

all as more fully stated below:

Safway states as follows:

2. Safway leased (a) a self-climbing wall form system and (b) a steel high-load shoring system to McCauley Construction Corporation ("McCauley"). McCauley was a subcontractor of E.W. Corrigan Construction Co. ("Corrigan"), the general contractor, on a project commonly known as the Kinzie Park Tower, 501 North Clinton Street, Chicago, Illinois (the "Project"). Corrigan was the general contractor for the Project under Corrigan's contract with the Owner, Kinzie Park, L.L.C. or The Habitat Company as managing member of Habitat Kinzie Park, L.L.C. the managing member of Kinzie Park, L.L.C., or with the Owner's agent or with an entity that the Owner authorized or knowingly permitted to enter into the general contract.

3. Safway entered into a contract (the "Safway Contract") with McCauley dated February 23, 1999 that was indicated by a written agreement number 1358, a copy of which is attached hereto as Exhibit A. Pursuant to the Safway Contract and applicable custom and usage, Safway leased to McCauley for use on the Project (a) a self-climbing wall form system for a ten-month duration, with an initial rental of \$480,000, and a rental of \$43,000 for each 28-day period after the initial ten-month duration, and (b) a steel high-load shoring system for a ten-month duration, with an initial rental of \$147,123.90, and a rental of \$11,877.36 for each 28-day period after the initial ten-month duration. The self-climbing wall form system and steel hi-load shoring system are collectively referred to as "the Equipment." The Equipment was used by McCauley to perform its concrete work on the Project.

PIN Nos: 17-09-112-005; 17-09-112-010; 17-09-112-018

Address: 501 North Clinton Street, Chicago, Illinois

4. Safway performed its obligations under the Safway Contract and leased the Equipment to McCauley. McCauley used Safway's Equipment at the Project through April 11, 2000 and as of the date of this Subcontractor's Claim for Mechanics Lien, McCauley continues to have possession of the Equipment. McCauley, however, has wrongfully failed and refused to pay the amounts due to Safway under the Safway Contract and McCauley has defaulted under the Safway Contract. Safway has performed all obligations required of it under the Safway Contract, except for those discharged by McCauley's default.

5. After allowing all credits, there is due Safway as of April 1, 2000, the principal amount of \$587,249.77 for which Safway claims a lien as described below. Rentals and other amounts will continue to become due to Safway in the future and Safway reserves the right to add such amounts to its lien claim. There are also other amounts due from McCauley to Safway, such as amounts due for damaged or missing Equipment not returned to Safway, additional fees, and other amounts which are not included in the amounts described in this Subcontractor's Claim for Mechanics Lien.

6. On or about January 1, 1999, and continuing thereafter, Kinzie Park, L.L.C was the Owner of fee simple title to, the agent of the Owner, or an entity authorized or knowingly permitted by the Owner to enter into contracts with respect to, the real estate (including all land and improvements thereon (the "Real Estate") in Cook County, Illinois commonly known as Kinzie Park Tower, 501 North Clinton, Chicago, Illinois and legally described as follows:

See Exhibit B

PIN Nos: 17-09-112-005; 17-09-112-010; 17-09-112-018

Address: 501 North Clinton Street, Chicago, Illinois

7. Owner, an agent of Owner, or an entity authorized or knowingly permitted by Owner entered into the general contract with Corrigan and the work performed and Equipment provided by Corrigan and Safway were performed and furnished with the knowledge and consent of Owner. Owner authorized or knowingly permitted Corrigan and Corrigan's subcontractors to enter into contracts for the improvement of the Real Estate, including the Safway Contract.

8. Safway completed its performance under the Safway Contract on April 11, 2000.

9. As of April 1, 2000, there is due to Safway, after allowing all credits, the principal amount of \$587,249.77 for which, with interest, Safway claims a lien (a) against the Real Estate and (b) against the monies or other consideration due or to become due from Owner to Corrigan under any contract between Owner and Corrigan, or from Corrigan to McCauley under any contract between Corrigan and McCauley relating to the Project. Safway reserves the right to add amounts to its lien claim that will become due from McCauley in the future. Safway also reserves the right to recover amounts from McCauley that are not included in the amounts described in this Subcontractor's Claim for Mechanics Lien.

Dated: April 19, 2000

PIN Nos: 17-09-112-005; 17-09-112-010; 17-09-112-018

Address: 501 North Clinton Street, Chicago, Illinois

UNOFFICIAL COPY

00278523

SAFWAY FORMWORK SYSTEMS, LLC

By: Andrew H. Beck

Name: ANDREW H. BECK

Title: BRANCH MANAGER

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING SHOULD BE
RETURNED TO:

Timothy R. Conway
Conway & Mrowiec
300 South Wacker Drive
Suite 601
Chicago, Illinois 60606

Property of Cook County Clerk's Office

PIN Nos: 17-09-112-005; 17-09-112-010; 17-09-112-018

Address: 501 North Clinton Street, Chicago, Illinois

9657 Soreng Avenue • Schiller Park, IL 60176 • Tel. (847) 678-8561 • Fax: (847) 678-8566

F.S.S.L. (hereinafter called Lessor) agrees to supply to:

| | | | |
|----------------------------|--|-------------|--|
| L E S S E E | McCauley Construction 505 North LaSalle Suite # 200 Chicago, Illinois 60610 Attention: Mr. Eammon McCauley Mr. Dan Valeria | FOR PROJECT | Kedzie Park Tower 501 North Clinton Street Chicago, Illinois |
|----------------------------|--|-------------|--|

the following Lessor products as listed below and detailed on drawing number(s) Self Climbing Wall Form Dwg & 99105 for the area(s) As Described Below at the unit prices listed below and/or on the attached quantity breakdown sheet(s).

SUMMARY

Safway Formwork Systems will furnish a " Self Climbing Wall Form System " and a " Steel Hi-Load Shoring System " for your elevator core, columns & beams as well as your poured in place decks in accordance with the following terms and conditions:
 Rental prices are based on a 28 day billing period with a one (1) month minimum.

SELF CLIMBING WALL FORM SYSTEM
 The rental price for the self climbing wall form system for a ten (10) month duration will be Four Hundred Eighty Thousand Dollars And No/100. (\$ 480,000.00).
 This will include all the necessary formwork, hydraulics, cantilever brackets, rollers, walkway brackets and all necessary hardware. McCauley Construction will be responsible for all electrical hook ups to the hydraulic jacking

STATE / LOCAL SALES TAX: Extra If Applicable

P.O.B.: LESSOR YARD Schiller Park, Illinois Facility

TERMS: PAYMENT ON RECEIPT OF INVOICE

INTEREST AT 1 1/2% PER MONTH WILL BE CHARGED ON OVERDUE PAYMENTS. ATTACHMENTS: YES NO

Quotation valid for thirty (30) days from the date agreement signed by Lessor and is subject to credit approval. Lessor and the Lessee for themselves, their legal representatives, successors and assigns hereby agree to the full performance of the covenants on this and the reverse side hereof. This contract shall be binding upon Lessor only when countersigned by an authorized representative of the Company.

Accepted this 23rd day of February 1998 LESSOR Safway Formwork Systems

| | | |
|--|--------------------------------------|----------------------|
| By <u>EMMONN McCauley</u> Pres. | By <u>Andrew J. Beck</u> | Date: <u>2/23/98</u> |
| Title <u>Pres. Valeria - Purchaser</u> | By <u>Andrew J. Beck Branch Man.</u> | Date: _____ |

* ~~CONTRACT~~ CONTRACT IS CONTINGENT UPON DAN VALERIA VISITING A RECENTLY COMPLETED APT. BUILDING THAT USED THIS FORMING SYSTEM AND SEEING THE ACTUAL SYSTEM WORKING ON A ACTUAL CONST. PROJECT AT NO ADDITIONAL COST TO McCauley Const. Corp.

9657 Sorang Avenue • Schiller Park, IL 60176 • Tel. (847) 678-8561 • Fax: (847) 678-8566

TO: McCauley Construction
505 North LaSalle Street
Suite # 200
Chicago, Illinois 60610
Attention: Mr. Eammon McCauley
Mr. Dan Valeria

FOR: Kedzie Park Tower
501 North Clinton Street
Chicago, Illinois

system. The hydraulic jacks consist of #80, 3 phase, hi voltage electricity.
The assembly of the aluminum gang forms will be \$ 20,000.00 complete based on 10,000 square feet of form. McCauley Construction will be responsible for the dis-assembly of the aluminum gang forms and the manto forms.

STEEL HI-LOAD SHORING SYSTEM

The rental for the steel hi-load shoring system will be \$ 14,712.31 per month. Based on a ten (10) month duration, your ten (10) month lump sum price for the shoring will be \$ 147,123.90. This would include three (3) floors of shoring material, two (2) floors of re-shoring material with post shores and the garage level shoring. The typical square footage is based on 17,600 square feet of form in the tower and 20,000 square feet of form in the garage level.
Any additional material needed above and beyond the square footages as described here within would be invoiced as additional material at the same discounted rental rate and would ship from the closest available point.
Not included in the prices quoted above are taxes, labor, repairs, lumber, plywood, mud sills, plank and/or any sale items. i.e. coil bolts, coil loop inserts, etc.
Illustration design charges for this project will be done at no charge to McCauley Construction, however, if a structural engineers stamp is required there will be an additional charge for the stamp.
Any and all freight costs that are incurred will be the sole responsibility of the lessee. FOB terms are our Schiller Park, Illinois facility. All semi loads will be invoiced at \$ 350.00 per load and all Safway stake truck loads will be invoiced at \$ 175.00 per load. These prices exclude any permits and/or escorts.
We thank you for your order on this project and wish to congratulate your company on their successful award on this project and look forward to another successful project with your company.

PLEASE NOTE
There will be a \$ 10,000.00 credit given to McCauley Construction for the purchasing of the 3/4" H.D.O. plywood required for the aluminum gang forms.

511
2-27-99

* SELF CLIMBING WALL FORM SYSTEM WILL INCLUDE AT NO COST TO McCAULEY CONST. CORP. A WALKWAY SYSTEM OF EITHER PLANKS ON ALUMINUM BEAMS + PLYWOOD.

00278523

1. LEASE OR PURCHASE. Unless the box marked 'Purchase' has been checked on the front of this Agreement, then the Customer agrees to lease from Forming & Shoring Specialist, Inc. (Lessor) the items of equipment stated on the front of this Shipping Order ('Equipment') with an option to purchase said Equipment on the terms stated below. If the box marked 'Purchase' has been checked, then the Equipment listed on the front shall be purchased by Customer at the purchase price stated on the front of this Agreement and sections 2 through 7 below governing leases will not apply unless the sale reverts to a lease as provided below.

2. TAXES. Unless otherwise expressly indicated herein, all prices are exclusive of federal, state and local excise, sales, use, occupational or file taxes, tariffs, duties, surcharges, and similar taxes now in force or enacted in the future. Such taxes, when applicable to this sale of Lease will appear as separate additional items or charges on the invoice, or in the invoice the Customer, prior to delivery, shall provide the Lessor with a properly executed tax exemption certificate. If Lessor is required by any taxing authority to pay additional taxes, fees or other charges, the Customer will reimburse Lessor for said amount.

3. RENT. The amount of rent due shall be as stated on the front of this Agreement. The rental term for each item of Equipment shall commence on the date of shipment of that item by Lessor to Customer, as shown by Lessor's Shipping Order, and shall continue until the date that item is received back by Lessor, as shown by Lessor's Receiving Form. If Customer disputes any dates, descriptions, quantities, rental prices, or other information shown on Lessor's Shipping Order or Receiving Form, Customer shall notify Lessor in writing at Lessor's address specified on the front of this Agreement, within ten (10) days after the date of the Lessor's Shipping Order or Receiving Form. Otherwise Customer agrees it will have waived any and all such objections or disputes. All rent is due and payable one month in advance. All items not shall bear interest at the rate of 15% per annum without prejudice to Lessor's rights, as hereinafter stipulated, to terminate the lease for non payment. Customer may return the equipment at any time and shall be given full credit for all unexpired rent paid in advance, subject to a minimum rental period of one month unless otherwise expressly stated. Rent shall be prorated after the expiration of the minimum period. No rental credits shall be given for construction or rental interruptions without prior written agreement by Lessor.

4. LOCATION OF EQUIPMENT. The Equipment will be located at the project address specified on the front of this Agreement. Under no circumstances is the Equipment to be removed from the project address specified in this Agreement without prior express written consent of Lessor.

5. RETURN OF LEASED ITEMS. All equipment shall be returned to Lessor's warehouse in the same condition as the Equipment was when shipped by Lessor to Customer. Lessor's count of Equipment returned shall be conclusively deemed to have been accepted by Customer unless objected to or disputed in writing by Customer within ten (10) days after the date of Lessor's Receiving Form, otherwise Customer agrees it will have waived any and all such objections or disputes. ANY EQUIPMENT DAMAGED BY DRILLING, PUNCHING, BENDING, SAWING OR OTHER THAN CAREFUL USE OR REQUIRING NECESSARY ALL AT THE EXPENSE OF CUSTOMER. Equipment returned with excessive concrete adhesion will be assessed cleaning charges as appropriate. Lessor shall have the right to collect from Customer such amounts as Lessor has expended or incurred in such repair or replacement as though such amount were a contractual rent. Any Equipment not returned to Lessor will be charged to Customer at Lessor's published list selling price in effect at the time of default.

6. INSURANCE AND INSPECTION. Customer shall carry all risk insurance to the full insurable value of the Equipment for the benefit of Lessor and its successors and assigns. Customer shall permit Lessor or its agents from time to time to enter the premises of Customer or any construction site to inspect the Equipment. At the request of Lessor, the Customer shall furnish certificates of insurance and proof that such coverages are in effect.

7. DEFAULT. If the Customer defaults in paying any rent when due or breaches any term of this Agreement, or if Lessor or its agent obtains the Equipment in jeopardy, the full amount of rent then unpaid hereunder shall become due and payable forthwith at the option of Lessor, and Lessor may, at its option without notice or demand without legal process, take possession of the Equipment, wherever it may be located, with all additions and substitutions, whereupon all rights of Customer in the Equipment shall terminate immediately, but Customer shall not be released from its obligations under this Agreement until the full amount of rental unpaid, together with all other obligations to pay Lessor, under the terms of this Agreement, have been paid in full in cash.

8. OPTION TO PURCHASE. Customer shall have the option to purchase the Equipment covered by this Agreement, subject to the terms and conditions hereinafter stated. Notice of Customer's wish to purchase must be given in writing to Lessor at the address specified on the front of this Agreement. Exercise of this purchase option is subject to credit approval by Lessor. This option to purchase any item of Equipment has expired hereunder terminates upon the return of the item to Lessor.

9. SHIPPING. Lessor shall load the Equipment for shipping to the Customer and unload it upon its return. The Customer shall, at its own expense, do all other loading, unloading, restacking, dismantling and hauling. Lessor may ship the Equipment in accordance with its own method of shipping instructions are not furnished prior to loading for shipping. Lessor will not be responsible for delays due to weather, delay in furnishing equipment drawings or any other causes beyond its control. Before the Equipment is loaded for shipment to the Customer, the Customer may require an inspection thereof by proper authorities. If an objection is made to the condition of any equipment before it is loaded for shipment, the Customer shall be conclusively deemed to have accepted that the Equipment is in good condition and ready for shipment. It is hereby agreed that the Customer shall be deemed to have accepted that the Equipment is in good condition and ready for shipment without broken or worn out parts and in a clean usable condition. All carriers shall be deemed agents of Customer and Customer shall pay all transportation and shipment charges from Lessor's yard to destination and return. Unless otherwise stated, all shipping arrangements for the return of Equipment are the responsibility of Customer and must be returned to Lessor's yard from which the equipment was shipped. Any shipping arrangements made by Lessor for Customer are subject to a service charge.

10. FORCE MAJURE. Lessor reserves the right without penalty or obligation to suspend shipments of Equipment covered by this Agreement in the event of strikes, shortages of material or equipment, differences, with labor, transportation interruption, accidents, fire, floods, acts of God or other contingencies beyond the control of the Lessor.

11. ADD-ONS. If additional items of Equipment not specifically covered by this Agreement are requested by Customer and supplied by Lessor, they shall be subject to the terms and conditions of this Agreement. Any items not returned to Lessor will be credited in accordance with this Agreement.

12. CORRECT ERRORS. Lessor is authorized and empowered to correct errors herein, to compute and insert the purchase price or rental rate if omitted or incorrect, or if quantities, sizes and kinds of leased Equipment are not specified, to amend, delete and insert the same on the front of this Agreement, all with the same force and effect as if originally set forth herein.

13. PURCHASE PRICE OF ADDITIONAL EQUIPMENT. If the Equipment covered by this Agreement supplied on a purchase basis, the unit purchase prices shown on the front of this Agreement, and are applicable to any additional Equipment requested by customer for the job specified on the front of this agreement. If Customer defaults in any payment due for purchased Equipment, the sale shall immediately revert to a rental on the terms of this Agreement.

14. SECURITY INTEREST. (a) If the transaction between Lessor and Customer is a purchase (rather than a lease) as to any item of Equipment, then Customer hereby grants Lessor a security interest in such equipment and agrees that title shall not pass to Customer until the entire purchase price is paid. Customer agrees that if requested by Lessor it will promptly execute the required security documents to preserve or protect Lessor's security interest.

15. NO WARRANTIES. All Equipment purchased or leased under this Agreement is supplied "AS IS". THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RESPECTING THIS AGREEMENT OR THE EQUIPMENT COVERED BY THIS AGREEMENT. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INCIDENTAL OR CONSEQUENTIAL, RESULTING FROM THE USE OF EQUIPMENT SUPPLIED BY LESSOR OR FROM ANY DEFECT, FAILURE, OR MALFUNCTION OF THE EQUIPMENT, WHETHER A CLAIM FOR SUCH DAMAGE IS BASED ON WARRANTY, CONTRACT, TORT, OR OTHERWISE.

16. TECHNICAL DATA. Where Lessor has provided engineering data, drawings or specifications for use of the Equipment, Customer agrees to verify and hold Lessor harmless against and from any liability or claim or damages sustained by reason of any deviation from such data, drawings, even though such deviation may have been based on verbal technical representations attributed to Lessor personnel, all such engineering data, drawings and specifications that remain the property of Lessor and any information contained therein is not to be divulged to third parties without prior written authorization from Lessor. Under drawings and specifications for use of the Equipment.

17. INDEMNIFICATION. Customer shall hold harmless, defend and indemnify Lessor and its successors and assigns against all liabilities, judgments, costs, damages and expenses arising from any personal injury, death or property damage caused by any act or omission, whether negligent or otherwise, of Customer or its subcontractors, servants or agents. In the event Customer sells or leases the Equipment and all liability to third parties arising out of the use or possession thereof.

18. ENFORCEMENT. Customer agrees to pay promptly on demand all Lessor's out-of-pocket expenses in enforcing this Agreement, including reasonable attorney's fees and expenses. Customer hereby irrevocably authorizes any attorney of any court of record to appear for Customer and confess judgment, where such action is permitted by law, for all unpaid rent and other sums due hereunder, including all appraisal, stay or exemption laws then in force.

19. WAIVER. Any failure of Lessor at any time to require performance by Customer or any provisions hereof shall in no way effect the right of Lessor thereafter to enforce the terms hereof. Any waiver by Lessor or any breach of any provision hereof shall not be held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. All Lessor's rights under this Agreement are cumulative and not alternative.

20. TIME COMPUTATIONS. For the purposes of this Agreement, each week is assumed to have seven (7) days and each month twenty-eight (28) days and provisions shall be made on that basis.

21. ENTIRE AGREEMENT. This Agreement contains the full and entire agreement between the parties hereto, and shall be effective from and after its acceptance by Lessor as signified by signature hereon. Except as stated in Section 11, this agreement shall be amended or altered only in writing executed on behalf of Lessor by one of its officers at its general office at the address specified on the reverse side of this Agreement.

22. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the province or state from which shipment of the items covered by this Agreement was made.

23. SEVERABILITY. In the event that any paragraph or paragraphs, or parts thereof in this Agreement are found to be void, invalid or unenforceable, the remaining provisions of this agreement shall nevertheless be binding with the same force and effect as though the void parts were deleted.

Legal Description:

LOT 22 IN KINZIE PARK SUBDIVISION, BEING A RESUBDIVISION OF LOTS, BLOCKS AND VACATED STREETS AND ALLEYS IN WABANSIA IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 27, 1999 AS DOCUMENT NUMBER 99712460 IN COOK COUNTY, ILLINOIS.

P.I.N. 17-09-112-005; 17-09-112-010; 17-09-112-018

Property of Cook County Clerk's Office