Owner to acknowledge such subordination.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party~~ Contractor shall not assign the Contract in whole or in part without the prior written consent of the Owner. In the event Contractor shall assign the Contract in whole or in part, Contractor shall nevertheless remain legally responsible for all obligations ~~under the Contract~~ of "Contractor" under the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to ~~an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents.~~ any lender or lenders providing construction financing for all or any portion of the Project. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 ~~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.~~ All notices, requests, demands, and other communications hereunder shall be in writing except as expressly provided otherwise, and shall be personally delivered, or mailed certified or registered mail, postage prepaid, return receipt requested, to the party to which directed at the address stated in the Contract Documents and shall be deemed to have been given on the date of actual delivery thereof.

§ 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, Developer, 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 in writing.

§ 13.4.3 Owner and Contractor recognize that time is of the essence of this Contract and the Owner will suffer financial loss if the Work is not substantially completed in accordance with Section 4.2 of the Agreement. Owner and Contractor also recognize the delays, expense and difficulties involved in proving the actual losses suffered by Owner if the Work is not completed on time. Accordingly, in lieu of requiring such proof, Owner and Contractor agree that as liquidated damages for such delay (but not as a penalty), Contractor shall pay to Owner Ten Thousand Dollars ($10,000.00) for each day that expires beginning seven (7) days after the time specified in Section 4.2 of the Agreement for substantial completion of all or any portion of the Work, which sum is acknowledged and agreed to

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be a fair and reasonable estimate of the actual damages likely to be suffered by Owner in the event of a delay in substantial completion of the Work. There will be no claim for consequential damages in excess of the $10,000 per day liquidated damages. In the event that this Subsection 13.4.3 shall be deemed to be a penalty or shall otherwise be unenforceable, Owner and Contractor acknowledge and agree that Owner shall be entitled to all rights and remedies available at law or in equity arising due to the Contractor's failure to complete the Work in accordance with the time specified in the Agreement. Contractor and Owner acknowledge and agree that the liquidated damages provided for in this subsection do not preclude Owner from pursuing damages against Contractor for other potential damages suffered by Owner, including, but not limited to, damages incurred to fix non-conforming Work, or for completing the Work.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. ~~Unless otherwise provided, time.~~ To the extent permitted by Applicable Laws, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

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

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

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

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

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

§ 13.5.7 To the extent that Contractor is prohibited from performing, paying for or arranging for tests or studies pursuant to Applicable Laws, Owner shall be primarily responsible for performing such activities.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear ~~interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ no interest.

§ 13.8 In case any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in the Contract Documents shall not in any way be affected or impaired thereby.

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§ 13.9 Notwithstanding any other provision or inference to the contrary herein or in the Contract Documents contained, in the event of a dispute, controversy or question between the Owner and the Contractor or the Contractor and the Architect with respect to the interpretation of the Contract Documents, the performance of any portion of the Work, or the delivery of any materials, the payment of disputed monies or otherwise (the parties acknowledging that undisputed monies will be paid when due), the Owner and the Contractor agree that pending the resolution or settlement of such dispute, controversy or question, the Owner and the Contractor shall continue to perform the respective obligations under this Agreement without interruptions or delay, and the Contractor agrees not to directly or indirectly stop or delay the performance of the Work, including the delivery of materials to the Project site.

~~§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD~~

~~§ 13.7.1 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.~~

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

~~.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~.4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and ~~damages~~damages, but in no event shall Contractor receive payment for Work not performed or for profit or overhead for Work not performed.

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

§ 14.1.5 If Owner fails to make any payment approved by Architect in accordance with the Contract Documents, through no fault of Contractor or a Subcontractor or their agents or employees or any other person performing portions of the Work under contract with the Contractor, Contractor may, upon thirty (30) days' written notice to Owner and provided Owner fails to cure such failure to pay within such thirty (30) day period, terminate the Agreement Between Owner and Contractor (subject to Owner's right to contest such termination through arbitration or other legal proceedings) and receive from Owner the aggregate of (i) the earned but unpaid cost of the Work as of the date of termination, and (ii) any additional direct damages sustained by Contractor, provided such damages were reasonably foreseeable by Owner on the date of execution of the Agreement Between Owner and Contractor. Notwithstanding Contractor's right to terminate the Agreement Between Owner and Contractor pursuant to the immediately-preceding sentence, it is expressly understood and agreed that Contractor shall not have the right to refuse to render further services or to terminate the Agreement Between Owner and Contractor by reason of nonpayment of specific items or elements of Contractor's statement of monies due if Owner (i) was permitted to withhold payment as provided in the Contract Documents or (ii) has reasonable grounds to challenge and does challenge such items or elements and if Owner issues payment for all items and elements which are not challenged by Owner.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

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

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

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

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

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

.1 take possession of the site and 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 (or any terminated portion thereof) by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 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~~ Owner, upon demand, and (to the extent not paid by Contractor to Owner) Owner shall be entitled to deduct such expenses from any sums due to Contractor under any other contracts by and between Owner and Contractor. This obligation for payment shall survive termination of the Contract.

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§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, upon request of Owner terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

ARTICLE 15

NON-DISCRIMINATION

§ 15.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall comply with all Applicable Laws, rules, regulations, writs, and orders of governmental authorities concerning non-discriminatory practices and employment.

ARTICLE 16

SUBORDINATION

§ 16.1 The Contractor, all Subcontractors (and each of their respective Subcontractors) are hereby subordinate to any and all statutory, constitutional, contractual and constitutional liens, security interests and rights it may now or in the future have against the Project or any portion thereof to the liens, security interests and rights of any lender (herein called "Lender") having a lien against all or any part of the Project. Contractor shall include this provision of this Article 16 in each agreement between Contractor and Subcontractor.

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT B
SUPPLEMENTARY GENERAL CONDITIONS

EXHIBIT B

SUPPLEMENTARY GENERAL CONDITIONS

The GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION ("THE GENERAL CONDITIONS") dated April 15, 2008 by and between COLUMBUS CAMPUS, LLC and BRAUN CONSTRUCTION GROUP, INC. and are hereby amended by these GENERAL SUPPLEMENTARY CONDITIONS, as follows:

Certain provisions of the GENERAL CONDITIONS and SUPPLEMENTARY GENERAL CONDITIONS relating in general to administrative procedures and work of the Contractor and Subcontractors are supplemented in Division 1, GENERAL REQUIREMENTS of the specifications.

In the event of any conflict between the terms of the General Conditions and these Supplementary General Conditions, the terms of these Supplementary General Conditions shall control. Where a Paragraph, Subparagraph, or Clause of the Contract is modified or deleted by these supplements, the unaltered provisions of that Paragraph, Subparagraph, or Clause shall remain in effect.

1. These "Supplementary General Conditions" are in addition to the Supplementary General Conditions contained within the Project Specifications manual and related to the coordination of work on the site.

2. Contractor is responsible for coordination of its work with other Owner contractors so as not to delay or cause interference with the overall progress and final completion. Contractor understands and agrees to work closely and in harmony with various Site Work contractors and with the contractors that are constructing other buildings on site.

3. Contractor understands that all construction vehicles and employees must use the construction entrances as designated and park only in designated areas.

4. Contractor is responsible for keeping all its operations, storage, trailers, materials, etc. within designated staging areas. No equipment, materials, trailers, etc. can be stored outside the storage area without specific permission of the Owner.

5. Contractor's construction fence is to be built, maintained, and subsequently removed by Contractor. Contractor shall be responsible for repairing any damage to Owner's fence that is caused by Contractor's work.

6. Contractor is aware that emergency fire lanes existing within its staging area must be kept accessible at all times to allow vehicular traffic. Contractor must keep access open at all times. All costs relative to emergency fire lanes are included within Contractor's

responsibility. Any fencing changes required to accommodate emergency fire lanes are Contractor's responsibility.

7. Contractor is responsible for removing all construction debris from the site and preventing such debris from getting beyond the limits of Contractor's staging area. Contractor will be held responsible for Owner's costs of cleaning such debris if Contractor fails to comply with such obligation. Contractor shall be responsible to cause all concrete trucks wash-out within the limits of its staging area, and further, that all such waste concrete is removed from the jobsite.

8. Contractor shall take all necessary steps to assure all dirt is cleaned from tires of all vehicles prior to leaving the staging area and for cleaning any roads of such dirt on a continual basis. Since residents and employees of the Project use these same roads, Contractor must assure that no accumulation of dirt is allowed.

9. Contractor shall not install signs or other advertising on the fencing around its project, except those specifically required for safety or traffic purposes. Contractor and its Subcontractors are limited to one sign on their construction trailers; this sign shall be reasonably sized and shall not project above such trailers. Any and all signs are subject to Owner's approval and acceptance. Contractor shall not install signs on any building during the construction duration, except as those required for safety.

10. Contractor is responsible for all costs of protecting the site utilities from Contractor's operations and for restoring those that may be damaged.

11. Any stockpiled excavated materials must be stored within Contractor's designated staging area, or as otherwise allowed and directed by Owner. Contractor is responsible for returning any area used for such storage back to its original condition.

12. Contractor understands and agrees that the electrical transformer is located where shown on the site work drawings and that Contractor's Work includes all work to accommodate such location.

13. Contractor is responsible for providing Contractor's telephone lines for Contractor's construction needs. All temporary power and telephone lines must be removed upon project completion. All costs of removal are Contractor's responsibility.

14. Contractor shall repair any damage to the parking lot and curbs that were caused by Contractor's operations. All areas of the site within the staging area are to be returned to the original condition so that the Owner can proceed with sitework improvements.

15. Contractor understands that the Owner has the right to bring prospective residents into the

Project while it is under construction, as long as they are accompanied by one of Owner's employees, and it does not interfere with the execution of work under this Contract.

16. Any claim against Owner's Builder's Risk Insurance must be made within thirty (30) calendar days of Contractor's first knowledge of the event. Contractor shall place this same responsibility upon each of its Subcontractors. Any claim not so made shall be the sole responsibility of the Contractor, and Owner shall not be liable for any costs or damages arising from the incident, regardless of any other circumstances concerning this event.

17. The Owner's Builder's Risk Insurance coverage is for materials and equipment incorporated into the Work, properly stored on site, and for materials stored off-site for which Owner has previously given written approval for such off-site storage.

18. Contractor shall furnish to Owner within two (2) work days, the First Report of Injury form for any employee of Contractor, its Subcontractors and Vendors, and visitors to the site.

19. Contractor is responsible for protecting and maintaining all stabilized soil, sediment and erosion control and shall repair or replace any areas damaged as a result of the Contractor's activities.

20. No solicitation of employees of other Contractors engaged in work on the site will be permitted.

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT C
DRAWINGS, PLANS AND SPECIFICATIONS

Drawings Dated January 4, 2008

ARCHITECTURAL

00.00	TITLE SHEET
00.01	CODE REVIEW SHEET
00.02	MASTER UNIT CHART
00.03	PARKING COUNT & PHASING DIAGRAMS
00.04	CAMPUS WIDE BUILDING ELEVATIONS
20.01	OVERALL SITE PLAN FFE - LINKS & BRIDGES
30.01	TERRACE FLOOR PLAN - A
30.02	TERRACE FLOOR PLAN - B
30.03	FIRST FLOOR PLAN - A
30.04	FIRST FLOOR PLAN - B
30.05	SECOND FLOOR (MAIN STREET) PLAN - A
30.06	SECOND FLOOR (MAIN STREET) PLAN - B
30.07	THIRD FLOOR PLAN - A
30.08	THIRD FLOOR PLAN - B
30.09	FOURTH FLOOR PLAN - A
30.10	FOURTH FLOOR PLAN - B
30.11	ROOF FLOOR PLAN - A
30.12	ROOF FLOOR PLAN - B
31.00	OVERALL ELEVATIONS
31.01	NORTH & SOUTH ELEVATIONS
31.02	EAST ELEVATION
31.03	WEST ELEVATION
31.04	COURTYARD ELEVATION
31.10	ELEVATION DETAILS
32.01	BUILDING SECTIONS
32.02	BUILDING SECTIONS
32.03	BUILDING SECTIONS
33.01	WALL SECTIONS
33.02	WALL SECTIONS
33.03	WALL SECTIONS
33.20	EXTERIOR DETAILS - RB
33.21	EXTERIOR DETAILS - LINK
34.01	ELEVATOR PLANS AND SECTIONS
34.02	STAIR PLANS AND SECTIONS
34.03	STAIR PLANS AND SECTIONS
34.04	FIREWALL DETAILS
35.01	WALL, FLOOR & CEILING SCHEDULES
35.02	DOOR SCHEDULE
35.03	HEAD AND JAMB DETAILS
36.01	DETAILS
36.02	ENLARGED PLANS & INTERIOR ELEVATIONS
36.03	ENLARGED PLANS
36.04	ENLARGED PLANS
36.05	ENLARGED PLANS
37.01	LINK / BRIDGE PLANS
38.01	TERRACE RCP PLAN - A
38.02	TERRACE RCP PLAN - B
38.03	FIRST FLOOR RCP - A
38.04	FIRST FLOOR RCP - B
38.05	SECOND FLOOR RCP - A
38.06	SECOND FLOOR RCP - B
38.07	THIRD FLOOR RCP - A
38.08	THIRD FLOOR RCP - B
38.09	FOURTH FLOOR RCP - A
38.10	FOURTH FLOOR RCP - B
40.01	TERRACE FINISH PLAN - A
40.02	TERRACE FINISH PLAN - B
40.03	FIRST FLOOR FINISH PLAN - A
40.04	FIRST FLOOR FINISH PLAN - B
40.05	SECOND FLOOR FINISH PLAN - A
40.06	SECOND FLOOR FINISH PLAN - B
40.07	THIRD FLOOR FINISH PLAN - A
40.08	THIRD FLOOR FINISH PLAN - B
40.09	FOURTH FLOOR FINISH PLAN - A
40.10	FOURTH FLOOR FINISH PLAN - B
41.01	TERRACE WALL FINISH PLAN - A
41.02	TERRACE WALL FINISH PLAN - B
41.03	FIRST FLOOR WALL FINISH PLAN - A
41.04	FIRST FLOOR WALL FINISH PLAN - B
41.05	SECOND FLOOR WALL FINISH PLAN - A
41.06	SECOND FLOOR WALL FINISH PLAN - B
41.07	THIRD FLOOR WALL FINISH PLAN - A
41.08	THIRD FLOOR WALL FINISH PLAN - B
41.09	FOURTH FLOOR WALL FINISH PLAN - A
41.10	FOURTH FLOOR WALL FINISH PLAN - B
45.01	FINISH SCHEDULE AND LEGEND
45.02	RESIDENT UNIT FINISH SCHEDULE
45.03	UNIT AMENITIES LIST
49.01	TERRACE FURNITURE FINISH PLAN - A
49.02	TERRACE FURNITURE FINISH PLAN - B
49.03	FIRST FLOOR FURNITURE FINISH PLAN - A
49.04	FIRST FLOOR FURNITURE FINISH PLAN - B
49.05	SECOND FLOOR FURNITURE FINISH PLAN - A
49.06	SECOND FLOOR FURNITURE FINISH PLAN - B
49.07	THIRD FLOOR FURNITURE FINISH PLAN - A
49.08	THIRD FLOOR FURNITURE FINISH PLAN - B
49.09	FOURTH FLOOR FURNITURE FINISH PLAN - A
49.10	FOURTH FLOOR FURNITURE FINISH PLAN - B

UNIT PLAN SHEETS

UNIT NOTES	UNIT STANDARDS & NOTES
G51	UNIT PLANS - ARCH, M, E, P
G52	UNIT PLANS - ARCH, M, E, P
H61+16	UNIT PLANS - ARCH, M, E, P
K31.5	UNIT PLANS - ARCH, M, E, P
K31.5SR	UNIT PLANS - ARCH, M, E, P
K32.5	UNIT PLANS - ARCH, M, E, P
K33.5	UNIT PLANS - ARCH, M, E, P
K61	UNIT PLANS - ARCH, M, E, P
K71	UNIT PLANS - ARCH, M, E, P
LG41.5	UNIT PLANS - ARCH, M, E, P
LR21	UNIT PLANS - ARCH, M, E, P
R11	UNIT PLANS - ARCH, M, E, P
R21	UNIT PLANS - ARCH, M, E, P
R21A	UNIT PLANS - ARCH, M, E, P
R41.5	UNIT PLANS - ARCH, M, E, P
R42.5	UNIT PLANS - ARCH, M, E, P

UNIT PLAN SHEETS (CONTINUED)

R51	UNIT PLANS - ARCH, M, E, P
R61	UNIT PLANS - ARCH, M, E, P
S21	UNIT PLANS - ARCH, M, E, P
S41	UNIT PLANS - ARCH, M, E, P
S41A	UNIT PLANS - ARCH, M, E, P

STRUCTURAL

60.01	FOUNDATION PLAN - A
60.02	FOUNDATION PLAN - B
60.03	FIRST LEVEL FRAMING PLAN - A
60.04	FIRST LEVEL FRAMING PLAN - B
60.05	TYPICAL FLOOR FRAMING PLAN (2ND-4TH) - A
60.06	TYPICAL FLOOR FRAMING PLAN (2ND-4TH) - B
60.07	ROOF FRAMING PLAN - A
60.08	ROOF FRAMING PLAN - B
60.09	TYPICAL FLOOR FRAMING PLAN (2ND-4TH)
61.01	FOUNDATION SECTIONS & DETAILS
61.02	SECTIONS & DETAILS
62.01	SECTIONS & DETAILS
62.02	SECTIONS & DETAILS
62.03	SECTIONS & DETAILS
62.04	SECTIONS & DETAILS
63.01	SECTIONS & DETAILS
64.01	SECTIONS & DETAILS
66.01	GENERAL NOTES
66.02	GENERAL NOTES
66.03	GENERAL NOTES

PLUMBING

70.00	PLUMBING DETAILS & NOTES
70.01	PARTIAL FOUNDATION FLOOR PLUMBING PLAN- A
70.02	PARTIAL FOUNDATION FLOOR PLUMBING PLAN- B
70.03	PARTIAL TERRACE FLOOR PLUMBING PLAN- A
70.04	PARTIAL TERRACE FLOOR PLUMBING PLAN- B
70.05	PARTIAL FIRST FLOOR PLUMBING PLAN- A
70.06	PARTIAL FIRST FLOOR PLUMBING PLAN- B
70.07	PARTIAL SECOND FLOOR PLUMBING PLAN- A
70.08	PARTIAL SECOND FLOOR PLUMBING PLAN- B
70.09	PARTIAL THIRD FLOOR PLUMBING PLAN- A
70.10	PARTIAL THIRD FLOOR PLUMBING PLAN- B
70.11	PARTIAL FOURTH FLOOR PLUMBING PLAN- A
70.12	PARTIAL FOURTH FLOOR PLUMBING PLAN - B
70.13	PARTIAL ATTIC FLOOR PLUMBING PLAN- A
70.14	PARTIAL ATTIC FLOOR PLUMBING PLAN- B
72.01	PLUMBING RISER DIAGRAMS & DETAILS
72.02	PLUMBING RISER DIAGRAMS & DETAILS
73.01	SANITARY RISER DIAGRAMS
73.02	SANITARY RISER DIAGRAMS
73.03	SANITARY RISER DIAGRAMS
73.04	SANITARY RISER DIAGRAMS
73.05	SANITARY RISER DIAGRAMS
73.06	WATER RISER DIAGRAMS
73.07	WATER RISER DIAGRAMS
73.08	WATER RISER DIAGRAMS
73.09	WATER RISER DIAGRAMS

MECHANICAL

80.00 ABBREVIATIONS & SYMBOLS
80.01 PARTIAL TERRACE FLOOR MECHANICAL PLAN - A
80.02 PARTIAL TERRACE FLOOR MECHANICAL PLAN - B
80.03 PARTIAL FIRST FLOOR MECHANICAL PLAN - A
80.04 PARTIAL FIRST FLOOR MECHANICAL PLAN - B
80.05 PARTIAL SECOND FLOOR MECHANICAL PLAN - A
80.06 PARTIAL SECOND FLOOR MECHANICAL PLAN - B
80.07 PARTIAL THIRD FLOOR MECHANICAL PLAN - A
80.08 PARTIAL THIRD FLOOR MECHANICAL PLAN - B
80.09 PARTIAL FOURTH FLOOR MECHANICAL PLAN - A
80.10 PARTIAL FOURTH FLOOR MECHANICAL PLAN - B
80.11 PARTIAL ATTIC FLOOR MECHANICAL PLAN -A
80.12 PARTIAL ATTIC FLOOR MECHANICAL PLAN - B
80.13 IST AND 2ND FLOOR LINK & BRIDGE MECH. PLANS
81.01 ENLARGED FORTH FLOOR MECHANICAL ROOMS
82.01 MECHANICAL DUCT DETAILS
82.02 MECHANICAL PIPING DETAILS
83.01 FLOW CHART DUCTWORK
83.02 FLOW CHART DUCTWORK
84.01 MECHANICAL SCHEDULES

ELECTRICAL

90.00 ABBREVIATIONS, SCHEDULES & SYMBOLS
90.01 PARTIAL TERRACE LEVEL LIGHTING & POWER PLAN - A
90.02 PARTIAL TERRACE LEVEL LIGHTING & POWER PLAN - B
90.03 PARTIAL FIRST FLOOR LIGHTING & POWER PLAN - A
90.04 PARTIAL FIRST FLOOR LIGHTING & POWER PLAN - B
90.05 PARTIAL SECOND FLOOR LIGHTING & POWER PLAN - A
90.06 PARTIAL SECOND FLOOR LIGHTING & POWER PLAN - B
90.07 PARTIAL THIRD FLOOR LIGHTING & POWER PLAN - A
90.08 PARTIAL THIRD FLOOR LIGHTING & POWER PLAN - B
90.09 PARTIAL FOURTH FLOOR LIGHTING & POWER PLAN - A
90.10 PARTIAL FOURTH FLOOR LIGHTING & POWER PLAN - B
90.11 PARTIAL FIRST FLOOR LINK & SECOND FLOOR BRIDGE LIGHTING & POWER PLAN
91.01 ENLARGED ELEC. & MECH. ROOMS, POWER PLANS
91.02 ENLARGED ELEC. & MECH. ROOMS, POWER PLANS
91.03 MECHANICAL EQUIPMENT SCHEDULES
92.01 ELECTRICAL & COMMUNICATION CONDUIT ROUTING PLAN
92.02 ELECTRICAL DETAILS
92.03 ELECTRICAL DETAILS
92.04 SCHEMATIC DIAGRAMS & DETAILS
92.05 RISER DIAGRAMS & NOTES
93.01 ONE LINE DIAGRAM
94.01 PANEL SCHEDULES
94.02 PANEL SCHEDULES

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT D
QUALIFICATIONS/SCOPE OF WORK

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT E
COST OF WORK/SCHEDULE OF VALUES

BRAUN CONTRUCTION GROUP - BID PERMIT ESTIMATE

Erickson Retirement Communities

Hickory Chase

Hilliard, Ohio

Date : 08-April-15

Based on Plans Dated 1/4/08 by DHPY

BLDG	FLRS	W/O LINKS	# of Units	
RB 1.1	4	192,750	145	1br 43
**SQFT NOT INCL BALCONIES			91	2br 102

Bid & Permit Estimate

SPEC SEC	DESCRIPTION	RB 1.1 TOTAL COST	SF COST	REMARKS
		192,750		
1020	ALLOWANCES & UNIT COSTS	N/A	$0.00	
1400	QUALITY CONTROL	N/A	$0.00	
1500	TEMPORARY FACILITIES & CONDITIONS	$0	$0.00	
3300	CAST IN PLACE CONCRETE	$525,560	$2.73	Northeast
3540	CEMENTITIOUS UNDERLAYMENT	$120,690	$0.63	Kent Underlayment
4200	MASONRY	$589,300	$3.06	Karst Masonry
5120	STRUCTURAL STEEL & JOISTS	$310,575	$1.61	Service Iron
5400	COLD FORMED METAL FRAMING	N/A	$0.00	
5500	METAL FABRICATIONS	W/5120	$0.00	
5810	EXPANSION JOINT COVER ASSEMBLIES	$55,000	$0.29	BCG
6100	ROUGH CARPENTRY & LUMBER	$1,820,956	$9.45	Emerson Lumber
6200	FINISH CARPENTRY	$484,688	$2.51	Emerson Lumber
6201	EXTERIOR ARCHITECTURAL WOODWORK	$363,000	$1.88	Bo Builders
6402	INTERIOR ARCHITECTURAL WOODWORK	w/6200	$0.00	
7111	WATERPROOFING	$70,780	$0.37	Seal Tech
7210	BUILDING INSULATION	$74,110	$0.38	Edwards/Mooney & Moses
7241	EIFS	$10,920	$0.06	BCG
7311	FIBERGLASS SHINGLES	$84,390	$0.44	Emerson
7400	GUTTERS & DOWNSPOUTS	$19,575	$0.10	Apco
7531	EPDM MEMBRANE ROOFING	$5,000	$0.03	BCG
7901	JOINT SEALERS	W/7111	$0.00	
8111	METAL DOORS & FRAMES	w/ 8211	$0.00	
8211	FLUSH & 6-PANEL WOOD DOORS	$247,195	$1.28	Tupper door
8305	ACCESS DOORS	w. Trades	$0.00	
8311	ALUMINUM SLIDING GLASS DOORS	NA	$0.00	
8351	FOLDING DOORS	w/ 8211	$0.00	
8410	ALUM ENTRANCES & STOREFRONT	$99,600	$0.52	Ohio Glass
8561	VINYL WINDOWS	$167,519	$0.87	Best Bilt
8710	FINISH HARDWARE	w/8211	$0.00	
8800	GLAZING	w/ 8410	$0.00	
9255	GYPSUM BOARD ASSEMBLIES	$871,788	$4.52	Majestic
9300	CERAMIC TILE	N/A	$0.00	
9511	ACOUSTICAL PANEL CEILINGS	w/ 9255	$0.00	
9550	WOOD FLOORING	w/9651	$0.00	
9651	RESILIENT TILE FLOORING	W/9680	$0.00	
9680	CARPET	$505,000	$2.62	BCG
9900	PAINTING & WALLCOVERINGS	$342,500	$1.78	Madias
10150	CUBICLE CURTAINS, TRACKS AND HOOKS	N/A	$0.00	
10151	TOILET PARTITIONS	$0	$0.00	
10200	LOUVERS & VENTS	$5,000	$0.03	BCG
10265	WALL SURFACE PROTECTION SYSTEMS	$0	$0.00	
10426	SIGNAGE & GRAPHICS	$13,493	$0.07	BCG
10501	LOCKERS	$2,700	$0.01	
10550	POSTAL	N/A	$0.00	
10522	FIRE EXTINGUISHERS, CABINETS & ACCESS	$1,950	$0.01	BCG
10536	FABRIC COVERED AWNINGS	$42,180	$0.22	BCG
10605	WIRE MESH PARTITIONS	$51,750	$0.27	58 REOD @ $575/EA
10670	STORAGE SHELVING	N/A	$0.00	
10800	TOILET & BATH ACCESSORIES	$22,500	$0.12	TUPPER DOOR
10900	CLOSET SHELVING	INCL IN 6400	$0.00	
11132	PROJECT SCREENS / MARKER BOARDS	$0	$0.00	

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT F
INSURANCE ADDENDUM

INSURANCE
ADDENDUM – GENERAL CONTRACTOR

TYPE OF COVERAGE	AMOUNT OF COVERAGE
AD.1 Worker's Compensation and Employer's Liability*	
(a) Worker's Compensation Insurance insuring Contractor's full liability under the Workers' Compensation laws of the state where the Project is located	Statutory Limits (set by states)
(b) Employer's Liability	Bodily Injury by Accident = $500,000. Ea. Accident Bodily Injury by Disease = $500,000. Policy limit Bodily Injury by Disease = $500,000. Ea. Employee
*Policy must include a Waiver of Subrogation endorsement in favor of indemnified parties	
AD.2 Commercial General Liability: written on ISO occurrence form CG 00 01 01 96 (or a more recent version, or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractual liability. Such policy will not contain limitations or exclusions for blasting, explosion, collapse or underground hazards or activities. (Additional Insured requirement section 11.1.6)	Occurrence Form, minimum required limits: General Aggregate Limit (other than Products/ Completed Operations): $1,000,000. Products/Completed Operations Aggregate Limit: $1,000,000. Each Occurrence Limit: $1,000,000. Personal Injury & Advertising Injury Limit: $1,000,000.
AD.3 Business Auto Liability: covering any automobile, including hired and non-owned auto's	Minimum required limits: Bodily Injury Each Person: $1,000,000. Bodily Injury Each Accident: $1,000,000. Property Damage Each Accident: $1,000,000. Or, $1,000,000. combined bodily injury and property damage each accident limit for all of the above
AD.4 Commercial Umbrella Insurance Policy: or Excess Liability coverage meeting the same coverage requirements stated above for AD.1, AD.2, and AD.3	Occurrence Form, minimum required limits: $10,000,000. each occurrence $10,000,000. aggregate
AD.5 Continuing Completed Operations Liability Insurance. Contractor shall maintain during the term of the contract, and for a period of three years after completion of contract, commercial general liability (CGL) and commercial excess or umbrella liability insurance with a limit of not less than $11,000,000 combined limits per occurrence.	

28-107

AIA® Document A111™ – 1997

Standard Form of Agreement Between Owner and Contractor

where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the 10th day of May in the year 2008
(In words, indicate day, month and year)

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

Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

and the Contractor:
(Name, address and other information)

Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331

The Project is:
(Name and location)

Hickory Chase, Gate House

The Architect is:
(Name, address and other information)

Dorsky, Hodgson, Parrish, Yue
23240 Chagrin Boulevard, Suite 300
Cleveland, Ohio 44122

The Owner and Contractor agree as follows.

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

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America.

EXHIBIT 1-D

Init.
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User Notes: Columbus A111 Gate House
(3302614689)

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern. The form of the General Conditions of the Contract is attached hereto as Exhibit A; the Supplementary General Conditions are attached hereto as Exhibit B; the Drawings, Plans and Specifications for the Work are listed on Exhibit C attached hereto; the Contractor's Qualifications are attached hereto as Exhibit D; the Schedule of Values is attached hereto as Exhibit E; and the Insurance Addendum is attached hereto as Exhibit F.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. A general description of the Work is as follows:

Complete all Work associated with the Project in accordance with the Drawings and Specifications attached hereto as Exhibit C and the Qualifications/Scope of Work attached hereto as Exhibit D.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor acknowledges that Owner intends to hire a developer (hereinafter, the "Developer") to assist Owner in performing Owner's obligations under this Contract. At present, Owner intends to hire Erickson Retirement Communities, LLC as the Developer. Erickson Retirement Communities, LLC has an address of 701 Maiden Choice Lane, Baltimore, Maryland 21228, Attn: Michael A. Wagner, Executive Vice President. Owner reserves the right to remove or to replace Developer at any time and from time to time and may effect such removal or replacement by giving Contractor written notice of the name and address of the new Developer. All communications by Contractor to Owner shall be directed to Developer. Owner acknowledges and agrees that Developer is Owner's agent in connection with the execution, interpretation and performance of this Contract.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be no later than June 1, 2008.

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ~~days from the date of commencement, or as follows:~~ May 1, 2009.

As used in this Agreement and the Other Contract Documents, Substantial Completion shall mean: (1) with respect to the interior of residential units, that all Work has been completed, including final punchlist items, such that no

Init.

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User Notes: Columbus A111 Gate House

additional entry into such unit is required for completion of the Work, (ii) public spaces are substantially complete with only minor punchlist items remaining to be performed, (iii) Owner can utilize the Project for its intended purposes, and (iv) an unconditional certificate of occupancy has been issued.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

~~Portion of Work~~	~~Substantial Completion date~~

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

Time is of the essence in this Agreement. There is no allowance for weather days, and Contractor agrees to complete the Project by the dates identified above without any time extensions or extra costs allowed for weather related conditions, with the exception of extraordinary events which may be classified as "Acts of God". Such events may include floods, tornadoes, extreme snowfalls, etc. that affect a delay to the critical path of the schedule, either on or off the site. In such an event, the Completion Date shall be extended on a day for day basis for the effect of the incident.

No provisions for time extensions for delays resulting from work stoppages caused by contract labor negotiations are included in this Agreement. In such an event the Contractor and Owner mutually agree to work together to eliminate or minimize any such delays.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

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

§ 5.1.2 The Contractor's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

A fee of four percent (4%) of the cost of the Work, amounting to Four Thousand Seventy Seven Dollars ($4,077.00), is included in the Contract Sum.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed ($), One Hundred Six Thousand Eight Dollars ($106,008.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See Exhibit E attached hereto.

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§ 5.2.3 Unit prices, if any, are as follows:

See Exhibit E attached hereto. The Contract Sum includes a lump sum for all of the General Contractor's General Conditions in the amount of Five Thousand Three Hundred Eight Dollars ($5,308.00). Costs which would cause the lump sum for General Conditions to be exceeded shall be paid by Contractor without reimbursement by Owner.

Description	Units	Price ($ 0.00)

§ 5.2.4 Allowances, if any, are as follows
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)
Owner and Contractor acknowledge and agree that the Owner's Allowances (if any) set forth in the Schedule of Values shall only be released to Contractor upon written approval by Owner. Owner reserves the right prior to releasing any Owner's Allowance, to review and approve how Contractor proposes to expend the Owner's Allowance.

Allowance	Amount ($ 0.00)	Included items

§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

See Exhibit D attached hereto. The Contractor is required to provide a 100% Payment Bond and a 100% Performance Bond for the full value of the Contract Sum, which bonds shall be in form and content reasonably satisfactory to Owner. The cost of such bonds is included in the Guaranteed Maximum Price.

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

§ 6.4 If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining ~~agreements and, for personnel not covered by such~~ agreements, ~~such as sick leave, medical and health benefits, holidays, vacations and pensions,~~ provided such costs are based on wages and salaries included in the Cost of the Work under ~~Sections 7.2.1 through 7.2.3~~ Section 7.2.1.

§ 7.3 SUBCONTRACT COSTS

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

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

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

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

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

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ 7.5.3 ~~Costs of removal of debris from the site.~~

§ 7.5.4 ~~Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

§ 7.5.5 ~~That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.~~

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§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance ~~by the Owner~~ in writing by the Owner, which consent may be conditioned upon receipt by Owner of indicia of ownership of such materials by Owner, proof that such materials are not subject to any liens or other encumbrances, proof that such materials are covered by insurance, and such other requirements as Owner or any lender of all or any portion of the Project may require.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

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

§ 7.6.4 Fees of laboratories for tests required to be performed by Contractor by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 ~~Data processing costs related to the Work.~~

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

§ 7.6.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.~~

§ 7.6.9 ~~Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.~~

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document A201-~~1997~~ A201-1997, to the extent not caused by Contractor's fault or negligence.

§ 7.7.3 ~~Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.~~

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

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§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site ~~office, except as specifically provided in Sections 7.2.2 and 7.2.3 or as may be provided in Article 14~~ office.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as specifically provided in ~~Section 7.5.2~~ Article 7.

§ 8.1.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 8.1.7 Any cost not specifically and expressly described in Article 7.

§ 8.1.8 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase

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orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th (or earlier if the 25th is not a working day) day of a month, the Owner shall make payment to the Contractor not later than the ~~day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~ 20th day of the next month.

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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

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

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

.1 take ~~that~~ the lesser of (i) the Cost of the Work for completed work and (ii) the portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

.2 add that portion of the ~~Guaranteed Maximum Price~~ Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by ~~the Owner,~~ the Owner in accordance with the terms of Section 7.5.6, suitably stored off the site at a location agreed upon in writing;

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.3 add the Contractor's Fee, less retainage of ten percent (10%).The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its ~~completion;~~completion (Owner and Contractor agree that upon any distinct portion of the Work, as determined by Owner, reaching 50% completion (and provided such portion is on schedule and has been performed in accordance with the terms of the Contract Documents), the retainage for such portion of the Work shall be reduced to 5% and all subsequent Applications for Payment for such portion of the Work shall be subject to a 5% retainage);

.4 subtract the aggregate of previous payments made by the Owner;

.5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of ~~not less than ( ).~~ ten percent (10%), except that Subcontractors shall be subject to the same retainage as applied to Contractor's Applications for Payment pursuant to Paragraph 12.1.7 above. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

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

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Owner, or, if requested by Owner, the Architect.

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

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the ~~Architect~~ Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

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§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to ~~demand~~ request arbitration of the disputed amount without a further decision of the Architect. Such ~~demand~~ request for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to ~~demand~~ request arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the ~~Owner for convenience~~, Owner, as provided in Article 14 of AIA Document A201-1997. ~~However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

§ 13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

§ 13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

§ 13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

§ 13.2.3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner or the Contract may be terminated by Owner as provided in Article 14 of AIA Document ~~A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 and Section 6.4 of this Agreement~~ A201-1997. The Owner may terminate the contract at its convenience for any reason, at any time by giving Contractor written notice of such termination. Termination for default, if wrongfully made, shall be treated as a termination for convenience. In the event that the Contract is terminated for the convenience of the Owner, the Contractor shall be paid a pro-rata percentage of the Contract Sum equal to the percentage of Work completed by Contractor. In no event shall Contractor be entitled to receive payment for anticipated profit for unperformed Work.

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ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear no interest from the date payment is ~~due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is~~ located due.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:
(Name, address and other information.)

Erickson Retirement Communities, LLC
c/o Hickory Chase Development Office
4383 Davidson Road
Hilliard, Ohio 43026
Attention: Garrett Power, Development Director

§ 14.4 The Contractor's representative is:
(Name, address and other information.)

Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331
Attention: Steve Braun, President

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

§ 14.6 Other provisions:

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document ~~A201-1997,~~A201-1997, in the form attached hereto as Exhibit A.

§ 15.1.3 The Supplementary ~~and other Conditions of the Contract are those contained in the Project Manual dated —, and are as follows:~~Conditions of the Contract are attached hereto as Exhibit B.

Document	Title	Pages

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§ 15.1.4 The ~~Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows:~~Drawings and Specifications are those listed on Exhibit C attached hereto.

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

~~Section~~	~~Title~~	~~Pages~~

§ 15.1.5 ~~The Drawings are as follows, and are dated unless a different date is shown below:~~

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

~~Number~~	~~Title~~	~~Date~~

§ 15.1.6 ~~The Addenda, if any, are as follows:~~

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:
Contractor's Qualifications attached hereto as Exhibit D, the Schedule of Values attached hereto as Exhibit B, and the Insurance Addendum attached hereto as Exhibit F.

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

~~Type of insurance~~	~~Limit of liability ($ 0.00)~~

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

OWNER *(Signature)*

COLUMBUS CAMPUS, LLC
By: Erickson Retirement Communities, LLC, Member
(Printed name and title)

Michael A. Wagner, Executive Vice President

APPROVED AS TO LEGAL SUFFICIENCY GFD/LMS

CONTRACTOR *(Signature)*

BRAUN CONSTRUCTION GROUP, INC.
By: Steve Braun, President
(Printed name and title)

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT A
GENERAL CONDITIONS

AIA® Document A201™ – 1997

General Conditions of the Contract for Construction

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

THE OWNER:
(Name and address):
Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

THE ARCHITECT:
(Name and address):
Dorsky, Hodgson, Parrish, Yue
23240 Chagrin Boulevard, Suite 300
Cleveland, Ohio 44122

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

This document has been approved and endorsed by The Associated General Contractors of America

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). Architect may from time to time issue additional Drawings and Specifications to provide coordination and conforming details and otherwise issue additional Drawings and Specifications necessary to complete the Project (all such additional Drawings and Specifications are in this Agreement and in the Contract Documents referred to as "Additional Drawings and Specifications").

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Without in any way limiting the foregoing, Contractor shall provide and/or perform and the Work shall include (i) all materials, supplies, apparatus, appliances, implements, tools, equipment, sanitary facilities and all other facilities necessary in the performance of the Work (collectively, "Materials"), and (ii) all labor, supervision, transportation, light, power, water, utilities, storage, and all other services (collectively, "Services") required in the construction of and/or normally performed by contractor and subcontractors in connection with the construction of a project similar to the Work.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

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consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.4 Where a conflict exists within or between parts of the Contract Documents, or between the Contract Documents and applicable standards under codes or ordinances promulgated by governmental bodies having jurisdiction over the Project, the more stringent or higher quality requirements shall apply. Large-scaled Drawings shall control over smaller-scaled Drawings, figured dimensions on the Drawings shall control over scaled dimensions, and noted materials shall control over graphic representations. Where a conflict exists between the terms of the standard AIA General Conditions Form No. A-201, and the amendments made thereto in this document, the amendments shall control. Further, where a conflict exists between the terms and conditions of the Agreement between Owner and Contractor and these General Conditions, the Agreement between Owner and Contractor shall control.

§ 1.2.5 Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that reference to the Drawings is made unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as reviewed," "as accepted," "as approved," "as selected" or words of similar import are used, it shall be understood that the direction, requirement, permission, authorization, review, acceptance, approval, selection of the Architect and/or Owner is intended, unless otherwise stated.

§ 1.2.6 As used in the Contract Documents, "provide" shall be understood to mean "provide complete in place," that is, to furnish, install, fabricate, deliver, install, and erect, including all labor, materials, equipment, apparatus, appurtenances, and expenses necessary to complete in place, ready for operation and use. The use of the term "shall" in the Contract Documents means as prescribed by the Contract Documents, the use of the term "as necessary" in the Contract Documents means all action essential to the completion of the Work. The Specifications are of the abbreviated type and may include incomplete sentences. Omissions of phrases such as "the Contractor shall" or "conforming to the requirements" are intentional in order to save space, but such limited words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings. Words in the singular shall include the plural however applicable, unless the context otherwise indicates.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

§ 1.4.1 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 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

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

§ 1.6.1 ~~The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described.~~ All Drawings, Plans and Specifications, renderings and models prepared with respect to the

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Project are and shall be the property of Owner and may not be used by any person, party or entity on any other project unless expressly authorized in advance by Owner in writing. The Contractor may retain one record ~~set.~~ set of Drawings, Specifications and other documents prepared by the Architect. 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 or the Architect's ~~consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights.~~ consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the ~~Architect,~~ Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, 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, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' copyrights or other reserved rights.~~ Owner's copyrights or other reserved rights.

§ 1.6.2 All Shop Drawings prepared by Contractor exclusively for the Work shall be the property of the Owner and may not be used by any person, party or entity unless expressly authorized in advance by Owner in writing.

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. Owner intends to hire a development company to assist Owner in the development of the Project (the "Developer"). The initial Developer shall be Erickson Retirement Communities, LLC, having an address at 701 Maiden Choice Lane, Baltimore, Maryland 21228, Attn: Michael A. Wagner. Owner hereby reserves the right to replace and appoint Developers from time to time throughout the term of the Project, which right may be exercised by Owner giving Contractor written notice of the name and address of the newly appointed Developer. Throughout the Contract Documents, wherever an obligation is imposed on Owner (other than the obligation to pay money), Owner may, at its option, assign such obligation to Developer.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. ~~Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, 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.

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

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which 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, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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 term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect may require.

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§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the ~~Architect,~~ Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly ~~to the Architect~~ to the Architect and Owner at once. Notwithstanding the foregoing, Contractor shall not be obligated to perform additional studies or tests of field conditions, except as expressly set forth in the Contract Documents.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 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.~~ accepts the relationship of trust and confidence established between the Contractor and the Owner by the Contract Documents. Contractor covenants with the Owner (i) to furnish his best skill and judgment and to cooperate with the Architect in furthering the interest of the Owner; (ii) to furnish efficient business administration and superintendence; (iii) to use his best efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best way and in the most expeditious and economic manner consistent with the interests of the Owner. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. ~~If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.~~

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

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

§ 3.3.4 At least once a month a meeting on the site involving Contractor and Owner shall be held to review progress and coordinate work schedules for the weeks ahead. Contractor shall have in attendance at these meetings a job superintendent or another person authorized to make decisions for the Contractor.

§ 3.3.5 Contractor shall check all Materials and Services entering into the Work, including but not limited to quality and quantity, and shall keep full and detailed records and accounts in accordance with industry standards, including but not limited to said records and accounts as may be necessary to determine the Cost of the Work.

§ 3.3.6 Contractor shall keep current a detailed Schedule of Values of the various portions of the Work, divided so as to identify the portion of the Work to be provided by each Subcontractor and to facilitate payments to Subcontractors, prepared in a format and with such detail as is acceptable to and approved by Owner and Architect. The Schedule of Values shall include a detailed statement of Project overhead costs.

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§ 3.3.7 As general contractor for the Project, Contractor shall use reasonable efforts to accomplish the following:

(a) the avoidance of conflicts among the various trades;

(b) the efficient organization of construction activities, including location and size of activities, location and size of storage areas, staging areas and field offices, traffic patterns, delivery schedules, hoisting, safety and the like; and

(c) efficient scheduling of the Work to be performed by Subcontractors to avoid inefficient or unsafe performance of the Work performed and to be performed by all Subcontractors.

§ 3.3.8 Contractor shall prepare a Manual describing the methods of material-handling and the methods for the movement of personnel that are to be used on the Site. The Contractor shall ensure that these methods are understood and followed by all subcontractors in the construction of the Project.

§ 3.3.9 Contractor shall prepare a written safety program to govern all activity on the Site.

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.5.2 The Contractor shall and does hereby assign to the Owner the benefits of any warranties and guarantees of all Subcontractors, Material Suppliers and Manufacturers, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the Contract Documents. Notwithstanding the foregoing assignment, prior to final acceptance of the Work by Owner, Contractor shall deliver to Owner three (3) bound volumes of all guarantees and warranties on Materials furnished by all manufacturers and suppliers to Contractor and all Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, ~~the Contractor~~ Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and

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inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when ~~bids are received or negotiations concluded~~ the Contract is executed and delivered. Notwithstanding the foregoing, Contractor shall not be obligated to pay for impact fees, sewer connection or water tap fees, or other similar utility fees.

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

§ 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.~~ with Applicable Laws. 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.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to ~~laws, statutes, ordinances, building codes, and rules and regulations~~ Applicable Laws without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to ~~correction~~ correction, without an increase in the Contract Sum and such costs shall not be a Cost of the Work.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.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 in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding~~ Contractor shall employ all competent staff necessary for the proper execution of the Work, and shall see that members of such staff shall be in attendance at the site during the progress of the Work as may be necessary or appropriate under the circumstances. Such staff shall be under the direction of a project manager (who will devote, if necessary, all of his time and efforts to the Project) satisfactory to the Owner who shall not be changed without prior written consent of Owner unless such project manager is no longer employed by Contractor. The project manager shall represent the Contractor and all communications given to the project manager shall be as binding on the Contractor as if given to the Contractor. ~~Important communications shall be confirmed in writing. Other communications shall be similarly confirmed~~ Communications will be confirmed on written request in each case. The project staff shall consist of persons capable of filling such positions and/or performing such functions that the Owner and the Contractor may reasonably require under the circumstances, although a single person may perform more than one function if he or she is able to do so capably and efficiently.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, ~~promptly prior to or immediately~~ after being awarded the Contract, shall prepare and submit for the Owner's ~~and Architect's information a Contractor's construction schedule for the Work. The schedule~~ shall information and approval, a schedule (as same may be revised from time to time, herein called the "Schedule") for all parts of the Work. The Schedule shall initially be an estimate of the time requirement for all of the Work, incorporating such information as design services, Owner related activity, governmental approvals, and the like. The Contractor and each major Subcontractor shall cooperate fully and provide detailed information as required in order to achieve the most logical Schedule for the Work that will be acceptable to Owner and Contractor. The Schedule shall (i) not exceed time limits current under the Contract Documents, (ii) shall be revised by Contractor at appropriate intervals as required by the conditions of the Work and Project, subject to Owner's approval, (iii) shall be related to the entire Project to the extent required by the Contract Documents, and (iv) shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 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~~ Schedule and allows the Architect reasonable time to review submittals.

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

§ 3.10.4 From the initially approved Schedule and other information developed, the Contractor, in cooperation with the Owner, Architect, and major Subcontractors, will monitor, and shall revise and update monthly, the Schedule. The Schedule shall be further revised or expanded to provide more detailed information concerning the time requirements for all parts of the Work and other elements of the Project as such information is developed and approved by the Owner. Contractor and each Subcontractor, materialman, and supplier shall provide revised data in order to assist the Contractor in determining the most appropriate and acceptable Schedule and acceleration opportunities for the Work and to update the Schedule, in order to assure that the Work shall be completed on or before the Substantial Completion Date set forth in the Agreement.

§ 3.10.5 The Schedule shall set out, in addition to the elements set forth in Paragraphs 3.10.1 and 3.10.4 the following:

(a) a schedule of production of drawings, specifications and other documents required for the award of contracts for construction (providing for appropriate periods of review, which periods shall not exceed 10 days where practicable);

(b) a listing of all long-lead-time items and a schedule for the acquisition and delivery of such items;

(c) a detailed construction progress schedule showing the different stages of progress required in the Work;

(d) a schedule for the processing of shop drawings;

(e) a schedule for the acquisition and installation of all built-in furnishings, fixtures and equipment to be provided under this Agreement or to be provided by Owner and installed by Contractor; and

(f) a detailed schedule of the periods during which each Subcontractor's Work will be performed; and

(g) in the event that Contractor falls at least one week behind schedule, a detailed schedule setting forth all actions to be taken by the Contractor to get the Work back on schedule for completion within the Contract Time.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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~~submittal to the Owner upon completion of the Work~~ Owner. Contractor shall advise Owner on a current basis of all material changes in the Work made during construction.

§ 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.~~ Contractor shall prepare, or cause to be prepared as part of the Work, all shop drawings and other detailed drawings not made a part of the Drawings or Specifications or Additional Drawings and Specifications and shall submit same to Architect for approval. Shop Drawings establish actual detail of manufactured and fabricated items, indicate proper relation to adjoining Work, amplify design details or mechanical and electrical equipment in proper relation to physical spaces, and incorporate minor changes or design and construction to suit actual conditions.

.1 fabricated items are items specifically assembled or made out of selected materials to individual design requirements.

.2 manufactured items are standard items usually mass assembled.

§ 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 which illustrate materials, equipment texture, finish, color, technique 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 Owner and Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings, Product Data, and Samples. Contractor shall review shop drawings, product data, and samples as required in this Section 3.12.6, prior to submittal to Architect. Submittals shall be stamped by Contractor or through some other means to clearly indicate to Architect that submittals have been reviewed and approved by the Contractor.

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

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

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or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval or review thereof.

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

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

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Owner prior to using any portion of the Site.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost ~~thereof~~ thereof, including overhead costs, shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

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

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§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by ~~law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall~~ law, the Contractor shall defend, indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and agents and employees of any of them~~ Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), ~~but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable,~~ regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 Contractor agrees to forward to Owner within 45 days following the first and third fiscal quarters, unaudited financial statements of Contractor for such fiscal quarter, including income statements, cash flow and balance sheets, certified as true, accurate and complete by an authorized officer of Contractor.

§ 3.18.4 Contractor agrees to forward to Owner within 120 days after the end of each year, annual audited financial statements of the Contractor for such fiscal year prepared in accordance with generally accepted accounting principles consistently applied, accompanied by a report of an independent public account approved by Owner.

§ 3.18.5 Owner, at Owner's cost and expense, shall be entitled upon ten (10) days advance notice to audit Contractor's performance on the Project, and in connection therewith Contractor agrees to provide to Owner at Contractor's principal place of business, all books, records, files and other data necessary to conduct such audit.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner ~~shall employ a new Architect against whom the Contractor has no reasonable objection and~~ may employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

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§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect and Developer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, and Developer will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work 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~~ neither the Architect nor the Developer will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Architect, the Owner and the Developer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The ~~Architect~~ Architect, the Owner and the Developer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The Architect~~ However, nothing contained in this Subsection is intended to relieve the Architect of its responsibilities or liabilities under the Contract Documents or its contract with the Owner. The Architect, the Owner and the Developer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract ~~Documents~~ Documents, and as required by Applicable Laws. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. ~~Review~~ Except as may be required by Applicable Laws, 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

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under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. However, to the extent such submittals must be reviewed or approved by a licensed architect pursuant to Applicable Laws, the Architect shall provide all services necessary to satisfy such Applicable Laws.

§ 4.2.8 ~~The~~ Following consultation with Owner, the Architect will prepare ~~Change Orders and~~ Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect ~~and Developer~~ will ~~at such times~~ Architect and Developer deem appropriate and also upon request of Owner, conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

§ 4.2.11 The Architect will interpret and ~~decide~~ make recommendations on 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. If no agreement is made concerning the time within which ~~interpretations~~ recommendations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such ~~interpretations until 15~~ recommendations until ten (10) days after written request is made for them.

§ 4.2.12 ~~Interpretations and decisions~~ Recommendations 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 initial decisions~~, recommendations, 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~~ recommendations so rendered in good faith.

§ 4.2.13 The Architect's ~~decisions~~ recommendations on matters relating to aesthetic effect will be final only if consistent with the intent expressed in the Contract ~~Documents~~ Documents and will have no adverse effect on the Project budget or the Schedule.

§ 4.3 CLAIMS AND DISPUTES

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

§ 4.3.2 Time Limits on Claims. Claims by ~~either party~~ Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the

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Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment ~~shall~~ may be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice to Architect and Owner as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be ~~given~~ given to Architect and Owner. 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.

~~§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.~~

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

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

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

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§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, ~~shall~~ may be referred initially to the Architect for decision. ~~An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~ Claims submitted to the Architect shall be solely for the purpose of obtaining the Architect's recommendation as to the resolution of the Claim.

§ 4.4.2 The Architect will review Claims submitted to Architect and within ten days of the receipt of the 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. ~~Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.~~

§ 4.4.5 The Architect will ~~approve or reject~~ make recommendations on Claims by written decision, which shall state the reasons ~~therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.~~ therefor.

§ 4.4.6 ~~When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.~~

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 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 prior to resolution of the Claim by the Architect, by mediation or by arbitration.~~ deadlines.

~~§ 4.5 MEDIATION~~

~~§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.~~

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~~§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~§ 4.5.3 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.~~

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, except ~~Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5~~ may, upon Owner's and Contractor's consent, be subject to arbitration.

§ 4.6.2 Claims ~~not resolved by mediation shall be decided~~ to be resolved by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The ~~demand~~ request for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 4.6.3 A ~~demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases~~ request for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of ~~limitations as determined pursuant to Section 13.7~~ limitations.

§ 4.6.4 Limitation on Consolidation or Joinder. ~~No~~ At Owner's option any and all arbitration arising out of or relating to ~~the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof~~ any of the Contract Documents or any breach thereof shall include by consolidation, joinder or joint filing, any additional person or entity not a party to the Owner-Contractor Agreement to the extent necessary for the final resolution of the matter in controversy.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of ~~demand~~ request for arbitration must assert in the ~~demand~~ request all Claims then known to that party on which arbitration is ~~permitted to be demanded~~ requested.

§ 4.6.6 Judgment on Final Award. ~~The~~ If the parties agree to arbitration the award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect will promptly~~ Owner will reply to the Contractor in writing stating whether or not the ~~Owner~~ Owner, Developer or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner ~~or Architect~~ to reply ~~promptly~~ 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~~ Owner, Developer 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. The Contractor shall contract with each and every Subcontractor solely in the name and on behalf of the Contractor, and no approval by Owner of any such Subcontract shall be construed as creating any contractual relationship between any Subcontractor and Owner.

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

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

§ 5.2.5 All Subcontracts and purchase agreements shall specifically provide that any and all guarantees or warranties of or from the Subcontractor or Supplier for the benefit of Contractor shall also be made to, and for the benefit of, Owner and otherwise comply with the provisions hereof.

§ 5.2.6 All Subcontracts shall contain provisions requiring the Subcontractor thereunder to perform its portion of the Work in accordance with the Contract Documents and shall require the Subcontractor to adhere to all Applicable Laws and applicable provisions contained in this Agreement, the General Conditions (which also shall be expressly made a part of each Subcontract) and the other Contract Documents.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 Each subcontractor shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-

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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.

§ 5.3.2 Upon request of Owner, Contractor will cause each Subcontractor and Sub-subcontractor to execute and deliver to Owner a waiver or waivers of mechanic's and/or materialmen's liens with respect to all Work which has been performed and paid for under such Subcontract or Sub-subcontract, or, to the extent permitted by law, to be performed. Such waiver or waivers shall be in form and substance satisfactory to Owner.

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract ~~by the Owner for cause pursuant to Section 14.2~~ and only for those subcontract agreements which 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.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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

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

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations~~

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~~and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the ~~Contractor,~~ Contractor and 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~~ Owner will equitably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

.1 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.

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§ 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,~~ or Developer, 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 7.3.6.~~

Owner shall request additive and deductive changes in the Work by giving Contractor a written "Additive Change Order Request" or "Deductive Change Order Request," as the case may be, through the Architect, setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Contractor shall forthwith (but in no event later than twenty-one (21) days after receipt of the Change Order Request) return to Owner and Architect two (2) completed copies of its "Additive Change Order Proposal" or "Deductive Change Order Proposal," as the case may be, setting forth in detail, with a suitable breakdown by trades and work classifications Contractor's estimate of the changes in the Contract Sum (together with the appropriate data acceptable to Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and a proposed adjustment of the Contract Time resulting from such Change Order Request. If Owner approves in writing Contractor's Additive Change Order Proposal or Deductive Change Order Proposal as the case may be, Owner will issue and Contractor will execute and accept a "Change Order" and the Contract Sum and the applicable Turnover Dates and the Date of Final Completion shall be adjusted as set forth in such Change Order. If Contractor's Additive Change Order Proposal is not agreed to by Owner and Owner nevertheless issues a "Construction Change Directive" directing Contractor to perform the requested change to the Work, Contractor shall proceed with the Work authorized by same and the increase in the Contract Sum as a result of such change in the Work shall be equal to (x) the actual cost of such change in the Work (which actual costs shall include only those costs permitted under Article 7 of the Agreement if the Agreement is in the form where the basis for payment is the Cost of the Work plus a fee) and (y) a Contractor's Fee as stated in, and subject to any limitations set forth in, the Agreement Between Owner and Contractor. After the cost of such change in the Work is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon cost. Contractor agrees to deliver to Owner within twenty (20) days after the completion of the Work covered by Construction Change Directive invoices, statements, payroll data and other evidence of such actual cost of the change in the Work that Owner may reasonably require. If Contractor's Deductive Change Order Proposal is not agreed to by Owner and Owner nevertheless directs Contractor to make and perform changes in the Work pursuant to a Construction Change Directive, Contractor shall proceed with the Work as changed by such Construction Change Directive and the decrease in the Contract Sum as a result of such change in the Work shall be equal to (a) the actual reduction in cost of the Work resulting from such change in the Work and (b) a Contractor's Fee as stated in, and subject to any limitations set forth in the Agreement Between Owner and Contractor. After the decrease in the Contract Sum is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon decrease. Contractor agrees to deliver to Owner within twenty (20) days after the Completion of the Work covered by such Construction Change Directive such evidence of decrease in the Cost of the Work resulting from such directive as Owner may reasonably require. Agreement on any Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to the terms of this Agreement. When both additions and credits covering related Work or substitutions are involved in any one change, the

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allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change. For purposes of this Paragraph 7.3.3, Contractor shall keep at the Project site complete and accurate financial records of all costs incurred in performing any Construction Change Directive, and shall make these records available to Owner and Architect for audit and copying. No amount under this Paragraph 7.3.3 shall be payable by Owner unless such records are kept and until such records are made available to Owner and Architect.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and 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.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. 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 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which 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.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

§ 7.3.9 When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract ~~Time~~ Time; not involving a change in the scope, quality or quantity of the Work; and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order delivered to Owner and Contractor and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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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 or the Schedule approved by Owner for Substantial Completion of the Work.

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the ~~Architect~~ Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the ~~Architect may determine.~~ Owner may determine. However, pursuant to Section 4.3 of the Contract, Contractor shall not be entitled to any allowances or extensions of time for delays caused by weather or labor disputes. Should any workers performing work covered by this contract engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Owner, may, at its option and without prejudice to any other remedies Owner may have, after forty-eight (48) hours written notice to Contractor, contract with or provide any such labor on its own and deduct the cost thereof from any monies then due or thereafter to become due Contractor. Further, Owner may, at its option, without prejudice to any other remedies it may have, terminate the employment of Contractor for the Work under this Contract and shall have the right to enter upon the premises and take possession for the purpose of completing the Work hereunder of all Contractor's materials, tools and equipment thereon and to finish the Work either with its own employees or other contractors. Contractor shall remain liable for any damages which Owner incurs as a result of any such stoppage of work.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.~~ Any claim for extension of time shall be made in writing to the Owner not more than twenty-one (21) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, one notice shall be made within ten (10) days of commencement of the delay and the claim for actual delay days incurred shall be made within ten (10) days after the termination of the delay. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Claims for extension of time shall be stated in whole or half days only.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ In the event Contractor is delayed at any time in the progress of the Work (i) by labor disputes, fire, unusual delays in transportation, unavoidable casualties or any other causes not solely the responsibility of Owner; or (ii) cumulatively for thirty (30) days or less by any other causes, extension of time shall be Contractor's sole remedy for any such delay. In the event Contract is delayed cumulatively by more than thirty

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(30) days in the progress of the Work by any causes that are solely the responsibility of Owner and the Contractor makes a timely claim, then the Contract Time and the Contract Sum shall be adjusted by Change Order in accordance with Article 7. This provision is intended to be, and shall be construed as consistent with and not in conflict with, Ohio Revised Code § 4113.62, to the fullest extent permitted.

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.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the ~~Architect,~~ Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, ~~but not yet included in Change Orders~~ or by Change Orders. In no event may any Application for Payment include sums purportedly payable due to oral modifications to the Contract Sum or the Work, the parties agreeing that all such changes must be in writing, and signed by Owner.

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

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

§ 9.3.3 The Contractor warrants that title to all ~~Work~~ Work, including all materials and equipment, covered by an Application for Payment will pass to the Owner no later than the time ~~of payment~~ of payment, free and clear of liens and encumbrances other than those created by Owner. 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,~~ shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 With each Application for Payment, the Contractor shall present (i) written evidence of payment, satisfactory to the Owner, of any and all claims of Subcontractors and (ii) releases and waivers for all constitutional, statutory and contractual liens, including but not limited to mechanics and materialmen's liens, from all Subcontractors, but only to the extent of all prior payments made by Owner to Contractor on account of Work performed by such Subcontractor. All such releases and waivers shall be in form and substance satisfactory to Owner and shall be signed and acknowledged by the payee and (iii) such other matters as are required in Article 12

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of the Contract to which these conditions are attached. In addition, in each Application for Payment Contractor shall certify to Owner that such Application for Payment represents a just estimate of cost reimbursable to Contractor under the terms of the Contract Documents and shall also certify in a form acceptable to the Owner that:

"There are no known mechanics or materialmen's liens outstanding at the date of the Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application for Payment, and that, except for such bills not paid so included, there is no known basis for the filing of any mechanic's or materialmen's liens on the Work."

For any payment received by the Contractor, the Contractor shall also deliver to the Owner a release and waiver of the Contractor's constitutional statutory and contractual liens, including but not limited to mechanics and materialmen's lien to the extent of such payment so received, and such releases shall be signed, sworn to and acknowledged by Contractor, and shall be in a form acceptable to Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

.1 defective Work not remedied;

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

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, ~~materials or equipment;~~ materials, equipment, or services or for any other items for which payment has been made to Contractor;

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

.5 damage to the Owner or another contractor;

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

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

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for ~~Payment,~~ Payment in an amount approved by Owner, 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 promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. The Owner may, however, at its option, at any time after (i) Owner has given Contractor ten (10) days written notice of Contractor's default under the Contract Documents or under the applicable Subcontract; or (ii) a lien is filed by any Subcontractor or Sub-subcontractor against all or any portion of the Project and such lien is not released or bonded to the satisfaction of Owner within five (5) days after same has been filed, make payments directly to any Subcontractor or Sub-subcontractor and all such payment so made shall be deemed to be made directly to Contractor on account of the Contract Sum.

§ 9.6.5 Payment to material 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~~ Documents, or be construed or relied upon as any indication that the Work or Materials are in accordance with the Contract Documents, or that the amounts paid or certified therefore represent the correct cost or value of the Work or Materials or that such amount is in fact or law due to Contractor.

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

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. ~~The~~ If applicable, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Except as may be provided otherwise in the Agreement, Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner or subsequent contractor can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. In connection therewith, Contractor shall provide to Owner for Owner's written approval a schedule for completion of all such items, which schedule shall specify the number of personnel that will be dedicated each day to completion of such portion of the Work (the "Punchlist Schedule"). Contractor shall also designate a supervisor whose sole responsibility shall be to perform and complete such portion of the Work in accordance with the approved Punchlist Schedule. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the 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. All such additional items shall be incorporated by Contractor into the Punchlist Schedule, with no extension of time. 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 which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any ~~stage when such portion is designated by separate agreement with the Contractor,~~ stage, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the ~~Work.~~ Work, if required. 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.

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§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment and~~ payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner.~~ by the Owner, and (6) any other items required by the Contract Documents to be delivered by Contractor. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

~~.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~

~~.2 failure of the Work to comply with the requirements of the Contract Documents; or~~

~~.3 terms of special warranties required by the Contract Documents.~~

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

.1 employees on the Work and other persons who may be affected thereby;

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

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

.4 the Work of the Owner or the other contractors.

§ 10.2.2 The Contractor shall give notices and comply with ~~applicable laws, ordinances, rules, regulations and lawful orders of public authorities~~ Applicable Laws and state and federal regulations bearing on safety of persons or property or their protection from damage, injury ~~or loss~~ or loss and shall hold the Owner, Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their agents harmless from and against any fines or penalties levied in connection with the failure of Contractor to give such notices or to comply with any such Applicable Laws and state and federal regulations.

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

10.2.3.1 Contractor shall maintain exit doors and provide acceptable exitways from any building or buildings, shall not block or lock exit doors or in any manner prevent egress from exits, shall keep exitways through any building or buildings clear of materials and shall level surfaces to prevent accidents in case of egress from exits.

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

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

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

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.2.8 The Contractor shall employ such reasonable and customary practices as are necessary to protect all materials, equipment, completed and partially completed Work and all merchandise stored therein from loss and damage, including theft or damage by weather and, if necessary, shall provide suitable shelter therefor. The Contractor shall correct at its own expense any damage or disfigurement to work or property (whether or not located on the site) resulting from the fault, neglect or omission of the Contractor, any Subcontractor, any Sub-subcontractor or other person employed or hired by any of them.

§ 10.2.9 The Contractor shall take all reasonable precautions to keep the site free of safety hazards and shall comply with all Applicable Laws and insurance requirements relating to injury to persons and property on or about the site or any other location where any of the Work is performed, including but not limited to the regulations and directives of the federal and state Occupational Safety and Health Administrations and other governmental authorities having jurisdiction over the Project.

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§ 10.2.10 The Contractor shall on a daily basis keep the site free from any dangerous clutter or debris attributable to the Work and shall keep the site reasonably clean and orderly at all times in accordance with the nature of the Work. The Contractor shall clean up the site in a thorough and workmanlike manner to the satisfaction of the Owner at the completion of the Work.

§ 10.2.11 The Contractor shall be responsible for the security of the Work, the site and all Materials stored there or at any other location by the Contractor with the consent of Owner. The Contractor shall be responsible for all losses and expenses incurred by reason of failure to maintain reasonable security at the site or at the location where Materials are stored, and such expenses incurred shall not increase the Contract Sum. The Contractor shall comply with all reasonable security requirements of the Owner.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to 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. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

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

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the ~~Contractor unless such materials or substances were required by the Contract Documents.~~ Contractor.

§ 10.5 If, without negligence ~~on the part of the Contractor,~~ or misconduct on the part of the Contractor or the Contractor's employees, subcontractors, sub-subcontractors, agents, invitees or guests, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 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 Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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§ 11.1.1 The Contractor shall maintain throughout the term of the Agreement, and in some instances beyond the term of this Agreement, insurance of the types and in the minimum amounts set forth in this section 11 and on the Insurance Addendum.

§ 11.1.2 Insurance Carriers must be licensed to do business in all states applicable under the terms and scope of this Agreement, have an A.M. Best Company rating of not less than A-VI, and must be otherwise acceptable to Owner.

§ 11.1.3 If requested by Owner, Contractor shall provide certified copies of all such policies to Owner within 10 days of such request.

§ 11.1.4 Contractor must immediately notify Owner of any reduction or restriction in the required insurance regardless of whether it takes place prior to, during, or subsequent to, the term of this Agreement, and/or in the event the insurer notifies the Contractor of its intent to non-renew coverage. "Reduction of coverage" does not encompass depletion of insurance limit aggregates unless the current policy is or becomes depleted by 75% or more.

§ 11.1.5 Certificates of insurance, copies of additional insured endorsements from applicable insurance policies, and other required documentation, signed by a duly authorized agent of each insurance company shown and be otherwise acceptable to Owner, shall be filed with the Owner prior to the commencement of the Contractor's Work, and within ten (10) days of the expiration of any insurance policy required herein.

§ 11.1.6 The Owner, Developer, their parent and subsidiary companies, Hickory Chase, Inc., and their respective members, partners, directors, officers, employees, and agents are to be included as additional insureds with regard to all coverage obtained by the Contractor under Commercial General Liability, Automobile Liability, and the Umbrella/Excess insurance described on the Addendum. To the extent Contractor has insurance at levels greater than that set forth in the Addendum, the parties set forth herein shall be listed as additional insureds at such higher levels. The additional insured coverage is to be provided one of the following coverage forms: ISO Form CG2010 11-85; ISO Form CG2026; a combination of forms ISO Form CG2010 of a later version and CG2037; or other insurance form equivalent in coverage. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.7 Insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to indemnities and/or additional insureds under this Agreement. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.8 All policies are to be endorsed to provide for 30-day notice of cancellation or reduction of coverage to Owner. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.9 No payments shall be made to Contractor until satisfactory documentation as required herein is received and accepted by Owner.

§ 11.1.10 Approval of any insurance by Owner shall not relieve or decrease the liability of the Contractor. The Owner does not in any way represent that the insurance or limits of liability specified above are sufficient or adequate to protect the interests or liability of the Contractor and are only minimums.

§ 11.1.11 All required insurance policies shall contain a waiver of subrogation by the insurance carrier in favor of Owner.

§ 11.1.12 Self-insured retentions (deductibles) shall not be more than $10,000.

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

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.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;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

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

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing 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. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE

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~~§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

~~§ 11.4.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance 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 in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

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

~~§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.4.2 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.~~

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

BUILDER'S RISK COVERAGE

§ 11.4.11 The Owner shall purchase and maintain Builder's Risk Coverage protecting buildings and building materials against risks of direct physical loss or damage. Coverage will include the perils of fire, extended coverage,

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theft, vandalism, malicious mischief, collapse, flood and earthquake. Coverage will be applicable to property destined to become part of the building stored off-site and during transit, debris removal, and demolition occasioned by enforcement of any building, zoning, or land use ordinance or law. This insurance shall include the interests of the Owner, Contractor, Subcontractors and lower-tier subcontractors.

§ 11.4.12 This insurance will not include coverage for clothing of workers, tools, equipment, or property of a similar kind which will not become a permanent part of the building or structure. Contractor shall not be liable or responsible for any loss or damage to the items excluded. Coverage for transit, storage away from the project site, flood, earthquake, debris removal, and demolition have sub-limits or are otherwise limited by policy conditions. The Contractor, Subcontractors, and their lower-tier subcontractors shall hold harmless, indemnify, and defend Owner, its parent company, Hickory Chase, Inc., employees, members, directors, and agents from claims of damage or loss to such property excluded or limited.

§ 11.4.13 Coverage for transit and storage away from project site is limited to $500,000 per occurrence. For additional coverage, Owner has the option to report, obtain approval for, and pay additional cost for insurance under Contractor's program or obtain additional insurance elsewhere.

§ 11.4.14 Payments by the insurer for all losses covered under the Builder's Risk policy will be made to Owner, for the interest of all parties, subject to the requirements of any applicable mortgagee clause. Contractor shall pay such Subcontractor a just share of any insurance monies received by Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to lower-tier subcontractors in a similar manner.

§ 11.4.15 The Builder's Risk Insurance will be placed with a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. Such property insurance shall be maintained by the Owner, unless otherwise provided in the Agreement, or agreed in writing by the Contractor.

~~§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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~~§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. 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.~~

~~§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

~~§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising ~~thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract~~ thereunder, including, if requested by Owner, bonds for any Subcontractors designated by Owner. The costs of any bonds required to be delivered and not stipulated in the bidding requirements or other Contract Documents shall be a reimbursable expense of Contractor or any designated Subcontractor.

§ 11.5.2 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.

§ 11.5.3 It shall be the responsibility of the Contractor not to violate nor knowingly permit to be violated any conditions of the policies required hereunder, and it shall be the Contractor's duty and responsibility to impose upon each Subcontractor and have each Subcontractor impose upon each Sub-subcontractor the same responsibilities and obligations imposed upon the Contractor under the insurance provisions provided for herein.

§ 11.5.4 Contractor shall require each Subcontractor to provide the insurance coverage as stated in Paragraph 11.1.1 above.

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

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§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. If, within one year after the Date of Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any special warranty required by the Contract Documents, any of the Materials included in the Work are found to be defective or not in accordance with the Contract Documents, the Contractor shall correct same promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given Contractor an express written acceptance of such defective conditions. Contractor shall correct any defects in the Work or damage to other property caused by defects in the Work or the repairing of such defects with a minimum of inconvenience to Owner and other occupants of the Project and at times least disruptive to the operation or construction of the Project. Notwithstanding anything to the contrary contained herein, Contractor's obligations contained in this Paragraph 12.2.2.2 shall be in addition to all other obligations of Contractor contained in the Contract Documents in respect of warranties or correction of defects in Work.

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which 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 which the Contractor might have 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.

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

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.1.2 To the extent permitted by law, the Contractor and all Subcontractors (and each of their respective subcontractors and suppliers) are hereby subordinate to any and all statutory, constitutional and contractual liens, security interests and right each may now or in the future may have against the Project or any portion thereof to the liens, security interests, and rights of any lender having a lien against all or any portion of the Project, from time to time. Contractor and all subcontractors agree to execute and deliver to Owner, such documents as may be requested by Owner to acknowledge such subordination.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party~~ Contractor shall not assign the Contract in whole or in part without the prior written consent of the Owner. In the event Contractor shall assign the Contract in whole or in part, Contractor shall nevertheless remain legally responsible for all obligations ~~under the Contract~~ of "Contractor" under the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to ~~an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents.~~ any lender or lenders providing construction financing for all or any portion of the Project. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 ~~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.~~ All notices, requests, demands, and other communications hereunder shall be in writing except as expressly provided otherwise, and shall be personally delivered, or mailed certified or registered mail, postage prepaid, return receipt requested, to the party to which directed at the address stated in the Contract Documents and shall be deemed to have been given on the date of actual delivery thereof.

§ 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, Developer, 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 in writing.

§ 13.4.3 Owner and Contractor recognize that time is of the essence of this Contract and the Owner will suffer financial loss if the Work is not substantially completed in accordance with Section 4.2 of the Agreement. Owner and Contractor also recognize the delays, expense and difficulties involved in proving the actual losses suffered by Owner if the Work is not completed on time. Accordingly, in lieu of requiring such proof, Owner and Contractor agree that as liquidated damages for such delay (but not as a penalty), Contractor shall pay to Owner Ten Thousand Dollars ($10,000.00) for each day that expires beginning seven (7) days after the time specified in Section 4.2 of the Agreement for substantial completion of all or any portion of the Work, which sum is acknowledged and agreed to

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be a fair and reasonable estimate of the actual damages likely to be suffered by Owner in the event of a delay in substantial completion of the Work. There will be no claim for consequential damages in excess of the $10,000 per day liquidated damages. In the event that this Subsection 13.4.3 shall be deemed to be a penalty or shall otherwise be unenforceable, Owner and Contractor acknowledge and agree that Owner shall be entitled to all rights and remedies available at law or in equity arising due to the Contractor's failure to complete the Work in accordance with the time specified in the Agreement. Contractor and Owner acknowledge and agree that the liquidated damages provided for in this subsection do not preclude Owner from pursuing damages against Contractor for other potential damages suffered by Owner, including, but not limited to, damages incurred to fix non-conforming Work, or for completing the Work.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. ~~Unless otherwise provided,~~ time. To the extent permitted by Applicable Laws, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

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

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

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

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

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

§ 13.5.7 To the extent that Contractor is prohibited from performing, paying for or arranging for tests or studies pursuant to Applicable Laws, Owner shall be primarily responsible for performing such activities.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear ~~interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ no interest.

§ 13.8 In case any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in the Contract Documents shall not in any way be affected or impaired thereby.

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§ 13.9 Notwithstanding any other provision or inference to the contrary herein or in the Contract Documents contained, in the event of a dispute, controversy or question between the Owner and the Contractor or the Contractor and the Architect with respect to the interpretation of the Contract Documents, the performance of any portion of the Work, or the delivery of any materials, the payment of disputed monies or otherwise (the parties acknowledging that undisputed monies will be paid when due), the Owner and the Contractor agree that pending the resolution or settlement of such dispute, controversy or question, the Owner and the Contractor shall continue to perform the respective obligations under this Agreement without interruptions or delay, and the Contractor agrees not to directly or indirectly stop or delay the performance of the Work, including the delivery of materials to the Project site.

~~§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD~~

~~§ 13.7.1 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.~~

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

~~.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~.4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages damages, but in no event shall Contractor receive payment for Work not performed or for profit or overhead for Work not performed.

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

§ 14.1.5 If Owner fails to make any payment approved by Architect in accordance with the Contract Documents, through no fault of Contractor or a Subcontractor or their agents or employees or any other person performing portions of the Work under contract with the Contractor, Contractor may, upon thirty (30) days' written notice to Owner and provided Owner fails to cure such failure to pay within such thirty (30) day period, terminate the Agreement Between Owner and Contractor (subject to Owner's right to contest such termination through arbitration or other legal proceedings) and receive from Owner the aggregate of (i) the earned but unpaid cost of the Work as of the date of termination, and (ii) any additional direct damages sustained by Contractor, provided such damages were reasonably foreseeable by Owner on the date of execution of the Agreement Between Owner and Contractor. Notwithstanding Contractor's right to terminate the Agreement Between Owner and Contractor pursuant to the immediately-preceding sentence, it is expressly understood and agreed that Contractor shall not have the right to refuse to render further services or to terminate the Agreement Between Owner and Contractor by reason of nonpayment of specific items or elements of Contractor's statement of monies due if Owner (i) was permitted to withhold payment as provided in the Contract Documents or (ii) has reasonable grounds to challenge and does challenge such items or elements and if Owner issues payment for all items and elements which are not challenged by Owner.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

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

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

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

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

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

.1 take possession of the site and 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 (or any terminated portion thereof) by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 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~~ Owner, upon demand, and (to the extent not paid by Contractor to Owner) Owner shall be entitled to deduct such expenses from any sums due to Contractor under any other contracts by and between Owner and Contractor. This obligation for payment shall survive termination of the Contract.

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§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, upon request of Owner terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

ARTICLE 15

NON-DISCRIMINATION

§ 15.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall comply with all Applicable Laws, rules, regulations, writs, and orders of governmental authorities concerning non-discriminatory practices and employment.

ARTICLE 16

SUBORDINATION

§ 16.1 The Contractor, all Subcontractors (and each of their respective Subcontractors) are hereby subordinate to any and all statutory, constitutional, contractual and constitutional liens, security interests and rights it may now or in the future have against the Project or any portion thereof to the liens, security interests and rights of any lender (herein called "Lender") having a lien against all or any part of the Project. Contractor shall include this provision of this Article 16 in each agreement between Contractor and Subcontractor.

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT B
SUPPLEMENTARY GENERAL CONDITIONS

EXHIBIT B

SUPPLEMENTARY GENERAL CONDITIONS

The GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION ("THE GENERAL CONDITIONS") dated May 10, 2008 by and between COLUMBUS CAMPUS, LLC and BRAUN CONSTRUCTION GROUP, INC. and are hereby amended by these GENERAL SUPPLEMENTARY CONDITIONS, as follows:

Certain provisions of the GENERAL CONDITIONS and SUPPLEMENTARY GENERAL CONDITIONS relating in general to administrative procedures and work of the Contractor and Subcontractors are supplemented in Division 1, GENERAL REQUIREMENTS of the specifications.

In the event of any conflict between the terms of the General Conditions and these Supplementary General Conditions, the terms of these Supplementary General Conditions shall control. Where a Paragraph, Subparagraph, or Clause of the Contract is modified or deleted by these supplements, the unaltered provisions of that Paragraph, Subparagraph, or Clause shall remain in effect.

1. These "Supplementary General Conditions" are in addition to the Supplementary General Conditions contained within the Project Specifications manual and related to the coordination of work on the site.

2. Contractor is responsible for coordination of its work with other Owner contractors so as not to delay or cause interference with the overall progress and final completion. Contractor understands and agrees to work closely and in harmony with various Site Work contractors and with the contractors that are constructing other buildings on site.

3. Contractor understands that all construction vehicles and employees must use the construction entrances as designated and park only in designated areas.

4. Contractor is responsible for keeping all its operations, storage, trailers, materials, etc. within designated staging areas. No equipment, materials, trailers, etc. can be stored outside the storage area without specific permission of the Owner.

5. Contractor's construction fence is to be built, maintained, and subsequently removed by Contractor. Contractor shall be responsible for repairing any damage to Owner's fence that is caused by Contractor's work.

6. Contractor is aware that emergency fire lanes existing within its staging area must be kept accessible at all times to allow vehicular traffic. Contractor must keep access open at all times. All costs relative to emergency fire lanes are included within Contractor's

responsibility. Any fencing changes required to accommodate emergency fire lanes are Contractor's responsibility.

7. Contractor is responsible for removing all construction debris from the site and preventing such debris from getting beyond the limits of Contractor's staging area. Contractor will be held responsible for Owner's costs of cleaning such debris if Contractor fails to comply with such obligation. Contractor shall be responsible to cause all concrete trucks wash-out within the limits of its staging area, and further, that all such waste concrete is removed from the jobsite.

8. Contractor shall take all necessary steps to assure all dirt is cleaned from tires of all vehicles prior to leaving the staging area and for cleaning any roads of such dirt on a continual basis. Since residents and employees of the Project use these same roads, Contractor must assure that no accumulation of dirt is allowed.

9. Contractor shall not install signs or other advertising on the fencing around its project, except those specifically required for safety or traffic purposes. Contractor and its Subcontractors are limited to one sign on their construction trailers; this sign shall be reasonably sized and shall not project above such trailers. Any and all signs are subject to Owner's approval and acceptance. Contractor shall not install signs on any building during the construction duration, except as those required for safety.

10. Contractor is responsible for all costs of protecting the site utilities from Contractor's operations and for restoring those that may be damaged.

11. Any stockpiled excavated materials must be stored within Contractor's designated staging area, or as otherwise allowed and directed by Owner. Contractor is responsible for returning any area used for such storage back to its original condition.

12. Contractor understands and agrees that the electrical transformer is located where shown on the site work drawings and that Contractor's Work includes all work to accommodate such location.

13. Contractor is responsible for providing Contractor's telephone lines for Contractor's construction needs. All temporary power and telephone lines must be removed upon project completion. All costs of removal are Contractor's responsibility.

14. Contractor shall repair any damage to the parking lot and curbs that were caused by Contractor's operations. All areas of the site within the staging area are to be returned to the original condition so that the Owner can proceed with sitework improvements.

15. Contractor understands that the Owner has the right to bring prospective residents into the

Project while it is under construction, as long as they are accompanied by one of Owner's employees, and it does not interfere with the execution of work under this Contract.

16. Any claim against Owner's Builder's Risk Insurance must be made within thirty (30) calendar days of Contractor's first knowledge of the event. Contractor shall place this same responsibility upon each of its Subcontractors. Any claim not so made shall be the sole responsibility of the Contractor, and Owner shall not be liable for any costs or damages arising from the incident, regardless of any other circumstances concerning this event.

17. The Owner's Builder's Risk Insurance coverage is for materials and equipment incorporated into the Work, properly stored on site, and for materials stored off-site for which Owner has previously given written approval for such off-site storage.

18. Contractor shall furnish to Owner within two (2) work days, the First Report of Injury form for any employee of Contractor, its Subcontractors and Vendors, and visitors to the site.

19. Contractor is responsible for protecting and maintaining all stabilized soil, sediment and erosion control and shall repair or replace any areas damaged as a result of the Contractor's activities.

20. No solicitation of employees of other Contractors engaged in work on the site will be permitted.

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT C
DRAWINGS, PLANS AND SPECIFICATIONS

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30.02 ELEVATIONS & SECTIONS

STRUCTURAL
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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT D
QUALIFICATIONS/SCOPE OF WORK

NONE

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT E
COST OF WORK/SCHEDULE OF VALUES

J.M. OLSON CORPORATION - BID PERMIT DESIGN ESTIMATE

Erickson Retirement Communities
Hickory Chase
Hilliard, Ohio
Based on Plans Dated 1/4/08 by DHPY

Date Updated: 4-Feb-08
Date Printed: 5-May-08
Time: 1:29 PM

Gate House
Bid & Permit Estimate

SPEC SEC	DESCRIPTION	GATEHOUSE TOTAL COST		REMARKS
	FENCE / GATES	$30,000		Allowance
3300	CAST IN PLACE CONCRETE	$3,500		Northeast Conc
4200	MASONRY	$12,500		Karst
5120	STRUCTURAL STEEL & JOISTS	$4,900		Serevice Iron
6100	ROUGH CARPENTRY & LUMBER	$6,500		Emerson Lumber
6101	EXTERIOR TRIM & SIDING	w/6100		
6200	FINISH CARPENTRY & MILLWORK	$3,500		JMOC
7111	WATERPROOFING	N/A		
7210	BUILDING INSULATION	$2,500		JMOC
7311	GUTTERS & DOWNSPOUTS	$520		
7400	METAL ROOF	N/A		
7531	EPDM MEMBRANE ROOFING	N/A		
7900	JOINT SEALERS	$350		JMOC
8111	METAL DOORS & FRAMES	w/8410		
8311	ALUMINUM SLIDING GLASS DOORS	N/A		
8410	ALUM ENTRANCES & STOREFRONT	$10,000		Ohio Glass
8710	FINISH HARDWARE	w/8410		
8800	GLAZING	w/ 8410		
9221	EIFS	N/A		
9255	GYPSUM BOARD ASSEMBLIES	$300		Columbus Drywall
9651	CARPET & RESILIENT TILE FLOORING	$270		JMOC
9900	PAINTING & WALLCOVERINGS	$800		Madias
10522	FIRE EXTINGUISHERS, CABINETS & ACCESS	$125		JMOC
15000	HVAC SYSTEMS	$5,746		Metro
15400	PLUMBING	N/A		
15500	FIRE PROTECTION	N/A		
16000	ELECTRICAL	$15,000		Accurate
SUBTOTAL COST #1		$96,511		
0.00%	CONTINGENCY	$0		
5.50%	GENERAL CONDITIONS	$5,308		
0.00%	WINTER PROTECTION	excluded		
SUBTOTAL COST #2		$101,819		
0.11%	GENERAL LIABILITY INSURANCE	$112		
0.00%	BUILDERS RISK	by owner		
SUBTOTAL COST #3		$101,931		
4.00%	OH&P	$4,077		
PRELIMINARY TOTAL BUDGET		$106,008		

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT F
INSURANCE ADDENDUM

INSURANCE
ADDENDUM – GENERAL CONTRACTOR

TYPE OF COVERAGE	AMOUNT OF COVERAGE
AD.1 Worker's Compensation and Employer's Liability*	
(a) Worker's Compensation Insurance insuring Contractor's full liability under the Workers' Compensation laws of the state where the Project is located	Statutory Limits (set by states)
(b) Employer's Liability	Bodily Injury by Accident = $500,000. Ea. Accident Bodily Injury by Disease = $500,000. Policy limit Bodily Injury by Disease = $500,000. Ea. Employee
*Policy must include a Waiver of Subrogation endorsement in favor of indemnified parties	
AD.2 Commercial General Liability: written on ISO occurrence form CG 00 01 01 96 (or a more recent version, or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractual liability. Such policy will not contain limitations or exclusions for blasting, explosion, collapse or underground hazards or activities. (Additional Insured requirement section 11.1.6)	Occurrence Form, minimum required limits: General Aggregate Limit (other than Products/ Completed Operations): $1,000,000. Products/Completed Operations Aggregate Limit: $1,000,000. Each Occurrence Limit: $1,000,000. Personal Injury & Advertising Injury Limit: $1,000,000.
AD.3 Business Auto Liability: covering any automobile, including hired and non-owned auto's	Minimum required limits: Bodily Injury Each Person: $1,000,000. Bodily Injury Each Accident: $1,000,000. Property Damage Each Accident: $1,000,000. Or, $1,000,000. combined bodily injury and property damage each accident limit for all of the above
AD.4 Commercial Umbrella Insurance Policy: or Excess Liability coverage meeting the same coverage requirements stated above for AD.1, AD.2, and AD.3	Occurrence Form, minimum required limits: $10,000,000. each occurrence $10,000,000. aggregate
AD.5 Continuing Completed Operations Liability Insurance. Contractor shall maintain during the term of the contract, and for a period of three years after completion of contract, commercial general liability (CGL) and commercial excess or umbrella liability insurance with a limit of not less than $11,000,000 combined limits per occurrence.	

cc: Conway
orig: Acct.

Erickson Retirement Communities
703 Maiden Choice Lane
Baltimore, MD 21228
410-242-2880
FAX 410-402-2420

Letter of Transmittal

28.107

DATE	May 19, 2008
ATTN:	Steve Braun
CAMPUS:	Hickory Chase
BUILDING:	Pump House & Gate House
RE:	Contracts

TO Braun Construction Group, LLC
39395 W. 12 Mile Road, Suite 100
Farmington Hills, MI 48331

WE ARE SENDING YOU ☑ Attached ☐ Under separate cover via

☐ Shop drawings ☐ Drawings/Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☑ Contracts

COPIES	DATE	NO	DESCRIPTION
1	5/10/2008		Standard Form of Agreement Between Owner and Contractor for the Gate House
1	5/15/2008		Standard Form of Agreement Between owner and Contractor for the Pump House

THESE ARE TRANSMITTED as checked below:

☐ For approval ☐ Approved as submitted ☐ Resubmit _____ copies for approval
☐ For your use ☐ Approved as noted ☐ Submit _____ copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return _____ corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

cc: Susan Spence, Garrett Power, Patti Geraldy, Inga Feldmanayte

COPY TO _____ SIGNED Steve Montgomery

If enclosures are not as noted, kindly notify us at once

28-106

AIA® Document A111™ – 1997

Standard Form of Agreement Between Owner and Contractor
where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the 15th day of May in the year 2008
(In words, indicate day, month and year)

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

Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

and the Contractor:
(Name, address and other information)

Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331

The Project is:
(Name and location)

Hickory Chase, Pump House

The Architect is:
(Name, address and other information)

Dorsky, Hodgson, Parrish, Yue
23240 Chagrin Boulevard, Suite 300
Cleveland, Ohio 44122

The Owner and Contractor agree as follows.

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

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by the Associated General Contractors of America.

EXHIBIT 1-E

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(1677798027)

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern. The form of the General Conditions of the Contract is attached hereto as Exhibit A; the Supplementary General Conditions are attached hereto as Exhibit B; the Drawings, Plans and Specifications for the Work are listed on Exhibit C attached hereto; the Contractor's Qualifications are attached hereto as Exhibit D; the Schedule of Values is attached hereto as Exhibit E; and the Insurance Addendum is attached hereto as Exhibit F.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. A general description of the Work is as follows:

Complete all Work associated with the Project in accordance with the Drawings and Specifications attached hereto as Exhibit C and the Qualifications/Scope of Work attached hereto as Exhibit D.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor acknowledges that Owner intends to hire a developer (hereinafter, the "Developer") to assist Owner in performing Owner's obligations under this Contract. At present, Owner intends to hire Erickson Retirement Communities, LLC as the Developer. Erickson Retirement Communities, LLC has an address of 701 Maiden Choice Lane, Baltimore, Maryland 21228. Attn: Michael A. Wagner, Executive Vice President. Owner reserves the right to remove or to replace Developer at any time and from time to time and may effect such removal or replacement by giving Contractor written notice of the name and address of the new Developer. All communications by Contractor to Owner shall be directed to Developer. Owner acknowledges and agrees that Developer is Owner's agent in connection with the execution, interpretation and performance of this Contract.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be no later than June 1, 2008.

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ~~days from the date of commencement, or as follows:~~ May 1, 2009.

As used in this Agreement and the Other Contract Documents, Substantial Completion shall mean: (1) with respect to the interior of residential units, that all Work has been completed, including final punchlist items, such that no

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User Notes: Columbus A111 Pump House

additional entry into such unit is required for completion of the Work, (ii) public spaces are substantially complete with only minor punchlist items remaining to be performed, (iii) Owner can utilize the Project for its intended purposes, and (iv) an unconditional certificate of occupancy has been issued.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

~~Portion of Work~~ ~~Substantial Completion date~~

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

Time is of the essence in this Agreement. There is no allowance for weather days, and Contractor agrees to complete the Project by the dates identified above without any time extensions or extra costs allowed for weather related conditions, with the exception of extraordinary events which may be classified as "Acts of God". Such events may include floods, tornadoes, extreme snowfalls, etc. that affect a delay to the critical path of the schedule, either on or off the site. In such an event, the Completion Date shall be extended on a day for day basis for the effect of the incident.

No provisions for time extensions for delays resulting from work stoppages caused by contract labor negotiations are included in this Agreement. In such an event the Contractor and Owner mutually agree to work together to eliminate or minimize any such delays.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

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

§ 5.1.2 The Contractor's Fee is:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

A fee of four percent (4%) of the cost of the Work, amounting to Thirteen Thousand Eight Hundred Sixty Two Dollars ($13,862.00), is included in the Contract Sum.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed ($ ~~).~~ Three Hundred Sixty Thousand Four Hundred Five Dollars ($360,405.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See Exhibit E attached hereto.

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§ 5.2.3 Unit prices, if any, are as follows:

See Exhibit E attached hereto. The Contract Sum includes a lump sum for all of the General Contractor's General Conditions in the amount of Eighteen Thousand Forty Six Dollars ($18,046.00). Costs which would cause the lump sum for General Conditions to be exceeded shall be paid by Contractor without reimbursement by Owner.

Description	Units	Price ($ 0.00)

§ 5.2.4 Allowances, if any, are as follows
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)
Owner and Contractor acknowledge and agree that the Owner's Allowances (if any) set forth in the Schedule of Values shall only be released to Contractor upon written approval by Owner. Owner reserves the right prior to releasing any Owner's Allowance, to review and approve how Contractor proposes to expend the Owner's Allowance.

Allowance	Amount ($ 0.00)	Included Items

§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

See Exhibit D attached hereto. The Contractor is required to provide a 100% Payment Bond and a 100% Performance Bond for the full value of the Contract Sum, which bonds shall be in form and content reasonably satisfactory to Owner. The cost of such bonds is included in the Guaranteed Maximum Price.

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

§ 6.4 If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining ~~agreements and, for personnel not covered by such~~ agreements, ~~customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,~~ provided such costs are based on wages and salaries included in the Cost of the Work under ~~Sections 7.2.1 through 7.2.3~~ Section 7.2.1.

§ 7.3 SUBCONTRACT COSTS

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

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

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

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

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

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ 7.5.3 ~~Costs of removal of debris from the site.~~

§ 7.5.4 ~~Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

§ 7.5.5 ~~That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.~~

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§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance ~~by the Owner~~ in writing by the Owner, which consent may be conditioned upon receipt by Owner of indicia of ownership of such materials by Owner, proof that such materials are not subject to any liens or other encumbrances, proof that such materials are covered by insurance, and such other requirements as Owner or any lender of all or any portion of the Project may require.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

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

§ 7.6.4 Fees of laboratories for tests required to be performed by Contractor by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 ~~Data processing costs related to the Work.~~

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

§ 7.6.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.~~

§ 7.6.9 ~~Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.~~

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document A201-~~1997~~ A201-1997, to the extent not caused by Contractor's fault or negligence.

§ 7.7.3 ~~Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.~~

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

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§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site ~~office, except as specifically provided in Sections 7.2.2 and 7.2.3 or as may be provided in Article 14~~ office.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as specifically provided in ~~Section 7.5.2~~ Article 7.

§ 8.1.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 8.1.7 Any cost not specifically and expressly described in Article 7.

§ 8.1.8 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase

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orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th (or earlier if the 25th is not a working day) day of a month, the Owner shall make payment to the Contractor not later than the ~~day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~ 20th day of the next month.

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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

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

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

.1 take ~~that~~ the lesser of (i) the Cost of the Work for completed work and (ii) the portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

.2 add that portion of the ~~Guaranteed Maximum Price~~ Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by ~~the Owner,~~ the Owner in accordance with the terms of Section 7.5.6, suitably stored off the site at a location agreed upon in writing;

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.3 add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its ~~completion;~~completion (Owner and Contractor agree that upon any distinct portion of the Work, as determined by Owner, reaching 50% completion (and provided such portion is on schedule and has been performed in accordance with the terms of the Contract Documents), the retainage for such portion of the Work shall be reduced to 5% and all subsequent Applications for Payment for such portion of the Work shall be subject to a 5% retainage);

.4 subtract the aggregate of previous payments made by the Owner;

.5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of ~~not less than ( )~~ ten percent (10%), except that Subcontractors shall be subject to the same retainage as applied to Contractor's Applications for Payment pursuant to Paragraph 12.1.7 above. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

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

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Owner, or, if requested by Owner, the Architect.

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

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the ~~Architect~~ Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

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§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to ~~demand~~ request arbitration of the disputed amount without a further decision of the Architect. Such ~~demand~~ request for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to ~~demand~~ request arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the ~~Owner for convenience~~, Owner, as provided in Article 14 of AIA Document A201-1997. ~~However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

§ 13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

§ 13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

§ 13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

§ 13.2.3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner or the Contract may be terminated by Owner as provided in Article 14 of AIA Document ~~A201-1997, in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 and Section 6.4 of this Agreement.~~ A201-1997. The Owner may terminate the contract at its convenience for any reason, at any time by giving Contractor written notice of such termination. Termination for default, if wrongfully made, shall be treated as a termination for convenience. In the event that the Contract is terminated for the convenience of the Owner, the Contractor shall be paid a pro-rata percentage of the Contract Sum equal to the percentage of Work completed by Contractor. In no event shall Contractor be entitled to receive payment for anticipated profit for unperformed Work.

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ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear no interest from the date payment is ~~due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~due.

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

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:
(Name, address and other information.)

Erickson Retirement Communities, LLC
c/o Hickory Chase Development Office
4383 Davidson Road
Hilliard, Ohio 43026
Attention: Garrett Power, Development Director

§ 14.4 The Contractor's representative is:
(Name, address and other information.)

Braun Construction Group, Inc.
39395 W. 12 Mile Road, Suite 100
Farmington Hills, Michigan 48331
Attention: Steve Braun, President

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

§ 14.6 Other provisions:

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document ~~A201-1997~~ A201-1997, in the form attached hereto as Exhibit A.

§ 15.1.3 The Supplementary ~~and other Conditions of the Contract are those contained in the Project Manual dated __, and are as follows:~~ Conditions of the Contract are attached hereto as Exhibit B.

Document	Title	Pages

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§ 15.1.4 The ~~Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows:~~Drawings and Specifications are those listed on Exhibit C attached hereto.

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

~~Section~~	~~Title~~	~~Pages~~

§ 15.1.5 ~~The Drawings are as follows, and are dated unless a different date is shown below:~~

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

~~Number~~	~~Title~~	~~Date~~

§ 15.1.6 ~~The Addenda, if any, are as follows:~~

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:
Contractor's Qualifications attached hereto as Exhibit D, the Schedule of Values attached hereto as Exhibit E, and the Insurance Addendum attached hereto as Exhibit F.

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

~~Type of Insurance~~	~~Limit of liability ($ 0.00)~~

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

OWNER *(Signature)*

COLUMBUS CAMPUS, LLC
By: Erickson Retirement Communities, LLC, Member
(Printed name and title)

Michael A. Wagner, Executive Vice President

CONTRACTOR *(Signature)*

BRAUN CONSTRUCTION GROUP, INC.
By: Steve Braun, President
(Printed name and title)

APPROVED AS TO LEGAL SUFFICIENCY GFD/LMS

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT A
GENERAL CONDITIONS

AIA® Document A201™ – 1997

General Conditions of the Contract for Construction

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

THE OWNER:
(Name and address):
Columbus Campus, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228

THE ARCHITECT:
(Name and address):
Dorsky, Hodgson, Parrish, Yue
23240 Chagrin Boulevard, Suite 300
Cleveland, Ohio 44122

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

This document has been approved and endorsed by The Associated General Contractors of America

TABLE OF ARTICLES

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2	OWNER
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). Architect may from time to time issue additional Drawings and Specifications to provide coordination and conforming details and otherwise issue additional Drawings and Specifications necessary to complete the Project (all such additional Drawings and Specifications are in this Agreement and in the Contract Documents referred to as "Additional Drawings and Specifications").

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Without in any way limiting the foregoing, Contractor shall provide and/or perform and the Work shall include (i) all materials, supplies, apparatus, appliances, implements, tools, equipment, sanitary facilities and all other facilities necessary in the performance of the Work (collectively, "Materials"), and (ii) all labor, supervision, transportation, light, power, water, utilities, storage, and all other services (collectively, "Services") required in the construction of and/or normally performed by contractor and subcontractors in connection with the construction of a project similar to the Work.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

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consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.4 Where a conflict exists within or between parts of the Contract Documents, or between the Contract Documents and applicable standards under codes or ordinances promulgated by governmental bodies having jurisdiction over the Project, the more stringent or higher quality requirements shall apply. Large-scaled Drawings shall control over smaller-scaled Drawings, figured dimensions on the Drawings shall control over scaled dimensions, and noted materials shall control over graphic representations. Where a conflict exists between the terms of the standard AIA General Conditions Form No. A-201, and the amendments made thereto in this document, the amendments shall control. Further, where a conflict exists between the terms and conditions of the Agreement between Owner and Contractor and these General Conditions, the Agreement between Owner and Contractor shall control.

§ 1.2.5 Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that reference to the Drawings is made unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as reviewed," "as accepted," "as approved," "as selected" or words of similar import are used, it shall be understood that the direction, requirement, permission, authorization, review, acceptance, approval, selection of the Architect and/or Owner is intended, unless otherwise stated.

§ 1.2.6 As used in the Contract Documents, "provide" shall be understood to mean "provide complete in place," that is, to furnish, install, fabricate, deliver, install, and erect, including all labor, materials, equipment, apparatus, appurtenances, and expenses necessary to complete in place, ready for operation and use. The use of the term "shall" in the Contract Documents means as prescribed by the Contract Documents, the use of the term "as necessary" in the Contract Documents means all action essential to the completion of the Work. The Specifications are of the abbreviated type and may include incomplete sentences. Omissions of phrases such as "the Contractor shall" or "conforming to the requirements" are intentional in order to save space, but such limited words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings. Words in the singular shall include the plural however applicable, unless the context otherwise indicates.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

§ 1.4.1 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 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

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

§ 1.6.1 ~~The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described.~~ All Drawings, Plans and Specifications, renderings and models prepared with respect to the

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Project are and shall be the property of Owner and may not be used by any person, party or entity on any other project unless expressly authorized in advance by Owner in writing. The Contractor may retain one record ~~set.~~ set of Drawings, Specifications and other documents prepared by the Architect. 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 or the Architect's ~~consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights.~~ consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the ~~Architect,~~ Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, 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, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' copyrights or other reserved rights.~~ Owner's copyrights or other reserved rights.

§ 1.6.2 All Shop Drawings prepared by Contractor exclusively for the Work shall be the property of the Owner and may not be used by any person, party or entity unless expressly authorized in advance by Owner in writing.

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. Owner intends to hire a development company to assist Owner in the development of the Project (the "Developer"). The initial Developer shall be Erickson Retirement Communities, LLC, having an address at 701 Maiden Choice Lane, Baltimore, Maryland 21228, Attn: Michael A. Wagner. Owner hereby reserves the right to replace and appoint Developers from time to time throughout the term of the Project, which right may be exercised by Owner giving Contractor written notice of the name and address of the newly appointed Developer. Throughout the Contract Documents, wherever an obligation is imposed on Owner (other than the obligation to pay money), Owner may, at its option, assign such obligation to Developer.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. ~~Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, 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.

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

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which 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, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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 term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect may require.

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§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the ~~Architect,~~ Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly ~~to the Architect~~ to the Architect and Owner at once. Notwithstanding the foregoing, Contractor shall not be obligated to perform additional studies or tests of field conditions, except as expressly set forth in the Contract Documents.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 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.~~ accepts the relationship of trust and confidence established between the Contractor and the Owner by the Contract Documents. Contractor covenants with the Owner (i) to furnish his best skill and judgment and to cooperate with the Architect in furthering the interest of the Owner; (ii) to furnish efficient business administration and superintendence; (iii) to use his best efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best way and in the most expeditious and economic manner consistent with the interests of the Owner. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. ~~If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.~~

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

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

§ 3.3.4 At least once a month a meeting on the site involving Contractor and Owner shall be held to review progress and coordinate work schedules for the weeks ahead. Contractor shall have in attendance at these meetings a job superintendent or another person authorized to make decisions for the Contractor.

§ 3.3.5 Contractor shall check all Materials and Services entering into the Work, including but not limited to quality and quantity, and shall keep full and detailed records and accounts in accordance with industry standards, including but not limited to said records and accounts as may be necessary to determine the Cost of the Work.

§ 3.3.6 Contractor shall keep current a detailed Schedule of Values of the various portions of the Work, divided so as to identify the portion of the Work to be provided by each Subcontractor and to facilitate payments to Subcontractors, prepared in a format and with such detail as is acceptable to and approved by Owner and Architect. The Schedule of Values shall include a detailed statement of Project overhead costs.

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§ 3.3.7 As general contractor for the Project, Contractor shall use reasonable efforts to accomplish the following:

(a) the avoidance of conflicts among the various trades;

(b) the efficient organization of construction activities, including location and size of activities, location and size of storage areas, staging areas and field offices, traffic patterns, delivery schedules, hoisting, safety and the like; and

(c) efficient scheduling of the Work to be performed by Subcontractors to avoid inefficient or unsafe performance of the Work performed and to be performed by all Subcontractors.

§ 3.3.8 Contractor shall prepare a Manual describing the methods of material-handling and the methods for the movement of personnel that are to be used on the Site. The Contractor shall ensure that these methods are understood and followed by all subcontractors in the construction of the Project.

§ 3.3.9 Contractor shall prepare a written safety program to govern all activity on the Site.

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.5.2 The Contractor shall and does hereby assign to the Owner the benefits of any warranties and guarantees of all Subcontractors, Material Suppliers and Manufacturers, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the Contract Documents. Notwithstanding the foregoing assignment, prior to final acceptance of the Work by Owner, Contractor shall deliver to Owner three (3) bound volumes of all guarantees and warranties on Materials furnished by all manufacturers and suppliers to Contractor and all Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, ~~the Contractor~~ Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and

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inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when ~~bids are received or negotiations concluded.~~ the Contract is executed and delivered. Notwithstanding the foregoing, Contractor shall not be obligated to pay for impact fees, sewer connection or water tap fees, or other similar utility fees.

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

§ 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.~~ with Applicable Laws. 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.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to ~~laws, statutes, ordinances, building codes, and rules and regulations.~~ Applicable Laws without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to ~~correction.~~ correction, without an increase in the Contract Sum and such costs shall not be a Cost of the Work.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.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 in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding~~ Contractor shall employ all competent staff necessary for the proper execution of the Work, and shall see that members of such staff shall be in attendance at the site during the progress of the Work as may be necessary or appropriate under the circumstances. Such staff shall be under the direction of a project manager (who will devote, if necessary, all of his time and efforts to the Project) satisfactory to the Owner who shall not be changed without prior written consent of Owner unless such project manager is no longer employed by Contractor. The project manager shall represent the Contractor and all communications given to the project manager shall be as binding on the Contractor as if given to the Contractor. ~~Important communications shall be confirmed in writing. Other communications shall be similarly confirmed~~ Communications will be confirmed on written request in each case. The project staff shall consist of persons capable of filling such positions and/or performing such functions that the Owner and the Contractor may reasonably require under the circumstances, although a single person may perform more than one function if he or she is able to do so capably and efficiently.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, ~~promptly prior to~~ or immediately after being awarded the Contract, shall prepare and submit for the Owner's ~~and Architect's information a Contractor's construction schedule for the Work. The schedule shall~~ information and approval, a schedule (as same may be revised from time to time, herein called the "Schedule") for all parts of the Work. The Schedule shall initially be an estimate of the time requirement for all of the Work, incorporating such information as design services, Owner related activity, governmental approvals, and the like. The Contractor and each major Subcontractor shall cooperate fully and provide detailed information as required in order to achieve the most logical Schedule for the Work that will be acceptable to Owner and Contractor. The Schedule shall (i) not exceed time limits current under the Contract Documents, (ii) shall be revised by Contractor at appropriate intervals as required by the conditions of the Work and Project, subject to Owner's approval, (iii) shall be related to the entire Project to the extent required by the Contract Documents, and (iv) shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 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~~ Schedule and allows the Architect reasonable time to review submittals.

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

§ 3.10.4 From the initially approved Schedule and other information developed, the Contractor, in cooperation with the Owner, Architect, and major Subcontractors, will monitor, and shall revise and update monthly, the Schedule. The Schedule shall be further revised or expanded to provide more detailed information concerning the time requirements for all parts of the Work and other elements of the Project as such information is developed and approved by the Owner. Contractor and each Subcontractor, materialman, and supplier shall provide revised data in order to assist the Contractor in determining the most appropriate and acceptable Schedule and acceleration opportunities for the Work and to update the Schedule, in order to assure that the Work shall be completed on or before the Substantial Completion Date set forth in the Agreement.

§ 3.10.5 The Schedule shall set out, in addition to the elements set forth in Paragraphs 3.10.1 and 3.10.4 the following:

(a) a schedule of production of drawings, specifications and other documents required for the award of contracts for construction (providing for appropriate periods of review, which periods shall not exceed 10 days where practicable);

(b) a listing of all long-lead-time items and a schedule for the acquisition and delivery of such items;

(c) a detailed construction progress schedule showing the different stages of progress required in the Work;

(d) a schedule for the processing of shop drawings;

(e) a schedule for the acquisition and installation of all built-in furnishings, fixtures and equipment to be provided under this Agreement or to be provided by Owner and installed by Contractor; and

(f) a detailed schedule of the periods during which each Subcontractor's Work will be performed; and

(g) in the event that Contractor falls at least one week behind schedule, a detailed schedule setting forth all actions to be taken by the Contractor to get the Work back on schedule for completion within the Contract Time.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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~~submittal to the Owner upon completion of the Work.~~ Owner. Contractor shall advise Owner on a current basis of all material changes in the Work made during construction.

§ 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.~~ Contractor shall prepare, or cause to be prepared as part of the Work, all shop drawings and other detailed drawings not made a part of the Drawings or Specifications or Additional Drawings and Specifications and shall submit same to Architect for approval. Shop Drawings establish actual detail of manufactured and fabricated items, indicate proper relation to adjoining Work, amplify design details or mechanical and electrical equipment in proper relation to physical spaces, and incorporate minor changes or design and construction to suit actual conditions.

.1 fabricated items are items specifically assembled or made out of selected materials to individual design requirements.

.2 manufactured items are standard items usually mass assembled.

§ 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 which illustrate materials, equipment texture, finish, color, technique 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 Owner and Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 Shop Drawings, Product Data, and Samples. Contractor shall review shop drawings, product data, and samples as required in this Section 3.12.6, prior to submittal to Architect. Submittals shall be stamped by Contractor or through some other means to clearly indicate to Architect that submittals have been reviewed and approved by the Contractor.

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

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

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or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval or review thereof.

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

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

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Owner prior to using any portion of the Site.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost ~~thereof~~ thereof, including overhead costs, shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

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

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§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by ~~law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall~~ law, the Contractor shall defend, indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and agents and employees of any of them~~ Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), ~~but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable,~~ regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 Contractor agrees to forward to Owner within 45 days following the first and third fiscal quarters, unaudited financial statements of Contractor for such fiscal quarter, including income statements, cash flow and balance sheets, certified as true, accurate and complete by an authorized officer of Contractor.

§ 3.18.4 Contractor agrees to forward to Owner within 120 days after the end of each year, annual audited financial statements of the Contractor for such fiscal year prepared in accordance with generally accepted accounting principles consistently applied, accompanied by a report of an independent public account approved by Owner.

§ 3.18.5 Owner, at Owner's cost and expense, shall be entitled upon ten (10) days advance notice to audit Contractor's performance on the Project, and in connection therewith Contractor agrees to provide to Owner at Contractor's principal place of business, all books, records, files and other data necessary to conduct such audit.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner ~~shall employ a new Architect against whom the Contractor has no reasonable objection and~~ may employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

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§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect and Developer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, and Developer will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work 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~~ neither the Architect nor the Developer will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Architect, the Owner and the Developer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The ~~Architect~~ Architect, the Owner and the Developer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The Architect~~ However, nothing contained in this Subsection is intended to relieve the Architect of its responsibilities or liabilities under the Contract Documents or its contract with the Owner. The Architect, the Owner and the Developer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract ~~Documents~~ Documents, and as required by Applicable Laws. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. ~~Review~~ Except as may be required by Applicable Laws, 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

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under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. However, to the extent such submittals must be reviewed or approved by a licensed architect pursuant to Applicable Laws, the Architect shall provide all services necessary to satisfy such Applicable Laws.

§ 4.2.8 ~~The~~ Following consultation with Owner, the Architect will prepare ~~Change Orders and~~ Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect and Developer will at such times Architect and Developer deem appropriate and also upon request of Owner, conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

§ 4.2.11 The Architect will interpret and ~~decide~~ make recommendations on 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. If no agreement is made concerning the time within which ~~interpretations~~ recommendations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such ~~interpretations until 15~~ recommendations until ten (10) days after written request is made for them.

§ 4.2.12 ~~Interpretations and decisions~~ Recommendations 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 initial decisions~~, recommendations, 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~~ recommendations so rendered in good faith.

§ 4.2.13 The Architect's ~~decisions~~ recommendations on matters relating to aesthetic effect will be final only if consistent with the intent expressed in the Contract ~~Documents~~ Documents and will have no adverse effect on the Project budget or the Schedule.

§ 4.3 CLAIMS AND DISPUTES

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

§ 4.3.2 Time Limits on Claims. Claims by ~~either party~~ Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the

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Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment ~~shall~~ may be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice to Architect and Owner as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be ~~given.~~ given to Architect and Owner. 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.

~~§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.~~

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

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

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

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§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, ~~shall~~ may be referred initially to the Architect for decision. ~~An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~ Claims submitted to the Architect shall be solely for the purpose of obtaining the Architect's recommendation as to the resolution of the Claim.

§ 4.4.2 The Architect will review Claims submitted to Architect and within ten days of the receipt of the 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. ~~Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.~~

§ 4.4.5 The Architect will ~~approve or reject~~ make recommendations on Claims by written decision, which shall state the reasons ~~therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.~~ therefor.

§ 4.4.6 ~~When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.~~

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 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 prior to resolution of the Claim by the Architect, by mediation or by arbitration.~~ deadlines.

~~§ 4.5 MEDIATION~~

~~§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.~~

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~~§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~§ 4.5.3 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.~~

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, ~~except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.~~ may, upon Owner's and Contractor's consent, be subject to arbitration.

§ 4.6.2 Claims ~~not resolved by mediation shall be decided~~ to be resolved by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The ~~demand~~ request for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 4.6.3 ~~A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases~~ request for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of ~~limitations as determined pursuant to Section 13.7~~ limitations.

§ 4.6.4 Limitation on Consolidation or Joinder. ~~No~~ At Owner's option any and all arbitration arising out of or relating to ~~the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~ any of the Contract Documents or any breach thereof shall include by consolidation, joinder or joint filing, any additional person or entity not a party to the Owner-Contractor Agreement to the extent necessary for the final resolution of the matter in controversy.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of ~~demand~~ request for arbitration must assert in the ~~demand~~ request all Claims then known to that party on which arbitration is ~~permitted to be demanded~~ requested.

§ 4.6.6 Judgment on Final Award. ~~The~~ If the parties agree to arbitration the award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect will promptly~~ Owner will reply to the Contractor in writing stating whether or not the ~~Owner~~ Owner, Developer or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner ~~or Architect~~ to reply ~~promptly~~ 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~~ Owner, Developer 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. The Contractor shall contract with each and every Subcontractor solely in the name and on behalf of the Contractor, and no approval by Owner of any such Subcontract shall be construed as creating any contractual relationship between any Subcontractor and Owner.

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

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

§ 5.2.5 All Subcontracts and purchase agreements shall specifically provide that any and all guarantees or warranties of or from the Subcontractor or Supplier for the benefit of Contractor shall also be made to, and for the benefit of, Owner and otherwise comply with the provisions hereof.

§ 5.2.6 All Subcontracts shall contain provisions requiring the Subcontractor thereunder to perform its portion of the Work in accordance with the Contract Documents and shall require the Subcontractor to adhere to all Applicable Laws and applicable provisions contained in this Agreement, the General Conditions (which also shall be expressly made a part of each Subcontract) and the other Contract Documents.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 Each subcontractor shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-

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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.

§ 5.3.2 Upon request of Owner, Contractor will cause each Subcontractor and Sub-subcontractor to execute and deliver to Owner a waiver or waivers of mechanic's and/or materialmen's liens with respect to all Work which has been performed and paid for under such Subcontract or Sub-subcontract, or, to the extent permitted by law, to be performed. Such waiver or waivers shall be in form and substance satisfactory to Owner.

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract ~~by the Owner for cause pursuant to Section 14.2~~ and only for those subcontract agreements which 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.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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

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

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations~~

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~~and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the ~~Contractor,~~ Contractor and 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~~ Owner will equitably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

.1 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.

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§ 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,~~ or Developer, 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 7.3.6.~~

Owner shall request additive and deductive changes in the Work by giving Contractor a written "Additive Change Order Request" or "Deductive Change Order Request," as the case may be, through the Architect, setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Contractor shall forthwith (but in no event later than twenty-one (21) days after receipt of the Change Order Request) return to Owner and Architect two (2) completed copies of its "Additive Change Order Proposal" or "Deductive Change Order Proposal," as the case may be, setting forth in detail, with a suitable breakdown by trades and work classifications Contractor's estimate of the changes in the Contract Sum (together with the appropriate data acceptable to Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and a proposed adjustment of the Contract Time resulting from such Change Order Request. If Owner approves in writing Contractor's Additive Change Order Proposal or Deductive Change Order Proposal as the case may be, Owner will issue and Contractor will execute and accept a "Change Order" and the Contract Sum and the applicable Turnover Dates and the Date of Final Completion shall be adjusted as set forth in such Change Order. If Contractor's Additive Change Order Proposal is not agreed to by Owner and Owner nevertheless issues a "Construction Change Directive" directing Contractor to perform the requested change to the Work, Contractor shall proceed with the Work authorized by same and the increase in the Contract Sum as a result of such change in the Work shall be equal to (x) the actual cost of such change in the Work (which actual costs shall include only those costs permitted under Article 7 of the Agreement if the Agreement is in the form where the basis for payment is the Cost of the Work plus a fee) and (y) a Contractor's Fee as stated in, and subject to any limitations set forth in, the Agreement Between Owner and Contractor. After the cost of such change in the Work is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon cost. Contractor agrees to deliver to Owner within twenty (20) days after the completion of the Work covered by Construction Change Directive invoices, statements, payroll data and other evidence of such actual cost of the change in the Work that Owner may reasonably require. If Contractor's Deductive Change Order Proposal is not agreed to by Owner and Owner nevertheless directs Contractor to make and perform changes in the Work pursuant to a Construction Change Directive, Contractor shall proceed with the Work as changed by such Construction Change Directive and the decrease in the Contract Sum as a result of such change in the Work shall be equal to (a) the actual reduction in cost of the Work resulting from such change in the Work and (b) a Contractor's Fee as stated in, and subject to any limitations set forth in the Agreement Between Owner and Contractor. After the decrease in the Contract Sum is agreed to by Owner and Contractor, the Contract Sum shall be adjusted by Change Order in an amount equal to the agreed upon decrease. Contractor agrees to deliver to Owner within twenty (20) days after the Completion of the Work covered by such Construction Change Directive such evidence of decrease in the Cost of the Work resulting from such directive as Owner may reasonably require. Agreement on any Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to the terms of this Agreement. When both additions and credits covering related Work or substitutions are involved in any one change, the

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allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change. For purposes of this Paragraph 7.3.3, Contractor shall keep at the Project site complete and accurate financial records of all costs incurred in performing any Construction Change Directive, and shall make these records available to Owner and Architect for audit and copying. No amount under this Paragraph 7.3.3 shall be payable by Owner unless such records are kept and until such records are made available to Owner and Architect.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and 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.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. 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 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which 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.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

§ 7.3.9 When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract ~~Time~~ Time; not involving a change in the scope, quality or quantity of the Work; and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order delivered to Owner and Contractor and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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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 or the Schedule approved by Owner for Substantial Completion of the Work.

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the ~~Architect~~ Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the ~~Architect may determine.~~ Owner may determine. However, pursuant to Section 4.3 of the Contract, Contractor shall not be entitled to any allowances or extensions of time for delays caused by weather or labor disputes. Should any workers performing work covered by this contract engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Owner, may, at its option and without prejudice to any other remedies Owner may have, after forty-eight (48) hours written notice to Contractor, contract with or provide any such labor on its own and deduct the cost thereof from any monies then due or thereafter to become due Contractor. Further, Owner may, at its option, without prejudice to any other remedies it may have, terminate the employment of Contractor for the Work under this Contract and shall have the right to enter upon the premises and take possession for the purpose of completing the Work hereunder of all Contractor's materials, tools and equipment thereon and to finish the Work either with its own employees or other contractors. Contractor shall remain liable for any damages which Owner incurs as a result of any such stoppage of work.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.~~ Any claim for extension of time shall be made in writing to the Owner not more than twenty-one (21) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, one notice shall be made within ten (10) days of commencement of the delay and the claim for actual delay days incurred shall be made within ten (10) days after the termination of the delay. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Claims for extension of time shall be stated in whole or half days only.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ In the event Contractor is delayed at any time in the progress of the Work (i) by labor disputes, fire, unusual delays in transportation, unavoidable casualties or any other causes not solely the responsibility of Owner; or (ii) cumulatively for thirty (30) days or less by any other causes, extension of time shall be Contractor's sole remedy for any such delay. In the event Contract is delayed cumulatively by more than thirty

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(30) days in the progress of the Work by any causes that are solely the responsibility of Owner and the Contractor makes a timely claim, then the Contract Time and the Contract Sum shall be adjusted by Change Order in accordance with Article 7. This provision is intended to be, and shall be construed as consistent with and not in conflict with, Ohio Revised Code § 4113.62, to the fullest extent permitted.

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.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the ~~Architect,~~ Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, ~~but not yet included in Change Orders or~~ by Change Orders. In no event may any Application for Payment include sums purportedly payable due to oral modifications to the Contract Sum or the Work, the parties agreeing that all such changes must be in writing, and signed by Owner.

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

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

§ 9.3.3 The Contractor warrants that title to all ~~Work~~ Work, including all materials and equipment, covered by an Application for Payment will pass to the Owner no later than the time of ~~payment~~ of payment, free and clear of liens and encumbrances other than those created by Owner. 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,~~ shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 With each Application for Payment, the Contractor shall present (i) written evidence of payment, satisfactory to the Owner, of any and all claims of Subcontractors and (ii) releases and waivers for all constitutional, statutory and contractual liens, including but not limited to mechanics and materialmen's liens, from all Subcontractors, but only to the extent of all prior payments made by Owner to Contractor on account of Work performed by such Subcontractor. All such releases and waivers shall be in form and substance satisfactory to Owner and shall be signed and acknowledged by the payee and (iii) such other matters as are required in Article 12

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of the Contract to which these conditions are attached. In addition, in each Application for Payment Contractor shall certify to Owner that such Application for Payment represents a just estimate of cost reimbursable to Contractor under the terms of the Contract Documents and shall also certify in a form acceptable to the Owner that:

"There are no known mechanics or materialmen's liens outstanding at the date of the Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application for Payment, and that, except for such bills not paid so included, there is no known basis for the filing of any mechanic's or materialmen's liens on the Work."

For any payment received by the Contractor, the Contractor shall also deliver to the Owner a release and waiver of the Contractor's constitutional statutory and contractual liens, including but not limited to mechanics and materialmen's lien to the extent of such payment so received, and such releases shall be signed, sworn to and acknowledged by Contractor, and shall be in a form acceptable to Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

.1 defective Work not remedied;

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

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, ~~materials or equipment~~ materials, equipment, or services or for any other items for which payment has been made to Contractor;

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

.5 damage to the Owner or another contractor;

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

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

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for ~~Payment,~~ Payment in an amount approved by Owner, 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 promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. The Owner may, however, at its option, at any time after (i) Owner has given Contractor ten (10) days written notice of Contractor's default under the Contract Documents or under the applicable Subcontract; or (ii) a lien is filed by any Subcontractor or Sub-subcontractor against all or any portion of the Project and such lien is not released or bonded to the satisfaction of Owner within five (5) days after same has been filed, make payments directly to any Subcontractor or Sub-subcontractor and all such payment so made shall be deemed to be made directly to Contractor on account of the Contract Sum.

§ 9.6.5 Payment to material 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.~~Documents, or be construed or relied upon as any indication that the Work or Materials are in accordance with the Contract Documents, or that the amounts paid or certified therefore represent the correct cost or value of the Work or Materials or that such amount is in fact or law due to Contractor.

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

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. ~~The~~ If applicable, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Except as may be provided otherwise in the Agreement, Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner or subsequent contractor can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. In connection therewith, Contractor shall provide to Owner for Owner's written approval a schedule for completion of all such items, which schedule shall specify the number of personnel that will be dedicated each day to completion of such portion of the Work (the "Punchlist Schedule"). Contractor shall also designate a supervisor whose sole responsibility shall be to perform and complete such portion of the Work in accordance with the approved Punchlist Schedule. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the 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. All such additional items shall be incorporated by Contractor into the Punchlist Schedule, with no extension of time. 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 which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any ~~stage when such portion is designated by separate agreement with the Contractor,~~ stage, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the ~~Work.~~ Work, if required. 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.

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§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment and~~ payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner.~~ by the Owner, and (6) any other items required by the Contract Documents to be delivered by Contractor. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

~~.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~

~~.2 failure of the Work to comply with the requirements of the Contract Documents; or~~

~~.3 terms of special warranties required by the Contract Documents.~~

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

.1 employees on the Work and other persons who may be affected thereby;

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.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; ~~and~~

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

.4 the Work of the Owner or the other contractors.

§ 10.2.2 The Contractor shall give notices and comply with ~~applicable laws, ordinances, rules, regulations and lawful orders of public authorities~~ Applicable Laws and state and federal regulations bearing on safety of persons or property or their protection from damage, injury ~~or loss~~ or loss and shall hold the Owner, Developer, Architect, Hickory Chase, Inc., their parent and subsidiary companies, employees, members, directors and officers, and their agents harmless from and against any fines or penalties levied in connection with the failure of Contractor to give such notices or to comply with any such Applicable Laws and state and federal regulations.

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

10.2.3.1 Contractor shall maintain exit doors and provide acceptable exitways from any building or buildings, shall not block or lock exit doors or in any manner prevent egress from exits, shall keep exitways through any building or buildings clear of materials and shall level surfaces to prevent accidents in case of egress from exits.

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

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

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

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.2.8 The Contractor shall employ such reasonable and customary practices as are necessary to protect all materials, equipment, completed and partially completed Work and all merchandise stored therein from loss and damage, including theft or damage by weather and, if necessary, shall provide suitable shelter therefor. The Contractor shall correct at its own expense any damage or disfigurement to work or property (whether or not located on the site) resulting from the fault, neglect or omission of the Contractor, any Subcontractor, any Sub-subcontractor or other person employed or hired by any of them.

§ 10.2.9 The Contractor shall take all reasonable precautions to keep the site free of safety hazards and shall comply with all Applicable Laws and insurance requirements relating to injury to persons and property on or about the site or any other location where any of the Work is performed, including but not limited to the regulations and directives of the federal and state Occupational Safety and Health Administrations and other governmental authorities having jurisdiction over the Project.

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§ 10.2.10 The Contractor shall on a daily basis keep the site free from any dangerous clutter or debris attributable to the Work and shall keep the site reasonably clean and orderly at all times in accordance with the nature of the Work. The Contractor shall clean up the site in a thorough and workmanlike manner to the satisfaction of the Owner at the completion of the Work.

§ 10.2.11 The Contractor shall be responsible for the security of the Work, the site and all Materials stored there or at any other location by the Contractor with the consent of Owner. The Contractor shall be responsible for all losses and expenses incurred by reason of failure to maintain reasonable security at the site or at the location where Materials are stored, and such expenses incurred shall not increase the Contract Sum. The Contractor shall comply with all reasonable security requirements of the Owner.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to 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. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

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

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the ~~Contractor unless such materials or substances were required by the Contract Documents.~~ Contractor.

§ 10.5 If, without negligence ~~on the part of the Contractor,~~ or misconduct on the part of the Contractor or the Contractor's employees, subcontractors, sub-subcontractors, agents, invitees or guests, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 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 Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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§ 11.1.1 The Contractor shall maintain throughout the term of the Agreement, and in some instances beyond the term of this Agreement, insurance of the types and in the minimum amounts set forth in this section 11 and on the Insurance Addendum.

§ 11.1.2 Insurance Carriers must be licensed to do business in all states applicable under the terms and scope of this Agreement, have an A.M. Best Company rating of not less than A-VI, and must be otherwise acceptable to Owner.

§ 11.1.3 If requested by Owner, Contractor shall provide certified copies of all such policies to Owner within 10 days of such request.

§ 11.1.4 Contractor must immediately notify Owner of any reduction or restriction in the required insurance regardless of whether it takes place prior to, during, or subsequent to, the term of this Agreement, and/or in the event the insurer notifies the Contractor of its intent to non-renew coverage. "Reduction of coverage" does not encompass depletion of insurance limit aggregates unless the current policy is or becomes depleted by 75% or more.

§ 11.1.5 Certificates of insurance, copies of additional insured endorsements from applicable insurance policies, and other required documentation, signed by a duly authorized agent of each insurance company shown and be otherwise acceptable to Owner, shall be filed with the Owner prior to the commencement of the Contractor's Work, and within ten (10) days of the expiration of any insurance policy required herein.

§ 11.1.6 The Owner, Developer, their parent and subsidiary companies, Hickory Chase, Inc., and their respective members, partners, directors, officers, employees, and agents are to be included as additional insureds with regard to all coverage obtained by the Contractor under Commercial General Liability, Automobile Liability, and the Umbrella/Excess insurance described on the Addendum. To the extent Contractor has insurance at levels greater than that set forth in the Addendum, the parties set forth herein shall be listed as additional insureds at such higher levels. The additional insured coverage is to be provided one of the following coverage forms: ISO Form CG2010 11-85; ISO Form CG2026; a combination of forms ISO Form CG2010 of a later version and CG2037; or other insurance form equivalent in coverage. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.7 Insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to indemnities and/or additional insureds under this Agreement. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.8 All policies are to be endorsed to provide for 30-day notice of cancellation or reduction of coverage to Owner. A copy of the policy endorsement will be provided with the certificate of insurance.

§ 11.1.9 No payments shall be made to Contractor until satisfactory documentation as required herein is received and accepted by Owner.

§ 11.1.10 Approval of any insurance by Owner shall not relieve or decrease the liability of the Contractor. The Owner does not in any way represent that the insurance or limits of liability specified above are sufficient or adequate to protect the interests or liability of the Contractor and are only minimums.

§ 11.1.11 All required insurance policies shall contain a waiver of subrogation by the insurance carrier in favor of Owner.

§ 11.1.12 Self-insured retentions (deductibles) shall not be more than $10,000.

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

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.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;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

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

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing 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. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE

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~~§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

~~§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance 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 in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

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

~~§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.4.2 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.~~

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

BUILDER'S RISK COVERAGE

§ 11.4.11 The Owner shall purchase and maintain Builder's Risk Coverage protecting buildings and building materials against risks of direct physical loss or damage. Coverage will include the perils of fire, extended coverage,

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theft, vandalism, malicious mischief, collapse, flood and earthquake. Coverage will be applicable to property destined to become part of the building stored off-site and during transit, debris removal, and demolition occasioned by enforcement of any building, zoning, or land use ordinance or law. This insurance shall include the interests of the Owner, Contractor, Subcontractors and lower-tier subcontractors.

§ 11.4.12 This insurance will not include coverage for clothing of workers, tools, equipment, or property of a similar kind which will not become a permanent part of the building or structure. Contractor shall not be liable or responsible for any loss or damage to the items excluded. Coverage for transit, storage away from the project site, flood, earthquake, debris removal, and demolition have sub-limits or are otherwise limited by policy conditions. The Contractor, Subcontractors, and their lower-tier subcontractors shall hold harmless, indemnify, and defend Owner, its parent company, Hickory Chase, Inc., employees, members, directors, and agents from claims of damage or loss to such property excluded or limited.

§ 11.4.13 Coverage for transit and storage away from project site is limited to $500,000 per occurrence. For additional coverage, Owner has the option to report, obtain approval for, and pay additional cost for insurance under Contractor's program or obtain additional insurance elsewhere.

§ 11.4.14 Payments by the insurer for all losses covered under the Builder's Risk policy will be made to Owner, for the interest of all parties, subject to the requirements of any applicable mortgagee clause. Contractor shall pay such Subcontractor a just share of any insurance monies received by Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to lower-tier subcontractors in a similar manner.

§ 11.4.15 The Builder's Risk Insurance will be placed with a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. Such property insurance shall be maintained by the Owner, unless otherwise provided in the Agreement, or agreed in writing by the Contractor.

~~§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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~~§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. 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.~~

~~§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

~~§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising ~~thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~ thereunder, including, if requested by Owner, bonds for any Subcontractors designated by Owner. The costs of any bonds required to be delivered and not stipulated in the bidding requirements or other Contract Documents shall be a reimbursable expense of Contractor or any designated Subcontractor.

§ 11.5.2 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.

§ 11.5.3 It shall be the responsibility of the Contractor not to violate nor knowingly permit to be violated any conditions of the policies required hereunder, and it shall be the Contractor's duty and responsibility to impose upon each Subcontractor and have each Subcontractor impose upon each Sub-subcontractor the same responsibilities and obligations imposed upon the Contractor under the insurance provisions provided for herein.

§ 11.5.4 Contractor shall require each Subcontractor to provide the insurance coverage as stated in Paragraph 11.1.1 above.

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

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§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. If, within one year after the Date of Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any special warranty required by the Contract Documents, any of the Materials included in the Work are found to be defective or not in accordance with the Contract Documents, the Contractor shall correct same promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given Contractor an express written acceptance of such defective conditions. Contractor shall correct any defects in the Work or damage to other property caused by defects in the Work or the repairing of such defects with a minimum of inconvenience to Owner and other occupants of the Project and at times least disruptive to the operation or construction of the Project. Notwithstanding anything to the contrary contained herein, Contractor's obligations contained in this Paragraph 12.2.2.2 shall be in addition to all other obligations of Contractor contained in the Contract Documents in respect of warranties or correction of defects in Work.

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which 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 which the Contractor might have 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.

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

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.1.2 To the extent permitted by law, the Contractor and all Subcontractors (and each of their respective subcontractors and suppliers) are hereby subordinate to any and all statutory, constitutional and contractual liens, security interests and right each may now or in the future may have against the Project or any portion thereof to the liens, security interests, and rights of any lender having a lien against all or any portion of the Project, from time to time. Contractor and all subcontractors agree to execute and deliver to Owner, such documents as may be requested by Owner to acknowledge such subordination.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party~~ Contractor shall not assign the Contract in whole or in part without the prior written consent of the Owner. In the event Contractor shall assign the Contract in whole or in part, Contractor shall nevertheless remain legally responsible for all obligations ~~under the Contract~~ of "Contractor" under the Contract Documents.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to ~~an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents.~~ any lender or lenders providing construction financing for all or any portion of the Project. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 ~~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.~~ All notices, requests, demands, and other communications hereunder shall be in writing except as expressly provided otherwise, and shall be personally delivered, or mailed certified or registered mail, postage prepaid, return receipt requested, to the party to which directed at the address stated in the Contract Documents and shall be deemed to have been given on the date of actual delivery thereof.

§ 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, Developer, 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 in writing.

§ 13.4.3 Owner and Contractor recognize that time is of the essence of this Contract and the Owner will suffer financial loss if the Work is not substantially completed in accordance with Section 4.2 of the Agreement. Owner and Contractor also recognize the delays, expense and difficulties involved in proving the actual losses suffered by Owner if the Work is not completed on time. Accordingly, in lieu of requiring such proof, Owner and Contractor agree that as liquidated damages for such delay (but not as a penalty), Contractor shall pay to Owner Ten Thousand Dollars ($10,000.00) for each day that expires beginning seven (7) days after the time specified in Section 4.2 of the Agreement for substantial completion of all or any portion of the Work, which sum is acknowledged and agreed to

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be a fair and reasonable estimate of the actual damages likely to be suffered by Owner in the event of a delay in substantial completion of the Work. There will be no claim for consequential damages in excess of the $10,000 per day liquidated damages. In the event that this Subsection 13.4.3 shall be deemed to be a penalty or shall otherwise be unenforceable, Owner and Contractor acknowledge and agree that Owner shall be entitled to all rights and remedies available at law or in equity arising due to the Contractor's failure to complete the Work in accordance with the time specified in the Agreement. Contractor and Owner acknowledge and agree that the liquidated damages provided for in this subsection do not preclude Owner from pursuing damages against Contractor for other potential damages suffered by Owner, including, but not limited to, damages incurred to fix non-conforming Work, or for completing the Work.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate ~~time. Unless otherwise provided,~~ time. To the extent permitted by Applicable Laws, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

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

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

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

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

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

§ 13.5.7 To the extent that Contractor is prohibited from performing, paying for or arranging for tests or studies pursuant to Applicable Laws, Owner shall be primarily responsible for performing such activities.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear ~~interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ no interest.

§ 13.8 In case any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in the Contract Documents shall not in any way be affected or impaired thereby.

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§ 13.9 Notwithstanding any other provision or inference to the contrary herein or in the Contract Documents contained, in the event of a dispute, controversy or question between the Owner and the Contractor or the Contractor and the Architect with respect to the interpretation of the Contract Documents, the performance of any portion of the Work, or the delivery of any materials, the payment of disputed monies or otherwise (the parties acknowledging that undisputed monies will be paid when due), the Owner and the Contractor agree that pending the resolution or settlement of such dispute, controversy or question, the Owner and the Contractor shall continue to perform the respective obligations under this Agreement without interruptions or delay, and the Contractor agrees not to directly or indirectly stop or delay the performance of the Work, including the delivery of materials to the Project site.

~~§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD~~

~~§ 13.7.1 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.~~

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

~~.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~.4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and ~~damages~~damages, but in no event shall Contractor receive payment for Work not performed or for profit or overhead for Work not performed.

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

§ 14.1.5 If Owner fails to make any payment approved by Architect in accordance with the Contract Documents, through no fault of Contractor or a Subcontractor or their agents or employees or any other person performing portions of the Work under contract with the Contractor, Contractor may, upon thirty (30) days' written notice to Owner and provided Owner fails to cure such failure to pay within such thirty (30) day period, terminate the Agreement Between Owner and Contractor (subject to Owner's right to contest such termination through arbitration or other legal proceedings) and receive from Owner the aggregate of (i) the earned but unpaid cost of the Work as of the date of termination, and (ii) any additional direct damages sustained by Contractor, provided such damages were reasonably foreseeable by Owner on the date of execution of the Agreement Between Owner and Contractor. Notwithstanding Contractor's right to terminate the Agreement Between Owner and Contractor pursuant to the immediately-preceding sentence, it is expressly understood and agreed that Contractor shall not have the right to refuse to render further services or to terminate the Agreement Between Owner and Contractor by reason of nonpayment of specific items or elements of Contractor's statement of monies due if Owner (i) was permitted to withhold payment as provided in the Contract Documents or (ii) has reasonable grounds to challenge and does challenge such items or elements and if Owner issues payment for all items and elements which are not challenged by Owner.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

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

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

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

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

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

.1 take possession of the site and 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 (or any terminated portion thereof) by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 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~~ Owner, upon demand, and (to the extent not paid by Contractor to Owner) Owner shall be entitled to deduct such expenses from any sums due to Contractor under any other contracts by and between Owner and Contractor. This obligation for payment shall survive termination of the Contract.

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§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, upon request of Owner terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

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ARTICLE 15

NON-DISCRIMINATION

§ 15.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall comply with all Applicable Laws, rules, regulations, writs, and orders of governmental authorities concerning non-discriminatory practices and employment.

ARTICLE 16

SUBORDINATION

§ 16.1 The Contractor, all Subcontractors (and each of their respective Subcontractors) are hereby subordinate to any and all statutory, constitutional, contractual and constitutional liens, security interests and rights it may now or in the future have against the Project or any portion thereof to the liens, security interests and rights of any lender (herein called "Lender") having a lien against all or any part of the Project. Contractor shall include this provision of this Article 16 in each agreement between Contractor and Subcontractor.

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CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT B
SUPPLEMENTARY GENERAL CONDITIONS

EXHIBIT B

SUPPLEMENTARY GENERAL CONDITIONS

The GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION ("THE GENERAL CONDITIONS") dated May 15, 2008 by and between COLUMBUS CAMPUS, LLC and BRAUN CONSTRUCTION GROUP, INC. and are hereby amended by these GENERAL SUPPLEMENTARY CONDITIONS, as follows:

Certain provisions of the GENERAL CONDITIONS and SUPPLEMENTARY GENERAL CONDITIONS relating in general to administrative procedures and work of the Contractor and Subcontractors are supplemented in Division 1, GENERAL REQUIREMENTS of the specifications.

In the event of any conflict between the terms of the General Conditions and these Supplementary General Conditions, the terms of these Supplementary General Conditions shall control. Where a Paragraph, Subparagraph, or Clause of the Contract is modified or deleted by these supplements, the unaltered provisions of that Paragraph, Subparagraph, or Clause shall remain in effect.

1. These "Supplementary General Conditions" are in addition to the Supplementary General Conditions contained within the Project Specifications manual and related to the coordination of work on the site.

2. Contractor is responsible for coordination of its work with other Owner contractors so as not to delay or cause interference with the overall progress and final completion. Contractor understands and agrees to work closely and in harmony with various Site Work contractors and with the contractors that are constructing other buildings on site.

3. Contractor understands that all construction vehicles and employees must use the construction entrances as designated and park only in designated areas.

4. Contractor is responsible for keeping all its operations, storage, trailers, materials, etc. within designated staging areas. No equipment, materials, trailers, etc. can be stored outside the storage area without specific permission of the Owner.

5. Contractor's construction fence is to be built, maintained, and subsequently removed by Contractor. Contractor shall be responsible for repairing any damage to Owner's fence that is caused by Contractor's work.

6. Contractor is aware that emergency fire lanes existing within its staging area must be kept accessible at all times to allow vehicular traffic. Contractor must keep access open at all times. All costs relative to emergency fire lanes are included within Contractor's responsibility. Any fencing

responsibility. Any fencing changes required to accommodate emergency fire lanes are Contractor's responsibility.

7. Contractor is responsible for removing all construction debris from the site and preventing such debris from getting beyond the limits of Contractor's staging area. Contractor will be held responsible for Owner's costs of cleaning such debris if Contractor fails to comply with such obligation. Contractor shall be responsible to cause all concrete trucks wash-out within the limits of its staging area, and further, that all such waste concrete is removed from the jobsite.

8. Contractor shall take all necessary steps to assure all dirt is cleaned from tires of all vehicles prior to leaving the staging area and for cleaning any roads of such dirt on a continual basis. Since residents and employees of the Project use these same roads, Contractor must assure that no accumulation of dirt is allowed.

9. Contractor shall not install signs or other advertising on the fencing around its project, except those specifically required for safety or traffic purposes. Contractor and its Subcontractors are limited to one sign on their construction trailers; this sign shall be reasonably sized and shall not project above such trailers. Any and all signs are subject to Owner's approval and acceptance. Contractor shall not install signs on any building during the construction duration, except as those required for safety.

10. Contractor is responsible for all costs of protecting the site utilities from Contractor's operations and for restoring those that may be damaged.

11. Any stockpiled excavated materials must be stored within Contractor's designated staging area, or as otherwise allowed and directed by Owner. Contractor is responsible for returning any area used for such storage back to its original condition.

12. Contractor understands and agrees that the electrical transformer is located where shown on the site work drawings and that Contractor's Work includes all work to accommodate such location.

13. Contractor is responsible for providing Contractor's telephone lines for Contractor's construction needs. All temporary power and telephone lines must be removed upon project completion. All costs of removal are Contractor's responsibility.

14. Contractor shall repair any damage to the parking lot and curbs that were caused by Contractor's operations. All areas of the site within the staging area are to be returned to the original condition so that the Owner can proceed with sitework improvements.

15. Contractor understands that the Owner has the right to bring prospective residents into the Project

Project while it is under construction, as long as they are accompanied by one of Owner's employees, and it does not interfere with the execution of work under this Contract.

16. Any claim against Owner's Builder's Risk Insurance must be made within thirty (30) calendar days of Contractor's first knowledge of the event. Contractor shall place this same responsibility upon each of its Subcontractors. Any claim not so made shall be the sole responsibility of the Contractor, and Owner shall not be liable for any costs or damages arising from the incident, regardless of any other circumstances concerning this event.

17. The Owner's Builder's Risk Insurance coverage is for materials and equipment incorporated into the Work, properly stored on site, and for materials stored off-site for which Owner has previously given written approval for such off-site storage.

18. Contractor shall furnish to Owner within two (2) work days, the First Report of Injury form for any employee of Contractor, its Subcontractors and Vendors, and visitors to the site.

19. Contractor is responsible for protecting and maintaining all stabilized soil, sediment and erosion control and shall repair or replace any areas damaged as a result of the Contractor's activities.

20. No solicitation of employees of other Contractors engaged in work on the site will be permitted.

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT C
DRAWINGS, PLANS AND SPECIFICATIONS

LIST OF DRAWINGS

ARCHITECTURAL

00.00 TITLE SHEET
30.01 PLANS & PARTIAL SITE PLAN
30.02 ELEVATIONS & SECTIONS

STRUCTURAL

60.01 PUMPHOUSE FOUNDATION AND FRAMING PLANS
61.01 PUMPHOUSE SECTIONS AND DETAILS
62.01 PUMPHOUSE GENERAL NOTES
62.02 PUMPHOUSE GENERAL NOTES

PLUMBING

70.01 PUMPHOUSE PLUMBING PLANS

MECHANICAL

80.01 PUMPHOUSE HVAC PLANS

ELECTRICAL

90.00 PUMPHOUSE ELECTRICAL SYMBOLS AND SCHEDULES
90.01 PUMPHOUSE ELECTRICAL PLANS

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT D
QUALIFICATIONS/SCOPE OF WORK

NONE

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT E
COST OF WORK/SCHEDULE OF VALUES

J.M. OLSON CORPORATION - BID PERMIT DESIGN ESTIMATE

Erickson Retirement Communities
Hickory Chase - Pump House
Hilliard, Ohio
Based on plans dated 1/16/08
and Addendum #1 dated 2/8/08

Date Updated: 4-Feb-08
Date Printed: 15-May-08
Time: 12:01 PM

Bid & Permit Estimate

SPEC SEC	DESCRIPTION	PUMPHOUSE TOTAL COST		REMARKS
2800	FENCE / GATES	$2,615		Rocky Fork
3300	CAST IN PLACE CONCRETE	$18,420		Northeast Concrete
4200	MASONRY	$18,080		Karst & Sons
5120	STRUCTURAL STEEL & JOISTS	$2,500		Serevice Iron
6100	ROUGH CARPENTRY & LUMBER	$18,500		Emerson Lumber
6101	EXTERIOR TRIM & SIDING	w/6100		
6200	FINISH CARPENTRY & MILLWORK	w/6100		Emerson Lumber
7111	WATERPROOFING	$4,500		Seal Tech
7210	BUILDING INSULATION	w/6100 & 4200		
7311	GUTTERS & DOWNSPOUTS	N/A		
7400	METAL ROOF	N/A		
7531	EPDM MEMBRANE ROOFING	N/A		
7900	JOINT SEALERS	w/7111		
8111	METAL DOORS & FRAMES	$2,900		Tupper Door & Hardware
8311	ALUMINUM SLIDING GLASS DOORS	N/A		
8410	ALUM ENTRANCES & STOREFRONT	N/A		
8710	FINISH HARDWARE	w/8111		
8800	GLAZING	N/A		
9221	EIFS	N/A		
9255	GYPSUM BOARD ASSEMBLIES	N/A		
9651	CARPET & RESILIENT TILE FLOORING	N/A		
9900	PAINTING & WALLCOVERINGS	$7,500		Madias
10522	FIRE EXTINGUISHERS, CABINETS & ACCESS	$750		JMOC
15000	HVAC SYSTEMS	$6,210		Metro
15400	PLUMBING	$130,000		Freeland Contracting
15500	FIRE PROTECTION	$12,746		Tri-Star
16000	ELECTRICAL	$103,395		Roehrenbeck
SUBTOTAL COST #1		$328,116		
0.00%	CONTINGENCY	$0		
5.50%	GENERAL CONDITIONS	$18,046		
0.00%	WINTER PROTECTION	excluded		
SUBTOTAL COST #2		$346,162		
0.11%	GENERAL LIABILITY INSURANCE	$381		
0.00%	BUILDERS RISK	by owner		
SUBTOTAL COST #3		$346,543		
4.00%	OH&P	$13,862		
PRELIMINARY TOTAL BUDGET		$360,405		

CONSTRUCTION AGREEMENT
BY AND BETWEEN
COLUMBUS CAMPUS, LLC AND BRAUN CONSTRUCTION GROUP, INC.

EXHIBIT F
INSURANCE ADDENDUM

INSURANCE
ADDENDUM – GENERAL CONTRACTOR

TYPE OF COVERAGE	AMOUNT OF COVERAGE
AD.1 Worker's Compensation and Employer's Liability*	
(a) Worker's Compensation Insurance insuring Contractor's full liability under the Workers' Compensation laws of the state where the Project is located	Statutory Limits (set by states)
(b) Employer's Liability *Policy must include a Waiver of Subrogation endorsement in favor of indemnified parties	Bodily Injury by Accident = $500,000. Ea. Accident Bodily Injury by Disease = $500,000. Policy limit Bodily Injury by Disease = $500,000. Ea. Employee
AD.2 Commercial General Liability: written on ISO occurrence form CG 00 01 01 96 (or a more recent version, or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractual liability. Such policy will not contain limitations or exclusions for blasting, explosion, collapse or underground hazards or activities. (Additional Insured requirement section 11.1.6)	Occurrence Form, minimum required limits: General Aggregate Limit (other than Products/ Completed Operations): $1,000,000. Products/Completed Operations Aggregate Limit: $1,000,000. Each Occurrence Limit: $1,000,000. Personal Injury & Advertising Injury Limit: $1,000,000.
AD.3 Business Auto Liability: covering any automobile, including hired and non-owned auto's	Minimum required limits: Bodily Injury Each Person: $1,000,000. Bodily Injury Each Accident: $1,000,000. Property Damage Each Accident: $1,000,000. Or, $1,000,000. combined bodily injury and property damage each accident limit for all of the above
AD.4 Commercial Umbrella Insurance Policy: or Excess Liability coverage meeting the same coverage requirements stated above for AD.1, AD.2, and AD.3	Occurrence Form, minimum required limits: $10,000,000. each occurrence $10,000,000. aggregate
AD.5 Continuing Completed Operations Liability Insurance. Contractor shall maintain during the term of the contract, and for a period of three years after completion of contract, commercial general liability (CGL) and commercial excess or umbrella liability insurance with a limit of not less than $11,000,000 combined limits per occurrence.	

BRAUN CONSTRUCTION GROUP INC

HICKORY CHASE

BILLING SUMMARY

HICKORY CHASE - SITEWORK	$1,728,296.76
HICKORY CHASE - COMMUNITY BUILDING 1.0	$2,894,608.76
HICKORY CHASE - RESIDENTIAL BUILDING 1.1	$4,471,917.09
HICKORY CHASE - PUMP HOUSE	$50,748.55
HICKORY CHASE - GATE HOUSE	$32,659.55
TOTAL	$9,178,230.71

EXHIBIT 2

BRAUN CONSTRUCTION GROUP INC

HICKORY CHASE - SITEWORK

BILLING SUMMARY

DRAW NUMBER	INVOICE DATE	INVOICE NUMBER	GROSS BILLING	RETENTION	AMOUNT PAID	AMOUNT OPEN	PAYMENT SOURCE
1	1/31/2008	10897	$74,974.07	$5,398.08	$69,575.99		CHECK
2	2/29/2008	10935	$251,096.37	$10,558.06	$240,538.31		CHECK
3	3/31/2008	10955	$327,283.32	$23,696.05	$303,587.27		EFT
4	4/30/2008	1002	$1,148,554.24	$69,172.26	$1,079,381.98		EFT
5	5/31/2008	1014	$593,293.99	$58,101.26	$535,192.73		EFT
6	6/30/2009	1050	$1,042,216.95	$96,253.82	$945,963.13		EFT
7	7/31/2009	1072	$893,982.31	$88,105.24	$805,877.07		EFT
8	8/31/2008	1097	$1,200,246.65	$107,429.80	$1,092,816.85		EFT
9	9/30/2009	1134	$938,753.55	-$174,385.67	$1,113,139.22		EFT
10	10/31/2008	1166	$1,073,543.28	$48,059.11	$1,025,484.17		EFT
11	11/30/2008	1207	$598,176.49	$28,417.33	$569,759.16		EFT
12	12/31/2008	1234	$287,865.97	$13,019.68	$274,846.29		EFT
13	1/31/2009	1269	$70,271.14	$696.40	$69,574.74		EFT
14	2/28/2009	1300	$161,585.42	$3,241.32	$158,344.10		EFT
15	3/31/2009	1325	$138,353.24	$6,016.00	$0.00	$132,337.24	
16	4/30/2009	1348	$388,028.28	$18,704.98	$0.00	$369,323.30	
17	5/31/2009	1386	$824,152.52	-$3,960.61		$828,113.13	
18	6/5/2009			-$398,523.09		$398,523.09	
TOTAL			$10,012,377.79	$0.02	$8,284,081.01	$1,728,296.76	

BRAUN CONSTRUCTION GROUP INC

HICKORY CHASE - COMMUNITY BUILDING 1.0

BILLING SUMMARY

DRAW NUMBER	INVOICE DATE	INVOICE NUMBER	GROSS BILLING	RETENTION	AMOUNT PAID	AMOUNT OPEN	PAYMENT SOURCE
1	4/30/2008	1000	$278,211.48	$15,990.75	$262,220.73		EFT
2	5/31/2008	1013	$217,275.00	$17,510.00	$199,765.00		EFT
3	6/30/2009	1045	$235,552.24	$20,283.97	$215,268.27		EFT
4	7/31/2009	1070	$387,594.15	$33,999.41	$353,594.74		EFT
5	8/31/2008	1098	$700,520.43	$31,088.53	$669,431.90		EFT
6	9/30/2009	1136	$2,111,194.51	$156,621.59	$1,954,572.92		EFT
7	10/31/2008	1170	$1,284,314.22	$104,035.19	$1,180,279.03		EFT
8	11/30/2008	1205	$1,207,054.72	$111,223.84	$1,095,830.88		EFT
9	12/31/2008	1235	$706,214.27	-$5,426.82	$711,641.09		EFT
10	1/31/2009	1270	$997,673.75	$76,566.01	$921,107.74		EFT
11	2/28/2009	1301	$1,016,900.02	$64,659.84	$952,240.18		EFT
12	3/31/2009	1322	$717,875.75	$32,534.73	$0.00	$685,341.02	
13	4/30/2009	1349	$861,841.68	$17,319.58	$0.00	$844,522.10	
14	5/31/2009	1382	$688,339.09	-$174,599.92	$0.00	$862,939.01	
15	6/5/2009			-$501,806.63	$0.00	$501,806.63	
TOTAL			$11,410,561.31	$0.07	$8,515,952.48	$2,894,608.76	

BRAUN CONSTRUCTION GROUP INC

HICKORY CHASE - RESIDENTIAL BUILDING 1.1

BILLING SUMMARY

DRAW NUMBER	INVOICE DATE	INVOICE NUMBER	GROSS BILLING	RETENTION	AMOUNT PAID	AMOUNT OPEN	PAYMENT SOURCE
1	4/30/2008	1001	$300,248.48	$14,945.35	$285,303.13		EFT
2	5/31/2008	1015	$208,741.00	$12,972.50	$195,768.50		EFT
3	6/30/2009	1046	$238,492.63	$19,693.27	$218,799.36		EFT
4	7/31/2009	1071	$540,850.97	$48,720.20	$492,130.77		EFT
5	8/31/2008	1099	$371,242.79	$32,598.31	$338,644.48		EFT
6	9/30/2009	1137	$1,291,897.22	$100,880.56	$1,191,016.66		EFT
7	10/31/2008	1171	$1,314,877.00	$124,497.69	$1,190,379.31		EFT
8	11/30/2008	1206	$1,543,990.91	$55,404.47	$1,488,586.44		EFT
9	12/31/2008	1236	$1,614,010.14	$112,661.84	$1,501,348.30		EFT
10	1/31/2009	1271	$1,343,451.08	$59,804.53	$1,283,646.55		EFT
11	2/28/2009	1302	$1,132,285.75	$85,355.47	$1,046,930.28		EFT
12	3/31/2009	1323	$1,474,702.74	$59,336.06	$0.00	$1,415,366.68	
13	4/30/2009	1350	$1,287,631.76	$94,893.68	$0.00	$1,192,738.08	
14	5/31/2009	1383	$1,042,048.39	-$186,665.88	$0.00	$1,228,714.27	
15	6/5/2009			-$635,098.06	$0.00	$635,098.06	
TOTAL			$13,704,470.86	-$0.01	$9,232,553.78	$4,471,917.09	

BRAUN CONSTRUCTION GROUP INC

HICKORY CHASE - PUMP HOUSE

BILLING SUMMARY

DRAW NUMBER	INVOICE DATE	INVOICE NUMBER	GROSS BILLING	RETENTION	AMOUNT PAID	AMOUNT OPEN	PAYMENT SOURCE
1	7/31/2009	1069	$99,710.40	$9,393.57	$90,316.83		EFT
2	8/31/2008	1100	$36,107.62	$2,892.54	$33,215.08		EFT
3	9/30/2009	1135	$31,859.65	$2,407.84	$29,451.81		EFT
4	10/31/2008	1165	$51,228.55	$4,510.01	$46,718.54		EFT
5	11/30/2008	1208	$93,186.40	-$3,286.67	$96,473.07		EFT
6	12/31/2008	1237	$20,596.46	$927.83	$19,668.63		EFT
7	1/31/2009	1272	$11,286.82	$527.56	$10,759.26		EFT
8	3/31/2009	1324	$11,618.01	$320.00	$0.00	$11,298.01	
9	5/31/2009	1384	$21,757.87	-$239.59	$0.00	$21,997.46	
10	6/30/2009			-$17,453.08		$17,453.08	
TOTAL			$377,351.78	$0.01	$326,603.22	$50,748.55	

BRAUN CONSTRUCTION GROUP INC

HICKORY CHASE - GATE HOUSE

BILLING SUMMARY

DRAW NUMBER	INVOICE DATE	INVOICE NUMBER	GROSS BILLING	RETENTION	AMOUNT PAID	AMOUNT OPEN	PAYMENT SOURCE
1	10/31/2008	1164	$16,056.50	$1,519.95	$14,536.55		EFT
2	11/30/2008	1204	$15,215.00	$419.80	$14,795.20		EFT
3	12/31/2008	1238	$22,997.67	$222.28	$22,775.39		EFT
4	1/31/2009	1273	$2,095.52	$26.75	$2,068.77		EFT
5	2/28/2009	1303	$631.32	$57.83	$573.49		
6	3/31/2009	1326	$1,621.50	-$243.15	$0.00	$1,864.65	
7	4/30/2009	1351	$11,956.46	$1,017.29	$0.00	$10,939.17	
8	5/31/2009	1385	$16,834.98	-$478.55	$0.00	$17,313.53	
9	6/5/2009			-$2,542.20		$2,542.20	
TOTAL			$87,408.95	$0.00	$54,749.40	$32,659.55	

AFFIDAVIT FOR MECHANIC'S LIEN
(§1311.06 O.R.C.)

200906290094010
Pgs: 4 $44.00 T20090035967
06/29/2009 4:17PM BXLUPER/PRRAM
Robert G. Montgomery
Franklin County Recorder

State of Ohio
County of Franklin, ss.

The undersigned, Jeffrey R. Jinkens, being first duly sworn, says that he is the duly appointed agent and attorney for Braun Construction Group, Inc., whose address is 39395 W. 12 Mile Rd., Suite 100, Farmington Hills, MI 48331, and that Braun Construction Group, Inc. furnished certain labor and materials in furtherance of improvements located on or removed to the land hereinafter described, in pursuance of a certain contract with Columbus Campus, LLC whose address is 701 Maiden Choice Lane, Catonsville, MD 21228. The first of said labor and materials were furnished on January 24, 2008. The last of the labor and materials were furnished on May 11, 2009, and there is justly and truly due Braun Construction Group, Inc., therefor from Columbus Campus, LLC, over and above all legal setoffs, the sum of $1,728,296.76 plus interest for which amount Braun Construction Group, Inc. claims a lien upon the land and improvements of which Columbus Campus, LLC is the owner and which premises are commonly known as 4500 Hickory Chase Way, Hilliard, OH 43026 and are further described in Exhibit A attached hereto and incorporated by reference herein.

Jeffrey R. Jinkens, duly appointed attorney and agent
For Braun Construction Group, Inc.

Sworn to before me and subscribed in my presence this 29th day of June, 2009.

NOTARIAL SEAL STATE OF OHIO

TERRY SOMA
Notary Public, State of Ohio
My Commission Expires March 5, 2013

Notary Public

This instrument prepared by: Jeffrey R. Jinkens, Esq., Luper Neidenthal & Logan, A Legal Professional Association, 50 West Broad Street, Suite 1200, Columbus, Ohio 43215, (614) 221-7663.

EXHIBIT 3

77.019 ACRES

Situate in the State of Ohio, County of Franklin, City of Hilliard, lying in Virginia Military Survey Nos. 3000 and 4854, being part of the 40.924 and all of the 0.742 acre tracts conveyed to Columbus Campus LLC by deed of record in Instrument Number _____, and part of the 45.957 acre tract conveyed to Columbus Campus LLC by deed of record in Instrument Number _____, (all references refer to the records of the Recorder's Office, Franklin County, Ohio) being more particularly described as follows:

Beginning, for reference, at Franklin County Geodetic Survey Monument Number 0005 RESET found at the centerline intersection of Davidson Road (variable width) and Leap Road (variable width);

Thence South 23° 37' 07" East, a distance of 1243.56 feet, with the centerline of said Leap Road, to a point;

Thence North 66° 22' 53" East, a distance of 50.00 feet, across the right-of-way of said Leap Road and entering said 45.957 acre tract, to an iron pin set, the TRUE POINT OF BEGINNING;

Thence across said 45.957 acre tract, the following courses and distances:

North 68° 44' 53" East, a distance of 556.74 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 09° 08' 20", a radius of 1099.00 feet, an arc length of 175.29 feet, and a chord which bears North 60° 37' 51" East, a chord distance of 175.11 feet, to an iron pin set;

North 23° 37' 07" West, a distance of 384.33 feet, to an iron pin set in the line common to said 45.957 acre tract and the remainder of the original Tract Three conveyed to Wolpert Enterprises, Limited by deed of record in Instrument Number 200204080088414;

Thence North 84° 08' 15" East, a distance of 1139.80 feet, with the northerly line of said 45.957 and 0.742 acre tracts and with the southerly lines of the remainder of said Tract Three, the southerly line of the remainder of the original Tract Two conveyed to Wolpert Enterprises, Limited by deed of record in Instrument Number 200204080088414 and a southerly line of the remainder of the original Tract 1 conveyed to Ansmil Limited Partnership by deed of record in Official Record 32225 G17, to an iron pin set;

Thence South 05° 55' 17" East, a distance of 353.64 feet, with the line common to said 0.742 acre tract and the remainder of said original Tract 1, to an iron pin set at a point of curvature;

Thence with said curve to the left, having a central angel of 17° 44' 53", a radius of 1332.49 feet, an arc length of 412.75 feet, and a chord which bears South 14° 47' 43" East, a chord distance of 411.10 feet, with an easterly line of said 0.742 and 45.957 acre tracts and a westerly line of the remainders of said original Tract 1 and original Tract Two, to an iron pin set at a point of tangency;

Thence South 23° 40' 10" East, a distance of 353.83 feet, with an easterly line of said 45.957 and 40.924 acre tracts, and with a westerly line of the remainders of said original Tract Two and original Parcel Two, Tract Two conveyed to Ansmil Limited Partnership by deed of record in Official Records 32225 G17 and 32225 I05, to an iron pin set;

Thence continuing with the line common to said 40.924 acre tract, the remainder of said original Parcel Two, Tract Two and the remainder of the original Parcel Two, Tract Three conveyed to Ansmil Limited Partnership by deed of record in Official Records 32225 G17 and 32225 I05, the following courses and distances:

South 01° 52' 05" East, a distance of 53.85 feet, to an iron pin set;

South 23° 40' 10" East, a distance of 105.00 feet, to an iron pin set;

South 45° 28' 15" East, a distance of 53.85 feet, to an iron pin set;

South 23° 40' 10" East, a distance of 514.24 feet, to an iron pin set at a point of curvature;

With said curve to the right, having a central angle of 08° 02' 24", a radius of 1390.00 feet, an arc length of 195.05 feet, and a chord which bears South 19° 38' 58" East, a chord distance of 194.89 feet, to an iron pin set;

South 74° 22' 14" West, a distance of 20.00 feet, to an iron pin set;

EXHIBIT
tabbies
A

With a curve to the right, having a central angle of 01° 02' 00", a radius of 1370.00 feet, an arc length of 24.71 feet, and a chord which bears South 15° 06' 46" East, a chord distance of 24.71 feet, to an iron pin set;

South 76° 07' 35" West, a distance of 82.51 feet, to an iron pin set;

South 70° 47' 24" West, a distance of 286.15 feet, to an iron pin set;

South 68° 02' 13" West, a distance of 159.38 feet, to an iron pin set;

South 82° 20' 53" West, a distance of 300.01 feet, to an iron pin set;

South 76° 34' 35" West, a distance of 307.14 feet, to an iron pin set;

South 82° 47' 36" West, a distance of 138.56 feet, to an iron pin set;

North 79° 56' 50" West, a distance of 85.56 feet, to an iron pin set;

North 71° 18' 50" West, a distance of 150.01 feet, to an iron pin set;

North 65° 38' 53" West, a distance of 208.41 feet, to an iron pin set;

North 57° 48' 25" West, a distance of 129.32 feet, to an iron pin set;

North 59° 01' 48" West, a distance of 170.38 feet, to an iron pin set;

North 67° 18' 16" West, a distance of 57.59 feet, to an iron pin set;

North 80° 44' 53" West, a distance of 8.85 feet, to an iron pin set;

Thence across said 40.924 and 45.957 acre tracts, the following courses and distances:

North 02° 32' 02" East, a distance of 270.04 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 26° 09' 10", a radius of 600.00 feet, an arc length of 273.87 feet, and a chord which bears North 10° 32' 33" West, a chord distance of 271.50 feet, to an iron pin set;

North 23° 37' 07" West, a distance of 682.05 feet, to the TRUE POINT OF BEGINNING, containing 77.019 acres, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

This description is based on existing record and field work performed in December, 2006.

Bearings are based on the Ohio State Plane Coordinate System, South Zone, as per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FCGS 0005 RESET and FCGS 0006, having a bearing of North 23° 37' 07" West, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.

STATE OF OHIO
HEATHER L KING
S-8307
REGISTERED
PROFESSIONAL SURVEYOR

EVANS, MECHWART, HAMBLETON, & TILTON, INC.

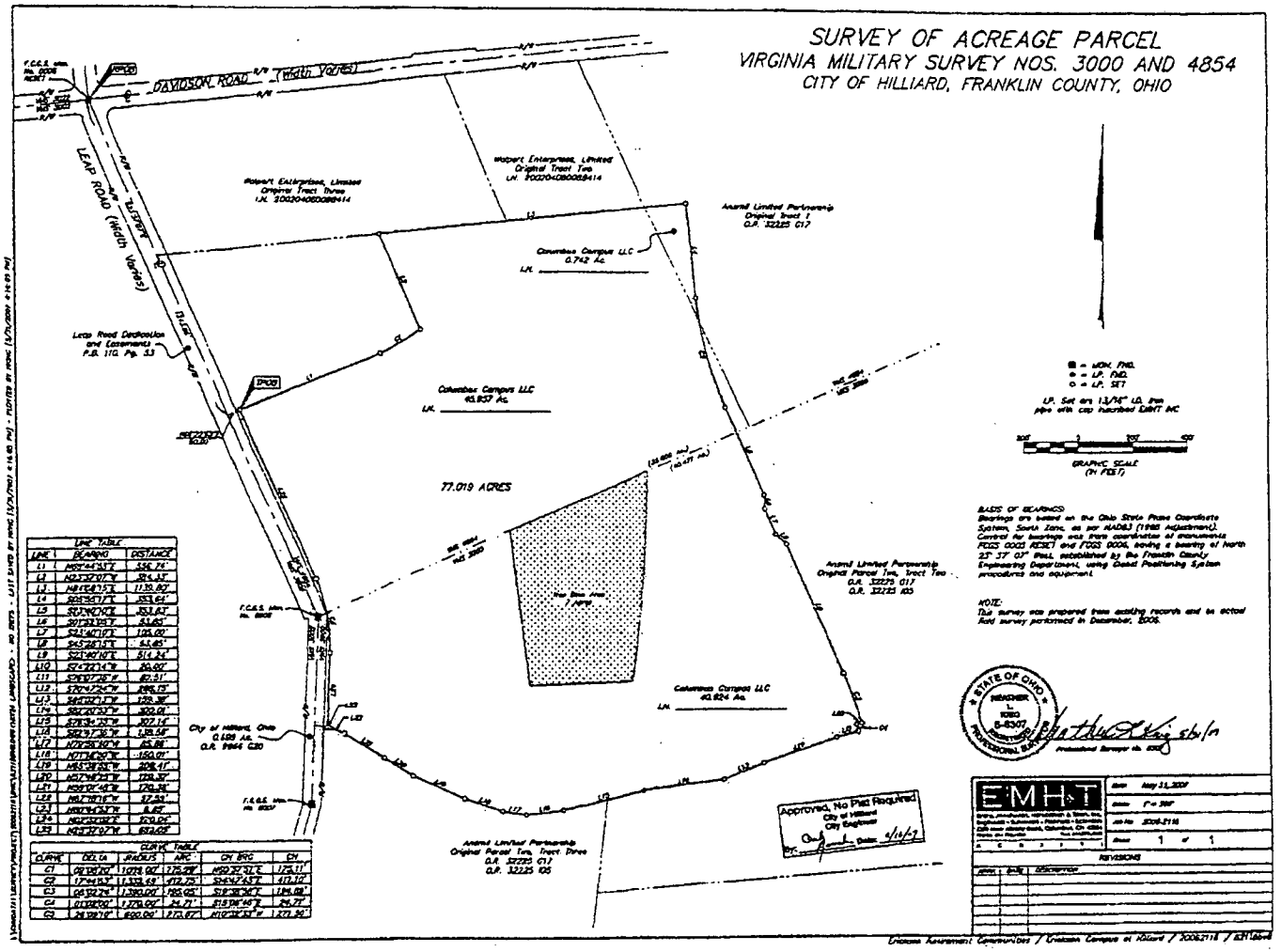
Heather L. King
Professional Surveyor No. 8307

5/31/07
Date

HLK/29May07
77_019 ac 62116

PRELIMINARY APPROVAL
FRANKLIN COUNTY ENGINEERING DEPT.
DATE: BY:

Approved, No Plat Required
City of Hilliard
City Engineer
By: Date: 6/14/07



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N69°44'53"E	336.76'
L2	N23°37'07"W	814.35'
L3	N81°54'37"E	1135.80'
L4	S85°55'11"E	553.64'
L5	S01°40'07"E	833.43'
L6	S01°33'35"E	83.65'
L7	S23°40'19"E	195.00'
L8	S14°58'15"E	83.65'
L9	S23°40'19"E	511.33'
L10	S71°22'34"W	30.00'
L11	S70°07'28"W	82.51'
L12	S70°47'54"W	899.13'
L13	S61°02'17"W	170.36'
L14	S52°20'53"W	302.01'
L15	S78°34'25"W	302.14'
L16	S82°19'38"W	198.06'
L17	N70°58'30"W	85.88'
L18	N77°46'09"W	150.01'
L19	N85°38'26"W	208.11'
L20	N87°46'03"W	178.30'
L21	N89°10'46"W	178.98'
L22	N87°30'15"W	57.53'
L23	N80°04'53"W	8.82'
L24	N02°32'08"E	109.06'
L25	N23°37'07"W	657.06'

CURVE TABLE					
CURVE	DELTA	RADIUS	ARC	CH BRG	CH
C1	09°08'20"	1,078.92'	172.28'	N59°32'10"E	172.11'
C2	17°44'53"	1,333.69'	412.75'	S24°47'43"E	411.12'
C3	09°01'24"	1,380.00'	130.25'	S18°38'34"E	130.20'
C4	01°32'02"	1,176.00'	31.27'	S13°06'48"E	31.27'
C5	24°08'19"	650.00'	273.87'	N10°02'33"W	271.90'

Pat 6 Hilliard - Part 1 (10/10/2006 1:11:18 PM) - Sheet 01 - C:\DOCUMENTS AND SETTINGS\ADMINISTRATOR\LOCAL SETTINGS\TEMPORARY INTERNET FILES\OLK1\SURVEY.DWG

AFFIDAVIT FOR MECHANIC'S LIEN
(§1311.06 O.R.C.)

200906290094011
Pgs: 4 $44.00 T20090035967
06/29/2009 4:18PM BXLUPER/PARAM
Robert G Montgomery
Franklin County Recorder

State of Ohio
County of Franklin, ss.

The undersigned, Jeffrey R. Jinkens, being first duly sworn, says that he is the duly appointed agent and attorney for Braun Construction Group, Inc., whose address is 39395 W. 12 Mile Rd., Suite 100, Farmington Hills, MI 48331, and that Braun Construction Group, Inc. furnished certain labor and materials in furtherance of improvements located on or removed to the land hereinafter described, in pursuance of a certain contract with Columbus Campus, LLC whose address is 701 Maiden Choice Lane, Catonsville, MD 21228. The first of said labor and materials were furnished on April 15, 2008. The last of the labor and materials were furnished on May 11, 2009, and there is justly and truly due Braun Construction Group, Inc., therefor from Columbus Campus, LLC, over and above all legal setoffs, the sum of $2,894,608.85 plus interest for which amount Braun Construction Group, Inc. claims a lien upon the land and improvements of which Columbus Campus, LLC is the owner and which premises are commonly known as 4500 Hickory Chase Way, Hilliard, OH 43026 and are further described in Exhibit A attached hereto and incorporated by reference herein.

Jeffrey R. Jinkens, duly appointed attorney and agent
For Braun Construction Group, Inc.

Sworn to before me and subscribed in my presence this 29th day of June, 2009.

NOTARIAL SEAL STATE OF OHIO

TERRY SOMA
Notary Public, State of Ohio
My Commission Expires March 5, 2013

Notary Public

This instrument prepared by: Jeffrey R. Jinkens, Esq., Luper Neidenthal & Logan, A Legal Professional Association, 50 West Broad Street, Suite 1200, Columbus, Ohio 43215, (614) 221-7663.

77.019 ACRES

Situate in the State of Ohio, County of Franklin, City of Hilliard, lying in Virginia Military Survey Nos. 3000 and 4854, being part of the 40.924 and all of the 0.742 acre tracts conveyed to Columbus Campus LLC by deed of record in Instrument Number _____, and part of the 45.957 acre tract conveyed to Columbus Campus LLC by deed of record in Instrument Number _____, (all references refer to the records of the Recorder's Office, Franklin County, Ohio) being more particularly described as follows:

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Thence South 23° 37' 07" East, a distance of 1243.56 feet, with the centerline of said Leap Road, to a point;

Thence North 66° 22' 53" East, a distance of 50.00 feet, across the right-of-way of said Leap Road and entering said 45.957 acre tract, to an iron pin set, the TRUE POINT OF BEGINNING;

Thence across said 45.957 acre tract, the following courses and distances:

North 68° 44' 53" East, a distance of 556.74 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 09° 08' 20", a radius of 1099.00 feet, an arc length of 175.29 feet, and a chord which bears North 60° 37' 51" East, a chord distance of 175.11 feet, to an iron pin set;

North 23° 37' 07" West, a distance of 384.33 feet, to an iron pin set in the line common to said 45.957 acre tract and the remainder of the original Tract Three conveyed to Wolpert Enterprises, Limited by deed of record in Instrument Number 200204080088414;

Thence North 84° 08' 15" East, a distance of 1139.80 feet, with the northerly line of said 45.957 and 0.742 acre tracts and with the southerly lines of the remainder of said Tract Three, the southerly line of the remainder of the original Tract Two conveyed to Wolpert Enterprises, Limited by deed of record in Instrument Number 200204080088414 and a southerly line of the remainder of the original Tract 1 conveyed to Ansmil Limited Partnership by deed of record in Official Record 32225 G17, to an iron pin set;

Thence South 05° 55' 17" East, a distance of 353.64 feet, with the line common to said 0.742 acre tract and the remainder of said original Tract 1, to an iron pin set at a point of curvature;

Thence with said curve to the left, having a central angel of 17° 44' 53", a radius of 1332.49 feet, an arc length of 412.75 feet, and a chord which bears South 14° 47' 43" East, a chord distance of 411.10 feet, with an easterly line of said 0.742 and 45.957 acre tracts and a westerly line of the remainders of said original Tract 1 and original Tract Two, to an iron pin set at a point of tangency;

Thence South 23° 40' 10" East, a distance of 353.83 feet, with an easterly line of said 45.957 and 40.924 acre tracts, and with a westerly line of the remainders of said original Tract Two and original Parcel Two, Tract Two conveyed to Ansmil Limited Partnership by deed of record in Official Records 32225 G17 and 32225 I05, to an iron pin set;

Thence continuing with the line common to said 40.924 acre tract, the remainder of said original Parcel Two, Tract Two and the remainder of the original Parcel Two, Tract Three conveyed to Ansmil Limited Partnership by deed of record in Official Records 32225 G17 and 32225 I05, the following courses and distances:

South 01° 52' 05" East, a distance of 53.85 feet, to an iron pin set;

South 23° 40' 10" East, a distance of 105.00 feet, to an iron pin set;

South 45° 28' 15" East, a distance of 53.85 feet, to an iron pin set;

South 23° 40' 10" East, a distance of 514.24 feet, to an iron pin set at a point of curvature;

With said curve to the right, having a central angle of 08° 02' 24", a radius of 1390.00 feet, an arc length of 195.05 feet, and a chord which bears South 19° 38' 58" East, a chord distance of 194.89 feet, to an iron pin set;

South 74° 22' 14" West, a distance of 20.00 feet, to an iron pin set;

EXHIBIT
tabbies
A

With a curve to the right, having a central angle of 01° 02' 00", a radius of 1370.00 feet, an arc length of 24.71 feet, and a chord which bears South 15° 06' 46" East, a chord distance of 24.71 feet, to an iron pin set;

South 76° 07' 35" West, a distance of 82.51 feet, to an iron pin set;

South 70° 47' 24" West, a distance of 286.15 feet, to an iron pin set;

South 68° 02' 13" West, a distance of 159.38 feet, to an iron pin set;

South 82° 20' 53" West, a distance of 300.01 feet, to an iron pin set;

South 76° 34' 35" West, a distance of 307.14 feet, to an iron pin set;

South 82° 47' 36" West, a distance of 138.56 feet, to an iron pin set;

North 79° 56' 50" West, a distance of 85.56 feet, to an iron pin set;

North 71° 18' 50" West, a distance of 150.01 feet, to an iron pin set;

North 65° 38' 53" West, a distance of 208.41 feet, to an iron pin set;

North 57° 48' 25" West, a distance of 129.32 feet, to an iron pin set;

North 59° 01' 48" West, a distance of 170.38 feet, to an iron pin set;

North 67° 18' 16" West, a distance of 57.59 feet, to an iron pin set;

North 80° 44' 53" West, a distance of 8.85 feet, to an iron pin set;

Thence across said 40.924 and 45.957 acre tracts, the following courses and distances:

North 02° 32' 02" East, a distance of 270.04 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 26° 09' 10", a radius of 600.00 feet, an arc length of 273.87 feet, and a chord which bears North 10° 32' 33" West, a chord distance of 271.50 feet, to an iron pin set;

North 23° 37' 07" West, a distance of 682.05 feet, to the TRUE POINT OF BEGINNING, containing 77.019 acres, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

This description is based on existing record and field work performed in December, 2006.

Bearings are based on the Ohio State Plane Coordinate System, South Zone, as per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FCGS 0005 RESET and FCGS 0006, having a bearing of North 23° 37' 07" West, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.

STATE OF OHIO
HEATHER L KING
S-8307
REGISTERED
PROFESSIONAL SURVEYOR

EVANS, MECHWART, HAMBLETON, & TILTON, INC.

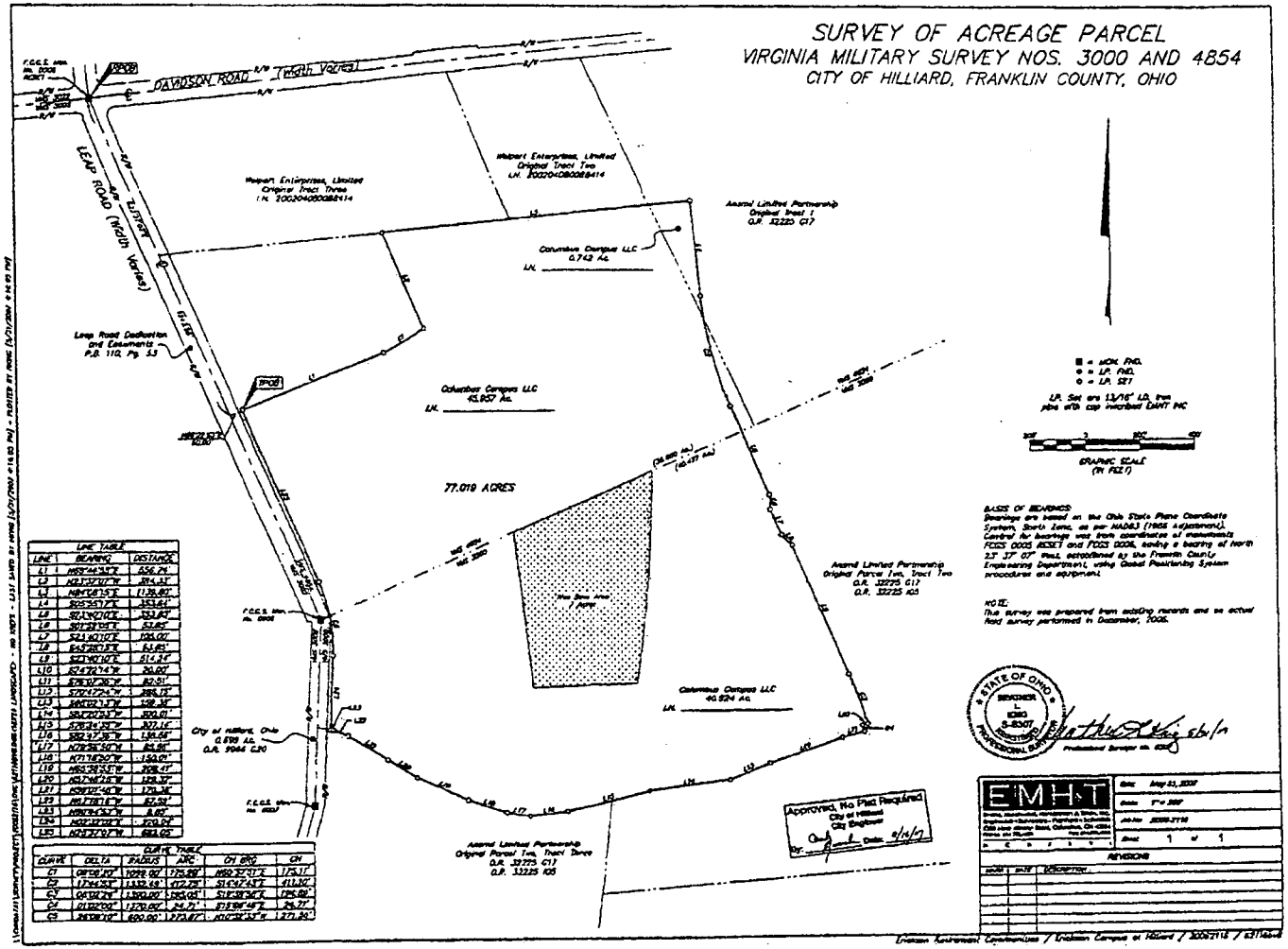
Heather L. King
Professional Surveyor No. 8307

5/31/07
Date

HLK/29May07
77_019 ac 62116

Clarence OK
PRELIMINARY APPROVAL
FRANKLIN COUNTY ENGINEERING DEPT.
DATE 6-1-07 BY:

Approved, No Plat Required
City of Hilliard
City Engineer
By: Date: 6/14/07



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N89°44'36"E	656.24'
L2	N01°37'01"W	494.32'
L3	N84°08'15"E	1139.87'
L4	S05°53'01"E	353.61'
L5	S01°43'01"E	133.87'
L6	S01°28'05"E	83.65'
L7	S21°40'10"E	936.01'
L8	S43°28'01"E	83.85'
L9	S21°40'10"E	514.24'
L10	S24°27'14"W	26.00'
L11	S76°07'26"W	82.51'
L12	S70°47'20"W	388.13'
L13	S68°02'17"W	158.36'
L14	S84°20'24"W	200.01'
L15	S78°34'52"W	307.16'
L16	S82°37'38"W	139.58'
L17	N78°58'56"W	84.86'
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L22	N61°18'18"W	82.59'
L23	N88°54'52"W	8.82'
L24	N02°32'03"E	109.04'
L25	N02°37'01"W	883.02'

CURVE TABLE					
CURVE	DELTA	RADIUS	ARC	CH BRG	CH
C1	09°08'02"	1099.00'	175.28'	N82°32'01"E	175.11'
C2	17°44'25"	1330.49'	412.28'	S14°47'48"E	410.70'
C3	04°01'24"	1390.00'	195.65'	S19°38'54"E	195.82'
C4	01°32'00"	1270.00'	34.71'	S13°58'48"E	34.71'
C5	24°09'18"	650.00'	273.87'	N01°28'33"W	271.86'

L:\Drawings\20060-7116\SURVEY\PROJECT\20067116_ALTANSPS.DWG - 06 1973 - 1:1 - SAVED BY mmg (5/31/2007 4:16:05 PM) - PLOTTED BY mmg (5/31/2007 4:16:05 PM)

AFFIDAVIT FOR MECHANIC'S LIEN
(§1311.06 O.R.C.)

200906290094012
Pgs: 4 $44.00 T20090035967
06/29/2009 4:19PM BXLUPER/PARAM
Robert G. Montgomery
Franklin County Recorder

State of Ohio
County of Franklin, ss.

The undersigned, Jeffrey R. Jinkens, being first duly sworn, says that he is the duly appointed agent and attorney for Braun Construction Group, Inc., whose address is 39395 W. 12 Mile Rd., Suite 100, Farmington Hills, MI 48331, and that Braun Construction Group, Inc. furnished certain labor and materials in furtherance of improvements located on or removed to the land hereinafter described, in pursuance of a certain contract with Columbus Campus, LLC whose address is 701 Maiden Choice Lane, Catonsville, MD 21228. The first of said labor and materials were furnished on April 15, 2008. The last of the labor and materials were furnished on May 11, 2009, and there is justly and truly due Braun Construction Group, Inc., therefor from Columbus Campus, LLC, over and above all legal setoffs, the sum of $4,471,917.59 plus interest for which amount Braun Construction Group, Inc. claims a lien upon the land and improvements of which Columbus Campus, LLC is the owner and which premises are commonly known as 4500 Hickory Chase Way, Hilliard, OH 43026 and are further described in Exhibit A attached hereto and incorporated by reference herein.

Jeffrey R. Jinkens, duly appointed attorney and agent
For Braun Construction Group, Inc.

Sworn to before me and subscribed in my presence this 29th day of June, 2009.

NOTARIAL SEAL STATE OF OHIO

TERRY SOMA
Notary Public, State of Ohio
My Commission Expires March 5, 2013

Notary Public

This instrument prepared by: Jeffrey R. Jinkens, Esq., Luper Neidenthal & Logan, A Legal Professional Association, 50 West Broad Street, Suite 1200, Columbus, Ohio 43215, (614) 221-7663.

77.019 ACRES

Situate in the State of Ohio, County of Franklin, City of Hilliard, lying in Virginia Military Survey Nos. 3000 and 4854, being part of the 40.924 and all of the 0.742 acre tracts conveyed to Columbus Campus LLC by deed of record in Instrument Number _____, and part of the 45.957 acre tract conveyed to Columbus Campus LLC by deed of record in Instrument Number _____, (all references refer to the records of the Recorder's Office, Franklin County, Ohio) being more particularly described as follows:

Beginning, for reference, at Franklin County Geodetic Survey Monument Number 0005 RESET found at the centerline intersection of Davidson Road (variable width) and Leap Road (variable width);

Thence South 23° 37' 07" East, a distance of 1243.56 feet, with the centerline of said Leap Road, to a point;

Thence North 66° 22' 53" East, a distance of 50.00 feet, across the right-of-way of said Leap Road and entering said 45.957 acre tract, to an iron pin set, the TRUE POINT OF BEGINNING;

Thence across said 45.957 acre tract, the following courses and distances:

North 68° 44' 53" East, a distance of 556.74 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 09° 08' 20", a radius of 1099.00 feet, an arc length of 175.29 feet, and a chord which bears North 60° 37' 51" East, a chord distance of 175.11 feet, to an iron pin set;

North 23° 37' 07" West, a distance of 384.33 feet, to an iron pin set in the line common to said 45.957 acre tract and the remainder of the original Tract Three conveyed to Wolpert Enterprises, Limited by deed of record in Instrument Number 200204080088414;

Thence North 84° 08' 15" East, a distance of 1139.80 feet, with the northerly line of said 45.957 and 0.742 acre tracts and with the southerly lines of the remainder of said Tract Three, the southerly line of the remainder of the original Tract Two conveyed to Wolpert Enterprises, Limited by deed of record in Instrument Number 200204080088414 and a southerly line of the remainder of the original Tract 1 conveyed to Ansmil Limited Partnership by deed of record in Official Record 32225 G17, to an iron pin set;

Thence South 05° 55' 17" East, a distance of 353.64 feet, with the line common to said 0.742 acre tract and the remainder of said original Tract 1, to an iron pin set at a point of curvature;

Thence with said curve to the left, having a central angel of 17° 44' 53", a radius of 1332.49 feet, an arc length of 412.75 feet, and a chord which bears South 14° 47' 43" East, a chord distance of 411.10 feet, with an easterly line of said 0.742 and 45.957 acre tracts and a westerly line of the remainders of said original Tract 1 and original Tract Two, to an iron pin set at a point of tangency;

Thence South 23° 40' 10" East, a distance of 353.83 feet, with an easterly line of said 45.957 and 40.924 acre tracts, and with a westerly line of the remainders of said original Tract Two and original Parcel Two, Tract Two conveyed to Ansmil Limited Partnership by deed of record in Official Records 32225 G17 and 32225 I05, to an iron pin set;

Thence continuing with the line common to said 40.924 acre tract, the remainder of said original Parcel Two, Tract Two and the remainder of the original Parcel Two, Tract Three conveyed to Ansmil Limited Partnership by deed of record in Official Records 32225 G17 and 32225 I05, the following courses and distances:

South 01° 52' 05" East, a distance of 53.85 feet, to an iron pin set;

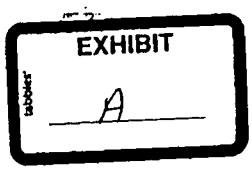
South 23° 40' 10" East, a distance of 105.00 feet, to an iron pin set;

South 45° 28' 15" East, a distance of 53.85 feet, to an iron pin set;

South 23° 40' 10" East, a distance of 514.24 feet, to an iron pin set at a point of curvature;

With said curve to the right, having a central angle of 08° 02' 24", a radius of 1390.00 feet, an arc length of 195.05 feet, and a chord which bears South 19° 38' 58" East, a chord distance of 194.89 feet, to an iron pin set;

South 74° 22' 14" West, a distance of 20.00 feet, to an iron pin set;



With a curve to the right, having a central angle of 01° 02' 00", a radius of 1370.00 feet, an arc length of 24.71 feet, and a chord which bears South 15° 06' 46" East, a chord distance of 24.71 feet, to an iron pin set;

South 76° 07' 35" West, a distance of 82.51 feet, to an iron pin set;

South 70° 47' 24" West, a distance of 286.15 feet, to an iron pin set;

South 68° 02' 13" West, a distance of 159.38 feet, to an iron pin set;

South 82° 20' 53" West, a distance of 300.01 feet, to an iron pin set;

South 76° 34' 35" West, a distance of 307.14 feet, to an iron pin set;

South 82° 47' 36" West, a distance of 138.56 feet, to an iron pin set;

North 79° 56' 50" West, a distance of 85.56 feet, to an iron pin set;

North 71° 18' 50" West, a distance of 150.01 feet, to an iron pin set;

North 65° 38' 53" West, a distance of 208.41 feet, to an iron pin set;

North 57° 48' 25" West, a distance of 129.32 feet, to an iron pin set;

North 59° 01' 48" West, a distance of 170.38 feet, to an iron pin set;

North 67° 18' 16" West, a distance of 57.59 feet, to an iron pin set;

North 80° 44' 53" West, a distance of 8.85 feet, to an iron pin set;

Thence across said 40.924 and 45.957 acre tracts, the following courses and distances:

North 02° 32' 02" East, a distance of 270.04 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 26° 09' 10", a radius of 600.00 feet, an arc length of 273.87 feet, and a chord which bears North 10° 32' 33" West, a chord distance of 271.50 feet, to an iron pin set;

North 23° 37' 07" West, a distance of 682.05 feet, to the TRUE POINT OF BEGINNING, containing 77.019 acres, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

This description is based on existing record and field work performed in December, 2006.

Bearings are based on the Ohio State Plane Coordinate System, South Zone, as per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FCGS 0005 RESET and FCGS 0006, having a bearing of North 23° 37' 07" West, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.

STATE OF OHIO
HEATHER L. KING
S-8307
REGISTERED
PROFESSIONAL SURVEYOR

EVANS, MECHWART, HAMBLETON, & TILTON, INC.

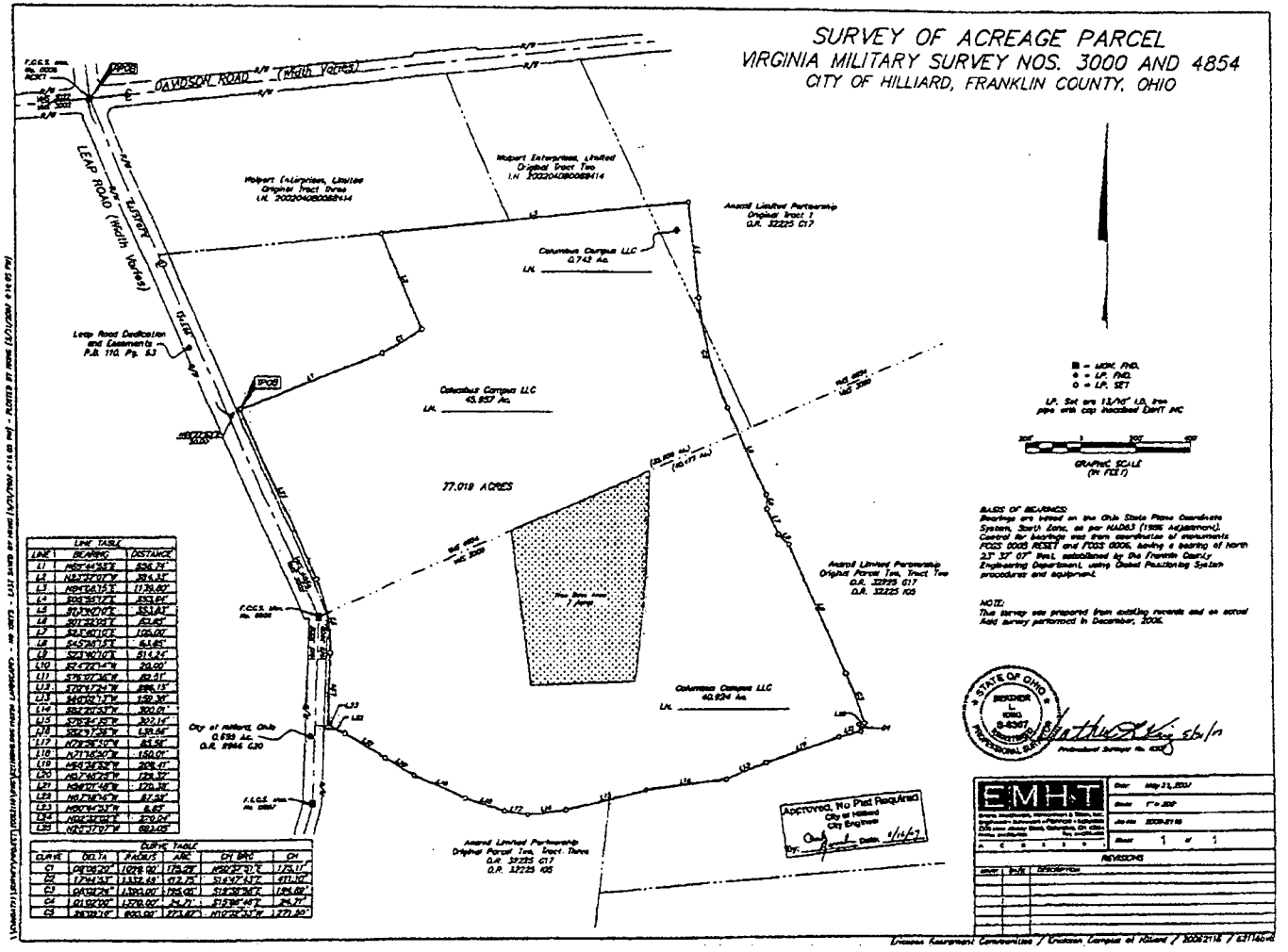
Heather L. King
Professional Surveyor No. 8307

5/31/07
Date

HLK/29May07
77_019 ac 62116

PRELIMINARY APPROVAL
FRANKLIN COUNTY ENGINEERING DEPT.
DATE: 6-1-07 BY:

Approved, No Plat Required
City of Hilliard
City Engineer
By: Date: 6/6/07



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N65°44'58"E	838.74'
L2	N33°22'07"W	324.35'
L3	N89°06'15"E	1179.80'
L4	S04°38'57"E	653.84'
L5	S13°30'07"E	353.47'
L6	S01°32'08"E	451.46'
L7	S01°54'10"E	100.00'
L8	S45°28'13"E	64.85'
L9	S23°16'10"E	814.24'
L10	S27°47'11"W	29.00'
L11	S76°07'36"W	82.51'
L12	S70°41'24"W	896.15'
L13	S41°02'17"W	428.38'
L14	S84°38'53"W	302.01'
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L16	S82°47'28"W	439.56'
L17	N79°28'10"W	83.56'
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L19	N68°38'58"W	209.41'
L20	N51°40'22"W	129.32'
L21	N36°01'48"W	270.36'
L22	N61°38'16"W	87.38'
L23	N89°14'24"W	8.87'
L24	N02°42'02"E	270.04'
L25	N02°37'07"W	682.40'

CURVE TABLE					
CURVE	DELTA	RADIUS	ARC	CH BRG	CH
C1	08°08'20"	1019.98'	126.28'	N80°27'10"E	126.17'
C2	17°41'32"	1332.68'	412.25'	S14°57'43"E	410.70'
C3	04°03'26"	1390.00'	98.45'	S18°38'36"E	98.43'
C4	01°02'00"	1278.00'	24.71'	S13°08'47"E	24.71'
C5	24°09'19"	900.00'	379.47'	N10°08'53"W	376.70'

Emerson Tournament Communities / Emerson Campus at Hilliard / 2005-2116 / 6711460.dwg

AFFIDAVIT FOR MECHANIC'S LIEN
(§1311.06 O.R.C.)

200906290094013
Pgs: 4 $44.00 T20090035967
06/29/2009 4:20PM BXLUPER/PARAM
Robert G. Montgomery
Franklin County Recorder

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County of Franklin, ss.

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For Braun Construction Group, Inc.

Sworn to before me and subscribed in my presence this 29th day of June, 2009.

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TERRY SOMA
Notary Public, State of Ohio
My Commission Expires March 5, 2013

Notary Public

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Thence South 23° 37' 07" East, a distance of 1243.56 feet, with the centerline of said Leap Road, to a point;

Thence North 66° 22' 53" East, a distance of 50.00 feet, across the right-of-way of said Leap Road and entering said 45.957 acre tract, to an iron pin set, the TRUE POINT OF BEGINNING;

Thence across said 45.957 acre tract, the following courses and distances:

North 68° 44' 53" East, a distance of 556.74 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 09° 08' 20", a radius of 1099.00 feet, an arc length of 175.29 feet, and a chord which bears North 60° 37' 51" East, a chord distance of 175.11 feet, to an iron pin set;

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EXHIBIT

A

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STATE OF OHIO
HEATHER L. KING
S-8307
REGISTERED
PROFESSIONAL SURVEYOR

EVANS, MECHWART, HAMBLETON, & TILTON, INC.

Heather L. King
Professional Surveyor No. 8307

5/31/07
Date

HLK/29May07
77_019 se 62116

PRELIMINARY APPROVAL
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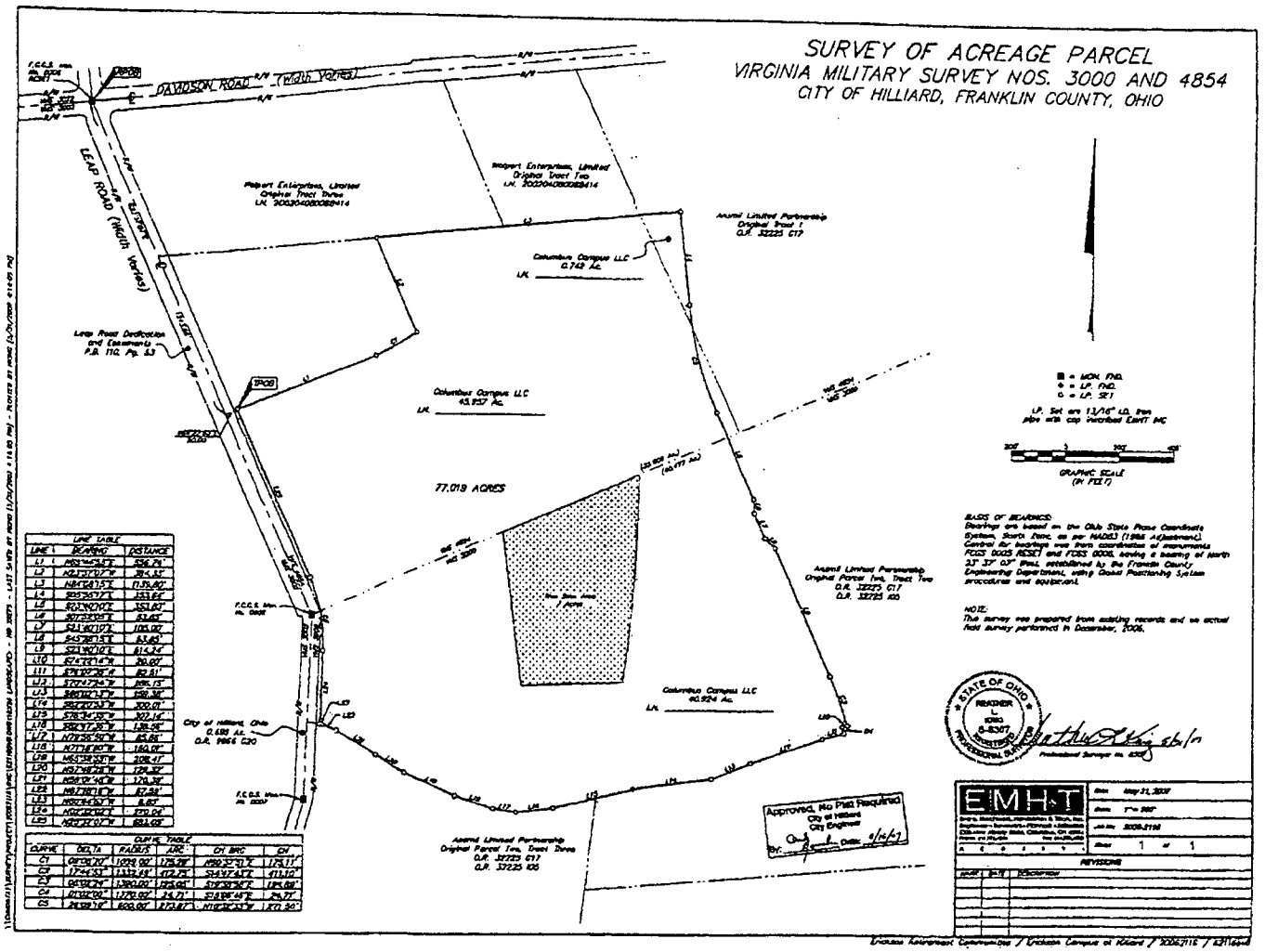
City Engineer
By: Date: 6/14/07



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AFFIDAVIT FOR MECHANIC'S LIEN
(§1311.06 O.R.C.)

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Jeffrey R. Jinkens, duly appointed attorney and agent
For Braun Construction Group, Inc.

Sworn to before me and subscribed in my presence this 29th day of June, 2009.

NOTARIAL SEAL STATE OF OHIO

TERRY SOMA
Notary Public, State of Ohio
My Commission Expires March 5, 2013

Notary Public

This instrument prepared by: Jeffrey R. Jinkens, Esq., Luper Neidenthal & Logan, A Legal Professional Association, 50 West Broad Street, Suite 1200, Columbus, Ohio 43215, (614) 221-7663.

77.019 ACRES

Situate in the State of Ohio, County of Franklin, City of Hilliard, lying in Virginia Military Survey Nos. 3000 and 4854, being part of the 40.924 and all of the 0.742 acre tracts conveyed to Columbus Campus LLC by deed of record in Instrument Number _____, and part of the 45.957 acre tract conveyed to Columbus Campus LLC by deed of record in Instrument Number _____, (all references refer to the records of the Recorder's Office, Franklin County, Ohio) being more particularly described as follows:

Beginning, for reference, at Franklin County Geodetic Survey Monument Number 0005 RESET found at the centerline intersection of Davidson Road (variable width) and Leap Road (variable width);

Thence South 23° 37' 07" East, a distance of 1243.56 feet, with the centerline of said Leap Road, to a point;

Thence North 66° 22' 53" East, a distance of 50.00 feet, across the right-of-way of said Leap Road and entering said 45.957 acre tract, to an iron pin set, the TRUE POINT OF BEGINNING;

Thence across said 45.957 acre tract, the following courses and distances:

North 68° 44' 53" East, a distance of 556.74 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 09° 08' 20", a radius of 1099.00 feet, an arc length of 175.29 feet, and a chord which bears North 60° 37' 51" East, a chord distance of 175.11 feet, to an iron pin set;

North 23° 37' 07" West, a distance of 384.33 feet, to an iron pin set in the line common to said 45.957 acre tract and the remainder of the original Tract Three conveyed to Wolpert Enterprises, Limited by deed of record in Instrument Number 200204080088414;

Thence North 84° 08' 15" East, a distance of 1139.80 feet, with the northerly line of said 45.957 and 0.742 acre tracts and with the southerly lines of the remainder of said Tract Three, the southerly line of the remainder of the original Tract Two conveyed to Wolpert Enterprises, Limited by deed of record in Instrument Number 200204080088414 and a southerly line of the remainder of the original Tract 1 conveyed to Ansmil Limited Partnership by deed of record in Official Record 32225 G17, to an iron pin set;

Thence South 05° 55' 17" East, a distance of 353.64 feet, with the line common to said 0.742 acre tract and the remainder of said original Tract 1, to an iron pin set at a point of curvature;

Thence with said curve to the left, having a central angel of 17° 44' 53", a radius of 1332.49 feet, an arc length of 412.75 feet, and a chord which bears South 14° 47' 43" East, a chord distance of 411.10 feet, with an easterly line of said 0.742 and 45.957 acre tracts and a westerly line of the remainders of said original Tract 1 and original Tract Two, to an iron pin set at a point of tangency;

Thence South 23° 40' 10" East, a distance of 353.83 feet, with an easterly line of said 45.957 and 40.924 acre tracts, and with a westerly line of the remainders of said original Tract Two and original Parcel Two, Tract Two conveyed to Ansmil Limited Partnership by deed of record in Official Records 32225 G17 and 32225 I05, to an iron pin set;

Thence continuing with the line common to said 40.924 acre tract, the remainder of said original Parcel Two, Tract Two and the remainder of the original Parcel Two, Tract Three conveyed to Ansmil Limited Partnership by deed of record in Official Records 32225 G17 and 32225 I05, the following courses and distances:

South 01° 52' 05" East, a distance of 53.85 feet, to an iron pin set;

South 23° 40' 10" East, a distance of 105.00 feet, to an iron pin set;

South 45° 28' 15" East, a distance of 53.85 feet, to an iron pin set;

South 23° 40' 10" East, a distance of 514.24 feet, to an iron pin set at a point of curvature;

With said curve to the right, having a central angle of 08° 02' 24", a radius of 1390.00 feet, an arc length of 195.05 feet, and a chord which bears South 19° 38' 58" East, a chord distance of 194.89 feet, to an iron pin set;

South 74° 22' 14" West, a distance of 20.00 feet, to an iron pin set;

EXHIBIT

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With a curve to the right, having a central angle of 01° 02' 00", a radius of 1370.00 feet, an arc length of 24.71 feet, and a chord which bears South 15° 06' 46" East, a chord distance of 24.71 feet, to an iron pin set;

South 76° 07' 35" West, a distance of 82.51 feet, to an iron pin set;

South 70° 47' 24" West, a distance of 286.15 feet, to an iron pin set;

South 68° 02' 13" West, a distance of 159.38 feet, to an iron pin set;

South 82° 20' 53" West, a distance of 300.01 feet, to an iron pin set;

South 76° 34' 35" West, a distance of 307.14 feet, to an iron pin set;

South 82° 47' 36" West, a distance of 138.56 feet, to an iron pin set;

North 79° 56' 50" West, a distance of 85.56 feet, to an iron pin set;

North 71° 18' 50" West, a distance of 150.01 feet, to an iron pin set;

North 65°,38' 53" West, a distance of 208.41 feet, to an iron pin set;

North 57° 48' 25" West, a distance of 129.32 feet, to an iron pin set;

North 59° 01' 48" West, a distance of 170.38 feet, to an iron pin set;

North 67° 18' 16" West, a distance of 57.59 feet, to an iron pin set;

North 80° 44' 53" West, a distance of 8.85 feet, to an iron pin set;

Thence across said 40.924 and 45.957 acre tracts, the following courses and distances:

North 02° 32' 02" East, a distance of 270.04 feet, to an iron pin set at a point of curvature;

With said curve to the left, having a central angle of 26° 09' 10", a radius of 600.00 feet, an arc length of 273.87 feet, and a chord which bears North 10° 32' 33" West, a chord distance of 271.50 feet, to an iron pin set;

North 23° 37' 07" West, a distance of 682.05 feet, to the TRUE POINT OF BEGINNING, containing 77.019 acres, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

This description is based on existing record and field work performed in December, 2006.

Bearings are based on the Ohio State Plane Coordinate System, South Zone, as per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FCGS 0005 RESET and FCGS 0006, having a bearing of North 23° 37' 07" West, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.

STATE OF OHIO
HEATHER L. KING
S-8307
REGISTERED
PROFESSIONAL SURVEYOR

EVANS, MECHWART, HAMBLETON, & TILTON, INC.

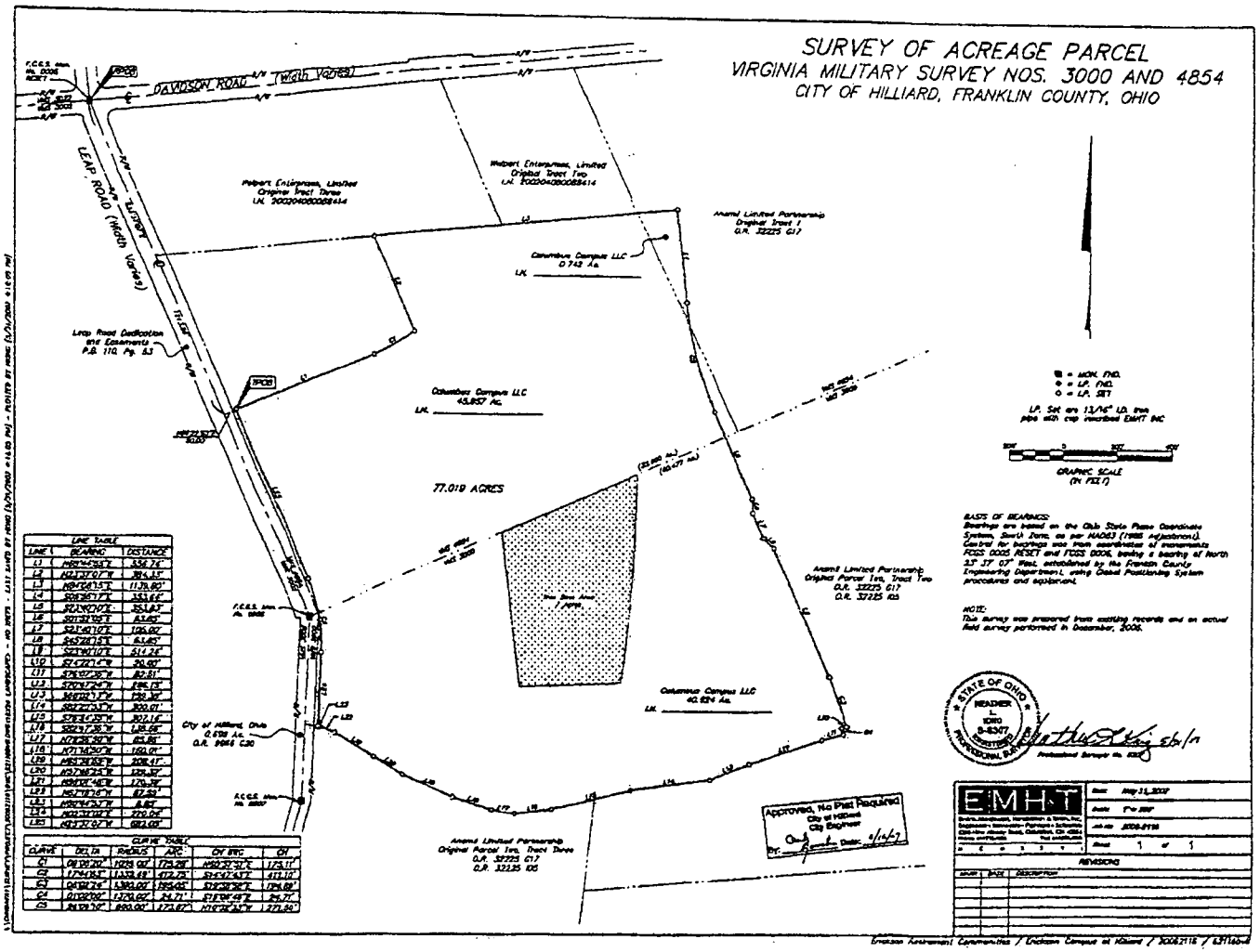
Heather L. King
Professional Surveyor No. 8307

5/31/07
Date

HLK/29May07
77_019 se 62116

Clearance OK
PRELIMINARY APPROVAL
FRANKLIN COUNTY ENGINEERING DEPT.
DATE 6 Jun 07 BY: [illegible]

Approved, No Plat Required
City of Hilliard
City Engineer
By: [illegible] Date: 8/16/07



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N89°44'54"E	536.74'
L2	N21°37'07"W	384.33'
L3	N89°08'15"E	1178.80'
L4	S08°36'11"E	353.66'
L5	S21°40'10"E	351.63'
L6	S01°32'38"E	63.46'
L7	S21°40'10"E	106.00'
L8	S45°28'15"W	61.45'
L9	S21°40'10"E	514.24'
L10	S21°27'14"W	20.00'
L11	S76°07'26"W	80.81'
L12	S20°04'24"E	896.13'
L13	N68°22'13"W	739.30'
L14	S88°23'03"W	300.01'
L15	S78°34'35"W	307.16'
L16	S82°47'38"W	148.98'
L17	N70°28'38"W	65.86'
L18	N71°14'30"W	160.01'
L19	N82°28'35"W	208.61'
L20	N57°48'24"W	109.30'
L21	N89°05'48"W	176.38'
L22	N67°18'07"W	87.50'
L23	N89°44'54"W	8.80'
L24	N01°32'38"E	220.04'
L25	N01°37'07"E	682.08'

CURVE TABLE					
CURVE	DELTA	RADIUS	ARC	CH BRG	CH
C1	06°09'20"	1925.00'	175.28'	N50°27'37"E	175.11'
C2	17°44'43"	1338.68'	414.75'	S14°47'43"E	413.10'
C3	04°02'24"	1390.00'	98.40'	S19°38'36"E	98.38'
C4	01°02'00"	1370.00'	24.71'	S18°08'48"E	24.71'
C5	24°09'10"	880.00'	371.07'	N10°28'31"W	371.50'

S:\Documents\Surveys\Projects\2006\2006-0118 Emerson Campus at Hilliard - NO BOUTS - 6311 SHEET BY MDG (5/24/2006 - 4:48 PM) - PLOTTED BY MDG (5/24/2006 - 4:49 PM)

Dinsmore&Shohl LLP
ATTORNEYS

Adam R. Todd
614-628-6918
adam.todd@dinslaw.com

December 4, 2009

VIA FEDERAL EXPRESS

BMC Group Inc.
Attn: Erickson Retirement Communities, LLC
Claims Processing
18750 Lake Drive East
Chanhassen, MN 55317

Re: Erickson Retirement Communities, LLC
Case No. 09-37010

Dear Sir or Madam:

Enclosed is an original and two (2) copies of Braun Construction Group, Inc.'s Proof of Claim in regard to the above-referenced matter. Please cause the Proof of Claim to be filed with the Court and return a time-stamped copy to me in the enclosed Federal Express envelope.

Thank you for your attention to this matter. Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

Adam R. Todd

ART/hlb
Enclosures
cc: Don Leach, Esq. (w/out enclosures)
Kasey Ingram, Esq. (w/out enclosures)

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