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Prepared by and mail to:

Paul A. Greenberg
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash - Suite 1700
Chicago, Illinois 60611

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

0817018038

Doc#: 0817018038 Fee: $53.00
Eugene "Gene" Moore RHSP Fee:$10.00
Cook County Recorder of Deeds
Date: 06/18/2008 11:48 AM Pg: 1 of 27

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CONTRACTOR'S CLAIM FOR LIEN

The claimant, AQUATECH STAINLESS STEEL POOLS, LTD., of Wheeling, Illinois (hereinafter referred to as the "Claimant"), hereby files notice and claim for lien against 401 NORTH WABASH VENTURE LLC or its successors in interest (hereinafter collectively referred to as "401 North Wabash"), or current owner of record, and states:

That on or about October 25, 2006, 401 North Wabash owned the following described land in the County of Cook, State of Illinois, to-wit:

SEE EXHIBIT A HERETO

Permanent Real Estate Index Numbers: **17-10-135-025-0000 & 17-10-136-008-0000**

Address(es) of premises: **401 North Wabash Avenue, Chicago, Illinois a/k/a Trump International Hotel & Tower** (the "Premises")

That on or about October 25, 2006, the Claimant made a contract (the "Contract") with 401 North Wabash, to furnish the labor and materials necessary for the construction and installation of a stainless steel swimming pool and spa at the Premises. A copy of the Contract is attached hereto as Exhibit B. The Claimant performed its work under the Contract, as well as extra work requested by the Owner through its duly authorized agent, Bovis Lend Lease, Inc. The Claimant completed its work on the project on February 19, 2008.

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After allowing all credits, there is due, unpaid and owing to the Claimant for work performed at the Premises the sum of $150,542.00. The Claimant claims a lien on said Premises, land and improvements in the amount of $150,542.00, plus interest and contractual and statutory attorney's fees.

Aquatech Stainless Steel Pools, Ltd.

By: _____

Its attorney and agent, Paul A. Greenberg

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The affiant, Paul A. Greenberg, being first duly sworn, on oath deposes and says that he has read the foregoing claim for lien and knows the contents thereof; and that all statements therein contained are true.

_____

Paul A. Greenberg

Subscribed and sworn to before me this 18th day of June, 2008.

OFFICIAL SEAL
S. PAIGE TROELSTRUP
Notary Public - State of Illinois
My Commission Expires Jun 28, 2011

_____

Notary Public

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Legal Description:

PARCEL 1:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17, AS DESCRIBED IN SAID ORDINANCE A DISTANCE OF 272.18 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17, AFORESAID, A DISTANCE OF 22.62 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST A DISTANCE OF 3.97 FEET TO A POINT; THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST, A DISTANCE OF 43.72 FEET; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET; THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST; A DISTANCE OF 32.82 FEET; THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET; THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET; THENCE SOUTH 47 DEGREES 01 MINUTES 53 SECONDS WEST, A DISTANCE OF 2.033 FEET; THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET; THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET; THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET; THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET; THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCK LINE OF THE CHICAGO RIVER; THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 101.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER; THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET; THENCE NORTH 00 DEGREE 18 MINUTES 37 SECONDS EAST A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL THE LAND, PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND BELOW A HORIZONTAL PLANE WHICH IS 150 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF EAST NORTH WATER STREET, EAST KINZIE STREET AND NORTH WABASH AVENUE BOUNDED AND DESCRIBED AS FOLLOWS:
COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, SAID SOUTH LINE OF EAST NORTH WATER STREET BEING ALSO THE NORTH LINE OF A

CONTINUED ON NEXT PAGE

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Legal Description:

PARCEL OF LAND DENOTED AS PARCEL 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED; THENCE CONTINUING SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 58.74 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 17, SAID POINT BEING ALSO THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE; THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE, SAID SOUTHEASTERLY RIGHT OF WAY LINE BEING ALSO THE NORTHWESTERLY LINE OF AFORESAID PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 18.45 FEET TO A POINT; THENCE NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CIRCLE WHICH HAS A RADIUS OF 50.00 FEET, A CHORD OF 94.53 FEET AND A CHORD BEARING OF NORTH 64 DEGREES 20 MINUTES 45 SECONDS EAST, AN ARC DISTANCE OF 123.85 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT IN FAVOR OF PARCELS 1 AND 2, AS GRANTED IN THAT CERTAIN ORDINANCE BY THE CITY OF CHICAGO APPROVED SEPTEMBER 1, 2004 AS PUBLISHED IN JOURNAL PAGES 30411 TO 30458, BOTH INCLUSIVE, FOR THE IMPROVEMENT, USE AND MAINTENANCE OF PUBLIC WAY, TO IMPROVE, MAINTAIN, REPAIR, REPLACE, USE AND OCCUPY FOR PEDESTRIAN PURPOSES, AND NOT VEHICULAR PURPOSES, THE FOLLOWING TRACTS OF LAND:
(A) NORTH WATER STREET PEDESTRIAN EASEMENT PREMISES ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMPRISING PARTS OF WATER LOTS 16 AND 17 AND A PORTION OF EAST NORTH WATER STREET, NORTH RUSH STREET, ORIGINAL EAST KINZIE STREET AND PART OF LOT 14 IN BLOCK 2 IN KINZIE'S ADDITION, WHICH TRACT OF LAND IS MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17 AS ESTABLISHED IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO A POINT; THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTH, HAVING A RADIUS OF 50.00 FEET, A CHORD DISTANCE OF 94.53 FEET AND A CHORD BEARING OF SOUTH 64 DEGREES 20 MINUTES 45 SECONDS WEST, AN ARC DISTANCE OF 123.85 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 29.24 FEET TO A POINT; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 24.79 FEET TO A POINT; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 16.87 FEET TO A POINT; THENCE NORTHERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE EAST, HAVING A RADIUS OF 240.67 FEET, WITH A CHORD DISTANCE OF 70.72 FEET AND A CHORD BEARING OF NORTH 23 DEGREES 43 MINUTES 54 SECONDS EAST, AN ARC DISTANCE OF 70.98 FEET TO A POINT; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 94.61 FEET TO A POINT; THENCE NORTHEASTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 52.64 FEET, WITH A CHORD DISTANCE OF 46.28 FEET AND A CHORD BEARING OF NORTH 51 DEGREES 59 MINUTES 36 SECONDS EAST, AN ARC DISTANCE OF 47.92 FEET TO A POINT; THENCE NORTH 25 DEGREES 34 MINUTES 12 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 5.53 FEET TO A POINT ON THE NORTH LINE OF EAST NORTH WATER STREET; THENCE NORTH 78 DEGREES 25 MINUTES 00

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SECONDS EAST ALONG THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 242.76 FEET TO A POINT; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 55.18 FEET TO A POINT ON THE SOUTH LINE OF SAID EAST NORTH WATER STREET; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 14.61 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

(B) NORTH RUSH STREET PEDESTRIAN EASEMENT PREMISES ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING ON OR BELOW A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF NORTH RUSH STREET BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET EXTENDED, A DISTANCE OF 52.84 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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Bovis
Lend Lease

Trade Contract
(CM Agency)

Bovis Lend Lease, Inc.
Chicago
Registered Trade Contractor
Class A Building Division QC 04231-A

CM Job Number	52064600
Contract Number	1120.000
Date	October 25, 2006

CONSTRUCTION MANAGER: Attention: ("Construction Manager")
Bovis Lend Lease, Inc. Kraig Riebock
Acting solely as agent for Owner
One North Wacker Drive, Suite 850
Chicago, IL 60606

TRADE CONTRACTOR: Attention: ("Contractor")
Aquatech Stainless Steel Pools, Ltd. Ronald J. Atlas
300 E. Industrial Lane
Wheeling, IL 60090

WORK: Pool and Spa

(general caption only)

PROJECT: Trump International Hotel & Tower ("Project")
Chicago, IL

OWNER: 401 North Wabash Venture LLC ("Owner")
725 Fifth Avenue
New York, NY 10022

ARCHITECT-ENGINEER: Skidmore, Owings & Merrill LLP ("Architect/Engineer")
224 S. Michigan Avenue, #1000
Chicago, IL 60604

CONTRACT PRICE: Five Hundred Forty Thousand and 00/100 Dollars ("Contract Price")*

($ 540,000.00)

MONTHLY BILLING DATE: 20th ("Monthly Billing Date")

RETAINED PERCENTAGE: % ("Retained Percentage")

CHANGE ORDER OVERHEAD AND PROFIT: % ("Profit Percentage")

PAYMENT AND PERFORMANCE BONDS: Required ☐ Not Required ☒

(The above terms are incorporated by reference and are more fully explained below.)

Owner, acting through Construction Manager, and Contractor with offices at the addresses shown above, agree for themselves, their successors and assigns as follows:

* **Contract Price is to be paid by Owner directly to Construction Manager to be held in trust for Contractor in accordance with the terms of this Contract ("Contract"). Contractor shall have no claim for any of the Contract Price against Construction Manager, other than for funds held in trust for Contractor. All claims shall be administered in accordance with this Contract and all applicable Contract Documents. The acceptance of this Contract is expressly conditional upon Contractor's acceptance of the foregoing condition.**

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EXHIBIT B

FROM (WED)MAY 7 2008 5:44/ST. 5:43/NO. 6333141250 P 1

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ARTICLE 1, DEFINITIONS

1.1 The "Contract Documents" consist of the documents set forth in Schedule 1 of the Trade Contract and any and all modifications, addenda and amendments thereto, which may be furnished to Contractor from time to time.

1.2 The terms "Contract" and "Contract Documents" are used interchangeably herein and are identical in meaning.

1.3 The "Contract Price" is the sum set forth in Page 1 of the Trade Contract.

1.4 By executing the Trade Contract, Contractor represents and warrants to Owner and to Construction Manager that (i) Contractor is and will be financially responsible and has and will have sufficient liquidity to meet its financial responsibilities under the Contract and for all other projects in which Contractor is or may become involved; (ii) Contractor has carefully examined the drawings, specifications and associated documents and has visited and examined the site, or deems such visit and examination to be unnecessary; (iii) from Contractor's investigation, Contractor has satisfied itself as to the nature and location of the proposed work, the general and local conditions, and all matters which may in any way affect the work or its performance, and (iv) Contractor fully understands the intent and purpose of the contract documents. Claims for additional compensation and/or extension of time relating to Contractor's non-compliance with its representations and warranties in the preceding sentence will not be allowed.

1.5 The term "Owner" means the entity so designated in the Trade Contract.

1.6 The term "Construction Manager" means the entity so designated in the Trade Contract.

1.7 The term "Other Contractors" means contractors and/or subcontractors other than Contractor and Contractor's subcontractors, irrespective of tier.

1.8 The term "Architect/Engineer" means the entity so designated in the Trade Contract and also includes Architect/Engineer's representatives; Owner's or Architect/Engineer's consultants; and Owner's or Architect/Engineer's engineering firms and their successors and assigns.

1.9 The term "Contractor" means the individual, partnership, firm, corporation or business entity who or which has signed the Trade Contract as Contractor. The term also includes Contractor's subcontractors and suppliers irrespective of tier.

1.10 The term "Work" means: the furnishing of all labor and/or materials by Contractor, at or for the benefit of the Project; unless specifically excepted, the furnishing by Contractor of all equipment, supplies, plant, tools, scaffolding, transportation, superintendence, inspections and temporary construction of every nature; that which is to be produced and supplied pursuant to the Contract; and the obligation of Contractor to visit the Project site, and to fully acquaint and familiarize itself with the site, surrounding and subsurface conditions and the character of the operations to be carried on at the site, and make such investigations as Contractor may deem fit or as may be prudent for Contractor to fully understand the facilities, physical conditions and restrictions attending the Work.

1.11 The term "Other Work" means the work of Other Contractors.

1.12 The term "Project" is the total construction designed by Architect/Engineer of which the Work is a part.

1.13 The term "days" means calendar days unless otherwise stated.

1.14 The term "Legal Requirements" means any and all requirements of law, code, permit, regulation, rule, order, judgment, decree, ordinance, or provision of any federal, state, or local government, agency, authority, or court pertaining to the Work, the Project, or the Contract.

ARTICLE 2, CONTRACTOR'S CONTRACT DOCUMENTS

2.1 The Contract Documents are complementary and are intended to include and imply all items required for the proper execution and completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided as if shown and mentioned in both.

2.2 The Drawings and Specifications are to be treated by Contractor as "scope" documents which indicate the general scope of the Project in terms of the architectural design concept, the overall dimensions, the type of structural, mechanical, electrical, utility, and other systems, and an outline of major architectural elements. As "scope" documents, the Drawings and Specifications do not necessarily indicate or describe all items required for the full performance and proper completion of the Work. The Contract is let with the understanding that Contractor is to furnish for the Contract Price all items required for proper completion of the Work. Subsequent Drawings and Specifications which may more completely detail certain requirements of the Work may be issued, at the option of the Architect/Engineer, for the purpose of construction, but there is no obligation to issue such additional documents.

2.3 The Work shall be first class and be in accordance with the best standards of the construction industry in the city where the Project is located. Contractor shall be responsible for providing a sufficient quantity of materials, parts and equipment for installation of all items of the Work indicated, described or reasonably inferable from the Contract Documents.

2.4 The Specifications generally describe Work which cannot be readily indicated on the Drawings, such as types, qualities and methods of installation for materials and equipment. It is not intended to describe every item of Work in the Specifications which can be shown on the Drawings nor to show on the Drawings all items of Work which can be described in the Specifications even if such items are of such nature that they could have been shown on the Drawings or described in the Specifications. All materials and labor for the Work which are shown on the Drawings or described in the Specifications or are inferable therefrom as necessary to produce a finished job shall be provided by Contractor.

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2.5 The Specifications are separated into titled sections for convenience only and not to suggest the trade or craft involved.

2.6 Where "as shown", "as indicated", "as detailed" or words of similar import are used, reference is made to the Drawings unless otherwise stated. Where "as directed", "as required", "as permitted", "as authorized", or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance or selection by Construction Manager or Owner is intended unless otherwise stated. "Provide" means "provide complete in place", that is, furnish and install, ready for operation and use.

2.7 Any reference to standard specifications of a society, institute, association or governmental authority is a reference to the standard specifications of such organization that are in effect at the date of Contractor's bid. If such standard specifications are revised prior to completion of any part of the Work to which such revision would pertain, Contractor may, if acceptable to Owner, perform such work in accordance with the revised standard specifications.

2.8 The standard specifications referred to above, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. The manufacturers and trades involved are assumed to be familiar with such standard specifications. Architect/Engineer will furnish, on request, information as to how copies of standard specifications may be obtained.

2.9 In the event there is a discrepancy between the various Contract Documents, the following order of priority will be used:

2.9.1 Exhibits and Schedules to the Trade Contract; however, nothing in Exhibit B shall vary the Drawings and Specifications and/or the Trade Contract unless and to the extent that it is explicitly stated in Exhibit B that the Drawings and Specifications and/or the Trade Contract are varied;

2.9.2 Special Conditions, if any; however, nothing in the Special Conditions shall vary the Drawings and Specifications and the Exhibits and Schedules to the Trade Contract unless and to the extent that it is explicitly stated in the Special Conditions that the Drawings and Specifications and the Exhibits and Schedules to the Trade Contract are varied;

2.9.3 Trade Contract;

2.9.4 Drawings and Specifications;

2.9.5 If the discrepancy is between the Drawings and the Specifications, or within the Specifications, or within the Drawings, then the discrepancy shall be submitted to Construction Manager who shall refer the matter to the Owner. The general rule for interpretation will be that the discrepancy will be resolved in favor of providing the better quality or greater quantity of work and/or materials. The decision of Owner as to which of the conflicting requirements shall govern shall be final, and Contractor shall perform the Work in accordance with such decision and without any change in the Contract Price. Owner may solicit the advice of Architect/Engineer under Paragraph 3.2 hereof.

2.10 Dimensions shall not be determined by scale or rule. Figured dimensions shall be followed. If figured dimensions are lacking, they shall be supplied by Architect/Engineer on Contractor's request made to the Construction Manager. Contractor is responsible for coordinating the Drawings and Specifications with field conditions and reporting to Construction Manager and Architect/Engineer any discrepancies.

2.11 All copies of Drawings and Specifications are the property of Owner and are not to be used on any other projects. The Drawings and Specifications are to be returned to Construction Manager on its request.

2.12 Contractor hereby irrevocably grants Owner and/or Construction Manager a license to use all shop drawings, designs, and deliverables provided by Contractor on the Project for Owner's and/or Construction Manager's purposes on the Project. Such license extends, without limitation to all shop drawings, CAD drawings, submittals to governmental or quasi-governmental authorities, product approvals, fabrication processes and the like, which are in any way necessary or desirable for the performance of the Work ("Granted Licenses"). This Trade Contract shall constitute conclusive evidence of the granting to Owner and/or Construction Manager of the Granted Licenses by Contractor.

ARTICLE 3, ARCHITECT/ENGINEER; COMMUNICATIONS, COVERING/UNCOVERING THE WORK / CUTTING AND PATCHING

3.1 Neither Architect/Engineer nor Construction Manager nor Owner shall be responsible for: construction means, methods, techniques, sequences or procedures of contractor; safety precautions and programs of Contractor; the acts or omissions of Contractor; or the failure of Contractor to carry out the Work in accordance with the Contract Documents.

3.2 Unless Owner otherwise determines, Architect/Engineer shall be, in the first instance, the interpreter of the Drawings and Specifications, excluding discrepancies therein (which are governed by Paragraph 2.9.5).

3.3 If any Work has been covered contrary to the requirements of the Contract Documents or to the specific instructions of Owner, Architect/Engineer or Construction Manager before such Work has been observed by them, such Work shall, upon request of Construction Manager or Owner, promptly be uncovered for observation at Contractor's sole cost and expense and, if found not to be in accordance with the Contract Documents, be replaced and recovered at Contractor's sole cost and expense.

3.4 If any Work has been covered which has not been required by the Contract Documents or by specific instruction by Owner, Architect/Engineer or Construction Manager to be observed by Owner, Architect/Engineer or Construction Manager prior to being covered,

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Construction Manager or Owner may request to see the Work in question, and it shall be uncovered promptly by Contractor as directed. If such Work is found to be in accordance with the requirements of the Contract Documents, Contractor shall be reimbursed by Owner for the cost of such uncovering and recovering. If such Work is found not to be in accordance with the Contract Documents, the cost of uncovering, replacement and recovering shall be at the expense of Contractor.

3.5 Upon request of Construction Manager or Owner, Contractor shall place its engineering personnel (or such engineering or consulting firm as Contractor may have engaged in connection with the Work) at Architect/Engineer's, Owner's and/or Construction Manager's disposal for checking the Work. When layouts of the Project site or Work are to be made, Contractor shall notify Architect/Engineer in reasonably sufficient time so that Architect/Engineer may be present.

3.6 Architect/Engineer is not authorized to make any changes or modifications in the Contract Documents except for written revisions of the Drawings and Specifications approved by Owner.

3.7 Contractor shall be responsible for all cutting and patching, as approved by Architect/Engineer or Construction Manager, necessary for the installation of the Work. If Contractor, as part of the Work, is responsible for placing sleeves and/or hangers and they are not placed in time or are improperly placed, Contractor shall be responsible at its expense for all resulting forming, drilling, and other corrective work required to be done to the Work and to Other Work, including patching.

3.8 All cutting, fitting, patching and drilling by Contractor shall be done promptly and so as to leave the Work and Other Work in conditions and appearance acceptable to Owner.

3.9 Structural members shall not be cut except by written authorization and pursuant to direction of Architect/Engineer.

3.10 Permission to patch and/or repair any areas or items of Work and Other Work shall not constitute a waiver of Owner's right to require complete removal and replacement of said areas or items of Work and/or Other Work, if, in Owner's opinion, said patching or repair does not satisfactorily restore the required quality and appearance of the Work and/or Other Work.

3.11 All communications between (i) Architect/Engineer and Contractor and (ii) between Owner and Contractor shall be through Construction Manager.

ARTICLE 4, ACCESS

Owner, Architect/Engineer, and Construction Manager, upon request, promptly shall have access to the Work, whether at the Project, in storage or in manufacture or preparation. Contractor shall provide proper and safe facilities for such access and for inspection at the Project site, at the place of storage or elsewhere. Contractor has given a license to exercise self-help.

ARTICLE 5, CONTRACTOR'S RESPONSIBILITIES

Contractor agrees, in addition to all other responsibilities and duties under the Contract:

5.1 To carefully study and compare, one with the other, all Drawings, Specifications and other instructions and at once report in writing to Construction Manager any error or omission (including variance from any Legal Requirements); and to subsequently proceed with the Work in accordance with instructions from Construction Manager concerning such error, omission, or variance.

5.2 To use all necessary means to discover and to notify Construction Manager in writing of any defect in Other Work upon which the satisfactory performance of the Work may depend, and to allow a reasonable amount of time for remedying such defects. If Contractor should proceed with the Work, Contractor shall be considered to have accepted and be responsible for such Other Work unless over Contractor's written objection, Contractor shall have proceeded pursuant to written instructions from Construction Manager.

5.3 To submit to Construction Manager promptly upon its request, information with respect to the names, responsibilities and titles of the principal members of Contractor's staff.

5.4 To furnish sufficient temporary facilities in accordance with Schedule 3 attached to the Trade Contract.

5.5 To pay: Construction Manager's charges for hoisting; costs of repair to Other Work attributable, in whole or in part, to the fault or negligence of Contractor; and Construction Manager's charges for removal of rubbish attributed by Construction Manager to Contractor, and any cleanup related to Contractor or the Work.

5.6 To comply with all Legal Requirements; to appear at hearings, proceedings or in court in respect of such compliance or in respect of violations or claimed violations of Legal Requirements; to pay any fines or penalties imposed for said violations; and to pay all legal fees, fines and penalties incurred by or imposed upon Owner, Construction Manager and Other Contractors relating to Contractor's compliance, violations or claimed violations. Without limiting the foregoing, Contractor will appear at hearings, proceedings and/or in court and consent to its substitution as a party defendant in respect of all summonses and claimed violations arising out of or relating to the Work.

5.7 Not to display on or about the Project site any sign, trademark or other advertisement.

5.8 That before any subcontractor or supplier is employed by Contractor, the name of such subcontractor or supplier shall be submitted in writing to Construction Manager, and no subcontractor or supplier shall be employed unless acceptable to Construction Manager. Each subcontractor and supplier shall be bound by all Contract Documents to the same extent and with the same effect as if the subcontractor or supplier were the Contractor. Contractor shall cause subcontractors and suppliers to comply with all the Contract Documents. Contractor shall be responsible for all the acts, omissions, work, material and equipment of its subcontractors and suppliers and all persons either directly or indirectly employed by any of them.

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5.9 That in the event of any dispute as to whether any item or portion of the Project work is within the scope of the Work to be performed by Contractor or any dispute as to whether Contractor is entitled to an extra payment, Contractor shall continue to proceed diligently with the performance of the Work, the Contract, and the disputed Work. The resolution, by agreement or otherwise, of the disputed Work, shall be made between Contractor and Construction Manager with reasonable promptness, subject to and on condition that Owner thereafter confirms the resolution and agrees to be liable for and pay Contractor the amount of any agreed-upon extra payment. In no event shall delay in such resolution excuse prompt performance by Contractor of the Work, the Contract, and the disputed Work.

5.10 To: (i) furnish a competent and adequate staff and use its best skill and attention for the proper administration, coordination, supervision and superintendence of the Work; (ii) organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; (iii) keep an adequate force of skilled workers on the job to complete the Work in strict accordance with all requirements of the Contract Documents; (iv) maintain throughout the duration of the Work a competent superintendent and any necessary assistants, all of whom shall be acceptable to Construction Manager and Owner and shall not be changed without the consent of the Construction Manager; (v) enforce discipline and order among Contractor's employees and not to employ at the Project any unfit person or anyone not skilled in the task assigned; and (vi) provide supervision by experts in all aspects of the application for the materials, equipment or system being fabricated and installed. Contractor shall not permit anyone under the age of 18 to perform the Work or to have access to the Project site.

5.11 That directions given to Contractor's Superintendent shall be binding upon Contractor.

5.12 Not to assign nor sublet the Contract as a whole, not to assign any monies due or to become due under the Contract, without the prior written consent of Owner. Any such assignment or subletting of the Contract or of monies due under the Contract without the prior written consent of Owner shall be void, and the purported assignee shall acquire no rights in, under or to the Contract or monies.

5.13 To afford Other Contractors reasonable opportunity for introduction and storage of their materials and for the execution of Other Work.

5.14 To comply with all Legal Requirements relating to the terms and conditions of employment of any employee who is employed in connection with the Work, including, without limitation, the applicable provisions of the Fair Labor Standards Act, the Fair Employment Practices Law and the Equal Pay Act.

5.15 Not to discriminate against any employee who is employed in connection with the Work or applicant for such employment because of race, creed, color, sex, affectional preference, or national origin. Contractor shall take affirmative action and cause all of its respective subcontractors to take affirmative action to afford equal employment opportunities without discrimination because of race, creed, color, sex, affectional preference, or national origin. Such action shall be taken with reference to, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay and other forms of compensation, and selection for training, including apprenticeship and on-the-job training.

5.16 To comply with all plans, guidelines and policy determinations relating to the employment of minority groups, established by any public authority, trade association, or any other organization designated by Construction Manager.

5.17 To obtain and pay for all permits, licenses, governmental fees and certificates of inspection necessary for the prosecution and completion of the Work.

5.18 That if any Work is performed which is contrary to Legal Requirements, to promptly make all changes as required and take all other corrective action to comply therewith and pay all costs arising therefrom.

5.19 To pay, whenever assessed, all applicable federal, state and local taxes on all materials, labor or services furnished by or through Contractor and all taxes arising out of Contractor's operations, which may be imposed upon or be collected from Owner and/or Construction Manager or become a lien against the Project as a result of or arising out of the Work. Such taxes shall include, but not be limited to, occupational, sales, use, excise, old age, employee, lease, benefit and unemployment taxes, customs duties and all income, franchise, license and other taxes now in force or hereafter enacted.

5.20 To pay all royalties and license fees applicable to the Work. Contractor shall defend, indemnify and hold Owner, Architect/Engineer and Construction Manager harmless of from and against any and all suits, demands and claims of infringement of any patent rights except to the extent that a particular design, process or product is specified in the Contract Documents. The foregoing exception shall be inapplicable if Contractor had or should have had reason to believe the design, process, or product infringed upon a patent and failed to give written notification to Construction Manager of same.

5.21 That any review or consideration by Owner, Architect/Engineer, or Construction Manager of any method of construction, invention, appliance, process, article, device or material of any kind shall be for its general adequacy for the Work and shall not be an approval for the use thereof by Contractor in violation of any patent or other rights of any third person.

5.22 That if any provision of the Contract Documents conflicts with any agreement among members of a trade association, or with a union or labor council which regulates the Work to be performed by a particular trade, to reconcile such conflict without delay or damage to Owner or to Construction Manager. In the event the progress of the Work is delayed by such conflict, Construction Manager may require that other material or equipment of equal or better kind and quality be provided

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at no additional cost to Owner. This right of substitution shall not limit other rights, which Owner may have concerning such delay.

5.23 To employ labor that is compatible with the labor of Other Contractors; to take all steps necessary to avoid labor disputes; and to be responsible for any delays and damages to Owner caused by such disputes.

ARTICLE 6, DEFAULT OF CONTRACTOR

6.1 An Event of Default on the part of Contractor shall occur upon the happening of any one or more of the following events:

6.1.1 a refusal or neglect by Contractor to supply a sufficient number of skilled workers, a sufficient quantity of materials of the specified quality, or a sufficient amount of equipment, parts, and systems of the specified quantity and performance requirement;

6.1.2 a failure by Contractor to prosecute the Work with diligence and promptness;

6.1.3 an act or omission by Contractor which stops, delays, interferes with, or damages the Work or any Other Work;

6.1.4 any other failure by Contractor to perform any other terms and conditions of the Contract;

6.1.5 a determination by Owner or Construction Manager that the Work or any portion of the Work is not being performed in accordance with the Contract;

6.1.6 the filing by or against Contractor of a petition under the Bankruptcy Code or for other debtor or insolvency relief;

6.1.7 the filing by or against Contractor of proceedings in furtherance of liquidation or dissolution;

6.1.8 the acknowledgment by Contractor of insolvency;

6.1.9 a determination by Owner or Construction Manager that Contractor has been acting or failing to act in a manner that evidences financial difficulties on the part of Contractor.

6.2 Upon the happening of an Event of Default, Owner and/or Construction Manager shall have the rights, in addition to any other rights and remedies provided by the Contract or by law, after five (5) days written notice from Construction Manager to Contractor mailed, delivered, or telegraphed to the last known address of Contractor, or after such shorter period, with or without notice, as may be deemed by Construction Manager to be appropriate under the circumstances, to:

6.2.1 cause to be performed or furnished, at Contractor's expense, such labor and equipment, parts, systems and materials, and/or to incur at Contractor's expense such other expenses (including, but not limited to, legal fees) in respect of the Work and/or Event of Default as may be necessary, or deemed by Owner and/or Construction Manager to be advisable, and to deduct the said expenses from monies, if any, due or to become due to Contractor; and/or

6.2.2 terminate the Project activities (but not necessarily the Contract) of Contractor for all or any portion of the Work, enter upon the Project site, and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, shanties, facilities, appliances and other items, all of which Contractor hereby transfers, assigns and sets over to Owner for such purpose; and/or

6.2.3 employ, at Contractor's expense, any person, firm, corporation or Other Contractor to complete the Work, and provide at Contractor's expense all labor, services, materials, equipment and other items required therefor; and/or

6.2.4 terminate the Contract and proceed, at Contractor's expense as in Subparagraphs 6.2.1, 6.2.2 and/or 6.2.3.

6.3 Upon the happening of an Event of Default and to effectuate the provisions of Paragraph 6.2, Construction Manager may engage Contractor's subcontractors and suppliers. Contractor shall not be entitled to receive any further payment until the Work shall be wholly completed to the satisfaction of Owner and shall have been accepted by Owner, at which time, if the unpaid balance, if any, of the Contract Price at the time of Contractor's default shall exceed the costs and expenses incurred in completing the Work and curing Contractor's default, such excess shall be paid to Contractor; but if such costs and expenses shall exceed such unpaid balance, then Contractor shall pay the difference to Owner. Such costs and expenses shall include not only the cost of completing the Work to the satisfaction of the Owner and of performing and furnishing all labor, services, materials, equipment and other items required therefor, but also all losses, damages, costs and expenses, whether direct or consequential, including, without limitation, legal fees and disbursements, sustained, incurred or suffered or to be sustained, incurred or suffered by Owner and/or Construction Manager by reason of or resulting from the Event of Default.

6.4 In addition to all other rights, which Owner has under the Contract Documents, Owner shall have the right to stop the Work upon the occurrence of an Event of Default.

6.5 Without limitation, an Event of Default shall not be deemed waived or discharged by:

6.5.1 action taken or not taken by Construction Manager or Owner in respect of the occurrence giving rise to an Event of Default; and/or

6.5.2 course of dealing by Construction Manager or Owner; and/or

6.5.3 delay on the part of Construction Manager or Owner in exercising any right under the Contract; and/or

6.5.4 payment to Contractor; and/or

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6.5.5 inspection, testing, or approval by Owner, Architect, Engineer, or Construction Manager of any portion of the Work.

6.6 Should any termination for default under Article 6 be determined to be invalid, improper or wrongful, such termination shall be deemed to have been a termination for convenience as provided in Article 20 below.

ARTICLE 7, LEGAL REQUIREMENTS / SIMILAR MATTERS

7.1 Contractor shall comply with, and cooperate with Other Contractors, Construction Manager, Architect/Engineer, and/or Owner in complying with Legal Requirements, including but not limited to OSHA requirements. Among other things, Contractor shall be responsible for performing corrective work within abatement periods, appealing from decisions or orders, requesting extensions on abatement periods, and furnishing such information or evidentiary material as may be necessary or as may be requested by Construction Manager and/or Owner to fully protect the rights and interests of Owner, Architect/Engineer, and Construction Manager with respect to possible, threatened or pending proceedings or orders.

7.2 Without limitation, Contractor shall indemnify Owner and/or Construction Manager pursuant to Article 11 hereof in respect of Paragraph 7.1 and the responsibilities of Contractor specified in Paragraphs 5.6, 5.14, 5.15, 5.16, 5.17, 5.18, 5.19 and 5.20 pertaining to Legal Requirements.

ARTICLE 8, BUILDINGS / MATERIALS / EQUIPMENT / PROCESSES

8.1 Unless otherwise specified, all materials and equipment that are part of the Work shall be new and shall be of the quality required by the Contract Documents. Contractor shall, upon request of Construction Manager, furnish satisfactory evidence as to kind and quality of all materials and equipment. All workmanship shall be of such quality as will result in first class work in accordance with the Contract Documents.

8.2 Any work, materials or equipment, which do not conform to the Contract Documents, may be rejected by Owner or Construction Manager, in which case they shall be replaced by Contractor at its expense.

8.3 When two or more products are specified for an item of Work, any one is acceptable and the choice is left to Contractor. When only one product is specified and the term "or equal" is used in connection with the product, Contractor may offer a substitute product, (subject to approval by Architect, and then Owner), which will completely accomplish the purpose of the specified product.

8.4 Requests for permission to substitute a product, material or process for that specified in the Contract Documents must be accompanied by evidence that the proposed substitution: (i) is equal in quality and serviceability to the specified item; (ii) will not entail changes in detail and construction of Other Work; (iii) will be acceptable to the Architect/Engineer in achieving design and artistic intent; and (iv) will not result in a cost disadvantage to Owner. Contractor shall furnish with such request such drawings, specifications, samples, performance data and other information as may be required to enable Owner, Architect/Engineer, and Construction Manager to determine whether the proposed substitution is acceptable. The burden of proof of acceptability shall be upon Contractor. If an approved substitution affects Other Work or otherwise necessitates any redesign, Contractor shall pay all costs thereof.

8.5 Contractor shall prepare and submit lists, in triplicate, to Construction Manager of all manufactured or fabricated products proposed for the Work. Such lists shall include such information on materials, equipment and fixtures as may be required by Construction Manager for Owner's preliminary approval. Approval of such lists shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data and samples which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for final approval by Owner.

8.6 Manufacturers' nameplates shall not be permanently attached to ornamental and miscellaneous metal work, doors, frames, millwork, exposed surfaces and other fabricated or manufactured products to be placed in finished spaces if, in Owner's and Architect's opinion, the nameplates would be objectionable. The preceding sentence does not apply to Underwriters' labels where required, nor to manufacturers' name and rating plates on mechanical and electrical equipment.

8.7 Each major component of mechanical and electrical equipment shall have the manufacturer's name, address, model number and rating on a plate securely affixed in a conspicuous place, as required in the mechanical and electrical sections of the Specifications.

8.8 In case of any differences or conflicts between the requirements of the manufacturer's instructions or specifications and the requirements of the technical sections of the Specifications, the instructions or Specifications having the more detailed and precise requirements specifically applicable to the Work, as determined by Owner, shall govern.

ARTICLE 9, TESTING / INSPECTIONS

9.1 Owner may, but shall not be obligated to, retain the services of testing laboratories, agencies, and/or professional engineers to perform the tests (including control balancing and adjusting) and make the required inspections and reports specified in the Contract Documents or deemed necessary by Owner in case of questioned items. Such testing laboratories, agencies and/or professional engineers shall conduct and interpret the tests. A copy of each test report deemed necessary by Owner in case of questioned items shall, at Owner's option, be made available to Contractor.

9.2 At Owner's option, Contractor shall furnish samples of all materials and component parts to be used as test specimens. Contractor shall furnish labor and facilities at the Project site as necessary in connection with testing and inspection services.

9.3 Except as otherwise specified in other Contract Documents or elsewhere in this Trade Contract, Contractor shall pay for all laboratory services, tests,

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testing laboratories, agencies, professional engineers, engineering inspections and reports required by the Contract Documents, the Architect/Engineer, Owner or Construction Manager. Testing laboratories and professional engineers shall be subject to Owner's approval.

9.4 Without limiting the provisions of Paragraph 9.3, the cost of testing laboratories, agencies, and/or engineers for the convenience of Contractor in its scheduling and performance of the Work, or related to remedial operations or possible deficiencies shall be borne by Contractor.

9.5 The nature and scope of testing services, agencies and/or inspections performed by laboratories and engineers retained by or on behalf of Owner or Contractor shall be in accordance with Legal Requirements or as otherwise specified in the Contract Documents and shall be consistent with recognized good standards of engineering practice.

9.6 If, in the performance of any testing, control, balancing, adjusting or similar work to be performed by or on behalf of Contractor, it is the opinion of Owner, Construction Manager or Architect/Engineer that Contractor has failed to substantiate the ability to perform such Work, Contractor shall, at its expense, retain the services of a testing laboratory, agency or service organization which is satisfactory to Owner, Construction Manager and Architect/Engineer for the performance of such work.

9.7 Owner may instruct Construction Manager to order special inspection, testing or approval, as Owner deems necessary. If such special inspection or testing reveals a failure of the Work to comply (i) with the requirements of the Contract Documents, or (ii) with Legal Requirements, Contractor shall bear all costs of such Owner-directed special inspection, special testing and correction.

9.8 The observations of or participation by Owner, Architect/Engineer, or Construction Manager in inspections or tests by persons other than Contractor, shall not relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

9.9 If the Specifications or any Legal Requirements require any portion of the Work to be specifically tested or reviewed, Contractor shall give Construction Manager timely written notice of such test or review, shall secure all required certificates and shall promptly deliver them to the Construction Manager and Architect.

ARTICLE 10, GUARANTEES

10.1 Contractor guarantees to Owner and Construction Manager all Work against defects in materials and workmanship and for conformity with the Contract Documents for a period equal to the greater of: one (1) year from the date of Project completion; such period as may be specified in other Contract Documents; or such period as may be specified by Legal Requirements. If any part of the Work is found after Project completion not to comply with the Contract Documents, the guarantee period thereon shall commence on the date such part of the Work is corrected to comply with the Contract Documents.

10.2 Contractor promptly shall, after receipt of written notice, correct any defects in materials, equipment and workmanship which may develop within the guarantee period, and also correct and/or repair and/or replace any damage to Other Work or the Owner's property caused by defective materials, equipment or workmanship and the repairing of same.

10.3 The foregoing guarantee and obligations shall not deprive Owner of any action, right or remedy otherwise available for breach of any of the provisions of the Contract Documents. The periods referred to above shall not be construed as a limitation on the time in which Owner may pursue such other action, right or remedy.

ARTICLE 11, INDEMNIFICATION

11.1 To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless Construction Manager and Owner, as well as any other parties which Construction Manager is required to defend, indemnify and hold harmless, and their agents, servants and employees, from and against any claim, cost, expense, or liability (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity), attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by Contractor, its subcontractors and suppliers of any tier, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Contractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage, or destruction is caused by the sole negligence of a party indemnified hereunder. Contractor's obligation hereunder shall not be limited by the provisions of any Workers Compensation or similar act.

11.2 Should Owner or any other person or entity assert a claim or institute a suit, action, or proceeding against Construction Manager and/or Owner involving the manner or sufficiency of the performance of the Work, Contractor shall upon request of Construction Manager and/or Owner promptly assume the defense of such claim, suit, action or proceeding, at Contractor's expense. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Construction Manager and Owner as well as anyone to be defended, indemnified and held harmless by Construction Manager and its or their agents, servants and employees, from and against any liability, loss damage, or expense (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity) arising out of or related to such claim, suit, action or proceeding. Nothing in Article 11 shall be construed to require any indemnification which would make Article 11 void or unenforceable or to eliminate or reduce any indemnification or rights which the Owner, any party

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indemnified hereunder, and/or Construction Manager have by law.

ARTICLE 12, INSURANCE / BONDS

12.1 The terms and conditions of insurance to be provided by Contractor are described in Insurance Exhibit C attached to the Trade Contract. Neither Owner nor Construction Manager, nor their agents, employees or assigns shall be liable to Contractor or its agents, employees or assigns for any loss or damage covered by the insurance policies described in the aforementioned Insurance Exhibit C. The failure of Contractor to obtain the insurance required therein prior to the commencement of the Work shall not be deemed a waiver of such requirements or of any rights or remedies that Owner or Construction Manager may have.

12.2 If required, Contractor shall furnish performance, and labor and material payment bonds for one hundred percent (100%) of the Contract Price, said bonds to be in form and with sureties satisfactory to Construction Manager and/or Owner in accordance with Bonding Exhibit F attached to the Trade Contract. The premiums on such bonds shall be paid by Contractor and are included in the Contract Price. Irrespective of whether Contractor is required to provide performance, labor, and material surety bonds under the terms of the Trade Contract, Owner and Construction Manager shall have the right from time to time during the course of the Work and upon written recommendation of either Owner's construction lender or of Owner's or Construction Manager's legal counsel, to require Contractor to furnish bonds for one hundred percent (100%) of the Contract Price (with sureties and in form and amount acceptable to Owner and Construction Manager) covering the faithful performance of the Contract and the payment of all obligations arising thereunder. Such bonds shall be furnished within ten (10) days after Contractor has been given written notice of such requirement by Construction Manager.

12.3 If an action for bodily injury and/or property damage is commenced against Owner and/or Construction Manager, which in the opinion of Construction Manager's counsel or insurance coordinator is covered by the indemnity provisions of Article 11 or the insurance required hereunder of Contractor, Contractor shall, upon Construction Manager's written request, promptly cause Contractor's insurance carrier to have its attorneys appear timely in the action on behalf of Owner and/or Construction Manager and provide the defense of Owner and/or Construction Manager. The insurance required to be provided by Contractor, pursuant to the Insurance Exhibit C attached to the Trade Contract, shall not be deemed to be a limitation in any way upon the obligations of the Contractor that are required by the indemnity provisions of Article 11.

12.4 Waivers of Subrogation. Contractor waives all rights against the Owner, Construction Manager, Architect and Other Contractors for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work, except such rights as Contractor may have to the proceeds of such insurance. Contractor shall require similar waivers from its subcontractors, suppliers, sub-subcontractors, agents and employees of any of them, by appropriate agreements, each in favor of the other parties enumerated herein.

ARTICLE 13, TIME IS OF THE ESSENCE / CONTRACTOR'S PROSECUTION OF THE WORK / DELAY / OVERTIME

13.1 Time is of the essence in the Contractor's commencement, prosecution and construction of the Work. Contractor shall be responsible for all direct and consequential damages to Owner and to Construction Manager arising from any delay of Contractor, its subcontractors and suppliers, in performing or completing the Work in accordance with the time requirements of Paragraph 13.2 hereof. The indemnity provisions of Article 11 are applicable to such damages and to claims arising in respect thereto.

13.2 Contractor shall do all things necessary to ensure the prosecution of the Work in accordance with any one or more of the following as determined by Construction Manager in its absolute and sole discretion:

13.2.1 Project schedules and revisions thereof, given from time to time by Construction Manager to Contractor;

13.2.2 the time requirements for various portions of Work, which said requirements are made known from time to time by Construction Manager or Other Contractors to Contractor;

13.2.3 the requirements of the Project including, but not limited to, coordination requirements as may from time to time be known to Contractor or be made known by Construction Manager or Other Contractors to Contractor;

13.2.4 schedules of the Work provided by Contractor to Construction Manager upon Construction Manager's request.

13.3 Should the progress of the Work and/or Other Work be delayed by any fault, neglect, act or failure to act of Contractor or any of its subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to Owner and/or Construction Manager or for which Owner and/or Construction Manager may become liable, Contractor shall hold Owner and/or Construction Manager harmless from and indemnify Owner and/or Construction Manager against all such additional cost, expense, liability or damage in accordance with the provisions of Article 11.

13.4 The Work shall be performed during regular working hours, except that in the event of emergency or when necessary to perform the Work in accordance with the requirements of Paragraph 13.2, Work shall be performed at Contractor's cost and expense (including Construction Manager's standby and other general conditions costs) on night shifts, overtime, Saturdays, Sundays, Holidays and at other times, if permission to do so has been obtained in writing from Construction Manager. Without limiting the requirements of the preceding sentence, if the

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progress of the Work or of the Project has been delayed by any fault, neglect, act, or failure to act of Contractor or any of its subcontractors or suppliers, Contractor shall work such overtime, at Contractor's cost and expense as aforesaid, as Construction Manager shall deem necessary or desirable to make up for all time lost and to avoid delay in the completion of the Work and of the Project. The failure by Construction Manager to direct Contractor to engage in such overtime work shall not relieve Contractor of the consequences of its delay.

13.5 Contractor shall commence the Work upon written notice by Construction Manager.

13.6 Construction Manager may direct acceleration of the Work in order that it may be performed in advance of the schedules, time requirements and Project requirements described in Paragraph 13.2 hereof. If so directed, Contractor shall increase its staff and/or work overtime. Contractor will not be entitled to additional compensation for work performed outside of regular working hours, except as authorized in writing by Construction Manager. Provided that Contractor is not in default under the Contract, and Construction Manager has issued the aforesaid authorization, there shall be added to the Contract Price an actual out-of-pocket amount equal to: (i) additional wages actually paid, at rates which have been approved by Construction Manager; (ii) taxes imposed by law on such additional wages; (iii) premiums for worker's compensation and liability insurance if required to be paid on such additional wages.

Written authorization for overtime which exceeds $500.00 in any one week shall be invalid unless confirmed in writing by Construction Manager's Project Manager, it being understood that Construction Manager's on-site Superintendent shall not have authority to authorize such overtime which exceeds $500.00 in any one week.

13.7 Contractor expressly waives any claim based on quantum meruit and agrees that any claims against Owner, irrespective of an alleged breach by Owner of the Contract, shall be based, nonetheless, upon the Contract and the Contract Price.

ARTICLE 14, SHOP DRAWINGS AND SAMPLES

14.1 The term "shop drawings" means: fabrication, erection, layout and setting drawings; manufacturers' standard drawings; schedules; descriptive literature, catalogs and brochures; performance and test data; and all other drawings and descriptive data pertaining to materials, equipment, systems and methods of construction as may be required to show that the materials, equipment, systems, and methods of construction and the position thereof conform to the requirements of the Contract Documents. The term "manufactured" applies to standard units usually mass produced, and the term "fabricated" applies to items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall establish the actual detail of all manufactured or fabricated items; indicate proper relation to adjoining work; amplify design details in proper relation to physical spaces in the structure; and incorporate minor changes of design or construction to suit actual conditions.

14.2 The term "samples" means natural materials, fabricated items, equipment, devices, appliances or parts specified in the Contract Documents, and any other samples as may be required by Architect/Engineer to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials etc., proposed by Contractor conform to the required characteristics of the various portions of the Work.

14.3 Contractor shall promptly submit all shop drawings and samples as to cause no delay in the Work and Other Work. Contractor shall submit all shop drawings and samples through Construction Manager for Architect/Engineer's review. Review by Architect/Engineer shall not relieve Contractor from its responsibility in preparing and submitting adequate and accurate shop drawings and samples. By submitting shop drawings and samples, Contractor represents and warrants that it has determined and verified all materials, field measurements, and field construction criteria pertaining thereto, and has checked and coordinated this information with the Work, Other Work and the Contract Documents. Any submission which, in Architect/Engineer's opinion is incomplete, contains numerous errors or has not been checked or only checked superficially, will be returned unreviewed by Architect/Engineer for resubmission by Contractor.

14.4 In reviewing shop drawings, Architect/Engineer need not verify dimensions and field conditions. Architect/Engineer will review shop drawings and samples only for conformance with the design concept of the Work and for general detailing. Architect/Engineer's review shall not be construed as a complete check nor shall it relieve Contractor from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents, unless Contractor has in writing, specifically called Architect/Engineer's attention to each specific deviation at the time of submission. Nor shall Architect/Engineer's review relieve Contractor from responsibility for errors in shop drawings; responsibility for proper fitting of the Work, the necessity of furnishing any Work required by the Contract Documents which may not be indicated on shop drawings when reviewed; and the necessity of providing sufficient quantities of items.

14.5 Shop drawings must be properly identified with the name of the Project and dated. Submission must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item, and stating qualifications, departures or deviations, if any, from the Contract Documents. Shop drawings, for each portion of the Work, shall be numbered consecutively and the numbering system shall be retained throughout all revisions. Each drawing shall have a clear space for the stamp of Architect/Engineer.

14.6 Contractor shall submit reproducible sepia transparencies and prints of each shop drawing as requested by

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Construction Manager, and such other drawings as required under the various sections of the Specifications until final approval by Architect/Engineer is obtained. Contractor shall submit copies in number as requested by Construction Manager of manufacturers' descriptive data, drawings, and literature for materials, equipment and fixtures, including catalog sheets, showing dimensions, performance characteristics and capacities; wiring diagrams and controls; schedules; and other pertinent information as required or requested.

14.7 Contractor shall make any corrections required by Architect/Engineer and shall resubmit corrected shop drawings or new samples until approved. Contractor shall direct specific attention in writing to revisions other than the corrections requested by Architect/Engineer.

14.8 No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been approved in writing by Architect/Engineer. All such portions of the Work shall be in accordance with Architect/Engineer's approved shop drawings and samples.

14.9 If a considerable range of color, grining texture or other characteristic may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by Contractor to indicate the full range of such characteristics which will be present in the finished products; and such products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged or otherwise properly identified with the name of Contractor, the name of the Project, the purpose for which the samples are submitted and the date, and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number or drawing number for which the sample is submitted.

ARTICLE 15, PROTECTION / SAFETY AND ACCIDENT PREVENTION / CONSTRUCTION PRACTICES AT THE SITE

15.1 Contractor shall continuously protect the Work, Other Work, and the property of Owner and others from damage, injury or loss arising in connection with the Work. Owner and/or Construction Manager shall not be responsible for any loss or damage to the Work, however caused, until after final acceptance thereof by Owner, nor shall Owner or Construction Manager be responsible for loss of or damage (however caused) to materials, tools, equipment, appliances and other personal property of Contractor used in the performance of the Work.

15.2 Contractor shall remove all snow and ice as may be required or requested for the proper protection and prosecution of the Work. Contractor shall provide and maintain adequate protection against weather so as to protect the Work from injury or damage.

15.3 Contractor shall employ only methods of construction, erection, hoisting, rigging, forming, scaffolding, and cribbing, and use only tools, structures, etc., at the Project site which conform to OSHA and other Legal Requirements.

15.4 Contractor shall confine its equipment, the storage of materials and the operations of workers to the areas permitted by Legal Requirements or as may be established by Construction Manager, and shall not unreasonably encumber the Project site with equipment and materials.

15.5 Contractor shall enforce Construction Manager's instructions and all Legal Requirements regarding signs, advertisements, fires, smoking, alcoholic beverages, and the possession of firearms by any person at the Project site.

15.6 Contractor shall prevent dust, noise and smoke from interfering with the normal activities of others.

15.7 Contractor, as necessary for the Work, shall provide flagmen, erect proper barricades and other safeguards, and post danger signs and other warnings as warranted by hazardous and existing conditions for public safety.

15.8 Contractor has responsibility for maintaining a proper and sufficient safety and loss prevention program covering the Work and covering its employees, agents and subcontractors while at the Project site. In the event Construction Manager institutes a safety and loss prevention and environmental program affecting the entire Project, Contractor shall comply with such program. Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention and who shall have the responsibility and full authority to enforce the aforesaid programs. This person shall hold meetings with the representatives of Other Contractors to ensure that all workers and subcontractors understand and comply with the programs. Contractor shall cooperate fully with Construction Manager, all insurance carriers, and all loss prevention engineers and their personnel regarding loss and accident prevention. Contractor shall stop any part of the Work which Construction Manager deems unsafe until corrective measures satisfactory to Construction Manager have been taken. Construction Manager's failure to stop Contractor's unsafe practices shall not relieve Contractor of its responsibility therefor.

15.9 Contractor shall promptly report in writing to Construction Manager and to Contractor's insurance carriers all accidents arising out of, or in connection with, the performance of the Work, whether on or off the Project site, which caused death, bodily injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported to Construction Manager immediately by telephone or in person.

15.10 Contractor, its subcontractors and suppliers shall cooperate fully with all interested parties regarding claims handling procedures, and Contractor shall cause to be provided such legal defense as is required by the provisions of Paragraph 12.3 hereof.

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15.11 In an emergency affecting life, the Work, Other Work, or Owner's property, Contractor, without special instructions or authorization from Construction Manager, shall take the action necessary to deal adequately with such emergency. Notice of any such action shall be given by Contractor to Construction Manager as soon as is practicable.

15.12 All areas of the Work shall be maintained by Contractor in a neat and orderly condition and kept free from accumulation of waste materials and rubbish during the entire construction period. All crates, cartons, flammable waste materials, and trash shall be removed by Contractor from its Work areas at the end of each working day to a location directed by Construction Manager.

15.13 Contractor shall clean and maintain the Work and the area in which the Work is in progress, as required by the Contract or as directed by Construction Manager.

15.14 When directed by Construction Manager, Contractor shall dismantle and remove from the Project site all construction and installation equipment, fences, scaffolding, shanties, surplus materials, rubbish and supplies belonging or attributed to Contractor or the Work.

15.15 Contractor shall provide to Construction Manager a written site specific Safety and Health Program prior to the commencement of any Work on the Project. The Safety and Health Program shall address tasks to be performed on the Project with attendant risk analysis and have appropriate controls and safeguards to prevent injury and illness. Construction Manager will review the Safety and Health Program prior to the start of the Work. Any questions, comments or inquiries by Construction Manager as to the adequacy of this program must be completely addressed by Contractor before Work is started.

15.16 Contractor must have a Safety Orientation Program for all of its new Project workers. Documentation of this orientation is required for the Project. Weekly safety meeting with the workers of Contractor and its subcontractors of any tier are also required with evidence of the meeting results being supplied to Construction Manager.

15.17 Hard hats are required on the Project. The Contractor must have a Safety Disciplinary Program and Construction Manager will use a safety disciplinary system with the Contractor.

15.18 Guardrails are to be provided by Contractor at all working places and other locations where persons or materials could fall more than six (6) feet. Where this cannot be physically achieved, suitable and sufficient fall protection devices that do not rely on individuals must be provided and used by Contractor to establish a safe place of work. Harnesses and personal protective equipment must be used by Contractor as a last resort. The decisions made and options implemented must be clearly detailed by Contractor in its written site specific Safety and Health Program.

15.19 Free standing scaffold towers used externally be Contractor must not be higher to the top platform level than three (3) times the minimum base dimension unless secured to a permanent structure. For internal use only, the height to platform may rise to 3.5 times the minimum base dimension. Wheels must be locked when towers are in use. No person is permitted to remain on a tower platform while a tower is being moved.

15.20 Powered cranes, hoists, aerial platforms, and scissor lifts provided by Contractor must have a competent driver that is certified by a qualified third party. Additionally, the above items must be certified by a qualified third party as safe to use.

15.21 Contractor must comply in full with all applicable environment, health and safety ("EH&S") local and national legislation, including all OSHA regulations. In circumstances where there is a conflict between local or national legislation and this Article 15, the higher (more protective) requirement shall prevail.

15.22 All persons working for or under Contractor on suspended scaffolds/cradles/gondolas must wear and use appropriate fall prevention equipment so as to protect them effectively, at all times when they are at risk from any failure of any part of the scaffold/cradle/gondola, including its suspension system.

15.23 Holes, shafts and edges from or through which persons could fall a distance of more than 6 feet must be clearly marked by Contractor with signage or other means and must be adequately protected by covers or barriers provided by Contractor so as to prevent falls of persons and materials.

15.24 All temporary electrical circuits provided and used by Contractor must include a Residual Current Device, Earth Leakage Circuit Breaker or Ground Fault Circuit Interrupter at source.

15.25 Adequate lighting must be provided by Contractor to enable safe access to and egress from every place on a site where persons are liable to work. This is in addition to task lighting.

ARTICLE 16, CORRECTION OF WORK

16.1 If Owner, Architect and/or Construction Manager deems it inexpedient to repair damage to property caused by Contractor or its subcontractors, to correct improper work, or to insist on completion of incomplete Work, a deduction from the Contract Price as determined by Owner shall be made.

16.2 Contractor shall promptly remove and replace all Work rejected by Owner as failing to conform to the Contract Documents, and Contractor shall pay the expense of making good all Other Work destroyed or damaged by such removal or replacement.

16.3 If Contractor does not promptly correct or remove and replace rejected Work, Owner may, at the expense of Contractor, correct or remove and replace the rejected Work. This right is in addition to all other rights, which Owner has under the Contract.

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ARTICLE 17, ACCEPTANCE OF THE WORK / EARLY OCCUPANCY

17.1 The Work will be accepted, after inspection by Architect/Engineer, when, in its and Owner's opinion, the Work has been completed in accordance with the Contract Documents except for the most minor of adjustments.

17.2 Before acceptance of the Work, Owner may use or occupy space or spaces in the Project.

17.3 In the event that, under Paragraph 17.2, Owner desires to use or occupy a portion of the Project prior to completion of the entire Project, Contractor shall cooperate with Owner and Construction Manager in promptly making available for Owner's use as much of the Work as is necessary for the Owner's use or occupancy.

17.4 In respect of partial occupancy or use under Paragraph 17.2 hereof, Owner shall assume any increased expenses of operating the building systems that would not have been incurred if there were no such partial occupancy. Guarantees affecting the Work associated with the occupied or used spaces shall be modified in a reasonable manner acceptable to Owner and Construction Manager. Owner's use or occupancy of such portion of the Project shall not constitute acceptance of any Work, materials and equipment which are not in accordance with the Contract Documents, nor relieve Contractor from its obligations to complete the Work and to remain responsible for loss or damage due to or arising out of defects in, or malfunctioning of any Work, nor relieve Contractor from any unfulfilled obligations or responsibilities under the Contract.

ARTICLE 18, PAYMENTS / NO LIENS

18.1 Payment shall be made either directly from the Owner or otherwise only from funds which Construction Manager has actually received in hand from the Owner and designated by Owner for disbursement to Contractor. Contractor agrees to look solely to such funds for payment. Contractor understands and agrees that Construction Manager shall have no liability or responsibility for any reason whatsoever for any amounts due or claimed to be due to Contractor except to the extent that Construction Manager has actually received funds from Owner specifically designated for disbursement to Contractor. To the extent permitted by law, receipt of these funds by Construction Manager shall be a condition precedent to Contractor's right to receive payment from Construction Manager. In the event that such funds are not received by Construction Manager, Contractor reserves any and all rights it may have against the Owner, under this Contract or otherwise, for any amounts due or claimed to be due to Contractor. Contractor acknowledges that Construction Manager has made no representations or warranties regarding Owner's financial ability to perform its duties hereunder. The risk of Owner's non-performance shall be upon Contractor and not upon Construction Manager. The Contractor represents that it has inspected the Project site and has satisfied itself as to the condition thereof and that the Contract Price is just and reasonable compensation for all the Work and for the Contractor's assumption of the risk of all foreseen and unforeseen risks, hazards, and difficulties in connection with the performance of the Work.

18.2 Promptly after acceptance of Contractor's bid, Contractor shall prepare for Construction Manager's approval a Trade Payment Breakdown showing the values of the various portions of the Work in such detail and with such supporting evidence as Construction Manager may require. No Application for Payment by Contractor will be processed by Construction Manager until the aforesaid approval has been given.

18.3 On or before the 20th day of each month during the progress of the Work, Contractor shall submit to Construction Manager an Application for Payment in affidavit form, sworn to by a principal officer of Contractor, which shall include the following:

18.3.1 the amount paid to Contractor to the date of the Application for Payment;

18.3.2 the amount requested by Contractor on the current Application for Payment;

18.3.3 the balance that will be due after the payment requested is made;

18.3.4 any additions to and subtractions from the Contract Price in accordance with the Contract Documents;

18.3.5 the amount being withheld for retention;

18.3.6 the percentage of completion of each detailed portion of the Work listed in the Trade Payment Breakdown.

18.4 Each Application for Payment shall provide for the Retained Percentage of the amount due until completion of the Work and acceptance thereof by Owner. Contractor shall furnish with each Application for Payment such material invoices, evidence of equipment purchases, rentals and other details of cost as Owner, Owner's construction lender, or Construction Manager may require from time to time. With Owner's approval, an Application for Payment may reflect Work that is expected to be completed by the end of the month to which the Application for Payment is applicable.

18.5 With each Application for Payment, Contractor shall submit a duly executed waiver or partial waiver of lien in form approved by Owner, and acknowledged under oath by a principal officer of Contractor. In addition, at Owner's election, Contractor shall with each Application for Payment furnish an affidavit, in form approved by Owner and sworn to by a principal officer of Contractor, stating the amount of prior payments to subcontractors and suppliers in respect of the Project and the amount to be owing and due by Contractor to its subcontractors and suppliers through the end of the period covered by the Application for Payment.

18.6 Construction Manager shall review an Application for Payment together with such supporting documents as

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Owner and/or Construction Manager may require. Construction Manager shall then approve, modify or reject, in whole or in part, such Application for Payment. Construction Manager may, in its discretion, either return such Application for Payment to Contractor for revision and resubmission or forward the Application to Owner as modified unilaterally by Construction Manager. The forwarding of an Application for Payment to Owner by Construction Manager shall not bind Owner to make payment, Owner having retained the right to decline payment, in whole or in part, under Paragraph 18.8. Without limiting the terms and conditions of Paragraph 18.1 hereof, Applications for Payment, which are approved by the Construction Manager, will be paid within seven (7) days after Construction Manager has actually received in hand such funds from the Owner, which are specifically designated by the Owner for disbursement to Contractor therefor.

18.7 Payments for stored material shall only be made if Owner specifically approves such payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work but delivered and suitably stored at the Project site or at some other location agreed upon by Owner and Construction Manager in writing, such payments shall be conditioned upon submission by Contractor of bills of sale and other documents satisfactory to Owner and Owner's construction lender to establish Owner's title to such materials and equipment and to otherwise protect Owner's interests including applicable insurance and transportation to the Project site.

18.8 Owner or Construction Manager may decline to approve an Application for Payment in whole or part and/or may decline to make a payment because of evidence of:

18.8.1 defective Work or material;

18.8.2 claims filed or evidence indicating probable filing or making of claims;

18.8.3 failure of Contractor to make payments to subcontractor(s) or to suppliers for labor, services, materials or equipment;

18.8.4 reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price;

18.8.5 damage to Other Contractors;

18.8.6 unsatisfactory prosecution of the Work;

18.8.7 erroneous estimates by Contractor of the value of the Work performed;

18.8.8 unauthorized deviations from the Contract Documents;

18.8.9 any other failure of Contractor to perform pursuant to the Contract.

18.8.10 any breach or default by Contractor or its affiliates, parent company and/or subsidiaries under any other agreement.

18.9 When, as, and if all the above grounds for declining approval are removed, payment shall be made for amounts withheld.

18.10 Final payment of the unpaid balance, including retention, shall be made on an Application for Final Payment in form approved by Owner.

18.11 The Application for Final Payment shall be accompanied by the same type of documents, information, and affidavits as set forth hereinabove for an application for progress payment except, however, that the following additional conditions shall be fulfilled:

18.11.1 a full and final release and waiver of all liens and claims in connection with the Work shall be submitted by each subcontractor or supplier who has performed work or supplied materials to the Project on behalf of Contractor, such waiver to be in a form approved by Owner. In the event that any such release and waiver of lien is not or cannot be furnished, then there shall be furnished to Owner a bond or other security reasonably satisfactory to Owner to indemnify Owner against any such lien or claim;

18.11.2 Contractor shall have made or caused to have been made, all corrections in the Work required to remedy any defects therein and obtain compliance with the directions of Construction Manager and with the Contract;

18.11.3 Contractor through Construction Manager shall have delivered to Owner, all written guarantees, warranties, bonds, operating and maintenance manuals, instructions, drawings, shop drawings, other documents prepared by Contractor or prepared at Contractor's direction, CAD documentation and computer disks, and as-built drawings required by the Contract Documents;

18.11.4 Architect/Engineer shall have issued a Final Certificate for Payment, if required by Owner;

18.11.5 the General Release referred to in the following paragraph has been delivered.

18.12 Acceptance by Contractor of the Final Payment shall constitute a release of Owner and Construction Manager of and from all liability for all things done or not done or furnished or not furnished in connection with the Work, and for every act, omission, or neglect, if any, relating to or arising out of the Project. Before final payment, Contractor shall also execute and deliver a General Release to Construction Manager naming Owner and Construction Manager as releasee, said General Release to be in such form as Construction Manager may provide.

18.13 To the extent permitted by law, Contractor shall not suffer or permit any lien or other encumbrance to remain of record as a claim against the building or the Project site or against any monies due or to become due for any

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Work performed or materials furnished by, to or on behalf of Contractor, or any of its subcontractors or suppliers; nor shall Contractor suffer or permit any such lien or encumbrance to be so filed because of any claim or demand against, or any action or non-action of, Contractor or any of its subcontractors or suppliers. If any such lien or encumbrance has been so filed, Contractor shall promptly cause the removal or discharge thereof from the building and the Project site, and no payment shall be made to Contractor until said lien or encumbrance has been removed or discharged or there has been furnished to Owner a bond or other security satisfactory to Owner protecting and holding harmless the Owner and Construction Manager from any liability, fees, or costs (including, without limitation, attorneys' fees) in connection therewith.

18.14 The failure of Contractor after ten (10) days written demand by Owner or Construction Manager, to remove or discharge a lien filed by Contractor or by Contractor's subcontractor or supplier, shall constitute breach of the Contract.

18.15 No certificate issued or payment made to Contractor nor any partial or entire use or occupancy of the Project site shall be an acceptance of any Work not in accordance with the Contract Documents or be deemed evidence of proper performance of the Work, either in whole or in part, or be construed as an acceptance of defective workmanship or improper materials.

ARTICLE 19, CHANGE ORDERS / CLAIM FOR EXTRA COST / TIME EXTENSIONS

19.1 Owner, through Construction Manager, may order changes in the Work consisting of additions, deletions, and revisions. The Owner shall have the right to delete Work from the Contract for any reason whatsoever and to direct Other Contractors to perform such work, and in such event Contractor shall have no claim against Construction Manager or Owner for such deletion of work or for breach of Contract. The Contract Price and completion time requirements shall be adjusted as set forth below to the extent that Owner in its sole discretion agrees to such adjustment. All changes in the Work shall be authorized only by written Change Orders executed by Construction Manager's Project Manager except that emergency work may be authorized by Construction Manager through an order signed by its field superintendent. All changes in the Work shall be performed pursuant to the Contract Documents.

19.2 Any increase or decrease to the Contract Price resulting from a change in the Work shall be determined in one or more of the following methods as deemed applicable by Construction Manager to a specific situation:

19.2.1 by mutual acceptance of a lump sum, properly substantiated and itemized;

19.2.2 by unit prices stated in the Contract or if none are stated, as agreed upon;

19.2.3 by the sum of the following in the order stated: (i) the actual and reasonable out-of-pocket cost of additional materials; (ii) the actual and reasonable out-of-pocket cost of additional labor (base wage only); (iii) an amount for overhead and profit for Contractor and its subcontractors equal in the aggregate to the Profit Percentage of the actual and reasonable out-of-pocket costs of base wages and material, and (iv) actual additional out-of-pocket employee benefits, insurances, welfare, taxes and other fringes.

19.3 If Contractor objects to the method of determining the increase or decrease of the Contract Price deemed applicable by Construction Manager, Contractor shall nonetheless promptly proceed with the additional, revised or deleted Work involved. The increase or the decrease for such Work shall then be resolved by the parties by agreement or otherwise on the basis of value but in no event shall such value exceed the actual and reasonable out-of-pocket cost or cost savings to the Contractor of the additional, revised, or deleted Work.

19.4 When both increases and decreases are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any.

19.5 If Contractor claims an increase in the Contract Price or an extension in the completion time requirements by reason of a change in the Work, Contractor shall give Construction Manager written notice thereof within ten (10) days after Contractor's knowledge of the occurrence of the matter giving rise to such claim. This notice shall be given by Contractor before proceeding to execute the changed Work, except in an emergency endangering life or property in which case Contractor shall proceed in accordance with Paragraph 15.11 hereof. No such claim shall be valid unless notice is given as aforesaid. Contractor shall proceed to execute the Work, even though the increase or time extension has not been agreed upon.

19.6 Should Contractor be obstructed or delayed in the commencement, prosecution or completion of the Work, without fault on its part, by reason of: failure to act, direction, order, neglect, delay or default of the Owner, the Architect/Engineer, the Construction Manager, or any Other Contractor employed upon the Project; by changes in the Work; fire, lightning, earthquake, enemy action, act of God or similar catastrophe; by Government restrictions in respect to materials or labor; or by an industry-wide strike beyond Contractor's reasonable control, then Contractor shall be entitled to an extension of time to perform the Work which shall be equal to the time lost by reason of any or all of the causes aforesaid, but no claim for extension of time on account of delay shall be allowed unless a claim in writing therefor is presented to Construction Manager with reasonable diligence but in any event not later than ten (10) days after the commencement of such claimed delay. Except for the causes specifically listed above in this Paragraph 19.6, no other cause or causes of delay shall give rise to an extension of time to perform the Work. The granting of an extension is conditioned upon Contractor's timely

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submission of the aforesaid written notice. Contractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased labor or material costs, on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated including but not limited to the aforedescribed causes, and agrees that the sole right and remedy therefor shall be an extension of time, provided the requisite condition as to written claim has been met.

19.7 Contractor shall not be allowed an extension of time unless Contractor has established to Construction Manager's and Owner's satisfaction that the delay claimed by Contractor is to a portion of the Work on the critical path of the work schedule.

19.8 It is emphasized that no monetary recovery may be obtained by Contractor for delay. Time extensions for delay are limited to the specific causes set forth in Paragraph 19.6 hereof and, then, only upon compliance with the notice and proof requirements of Paragraphs 19.6 and 19.7 hereof.

19.9 It is specifically agreed by Contractor that under no circumstances will Contractor look to or make any claim against Construction Manager or Architect/Engineer for the consequences of any delay resulting from directions given or not given by Construction Manager including scheduling and coordination of the work or resulting from Architect/Engineer's preparation of drawings and specifications or review of shop drawings.

ARTICLE 20, ELECTIVE TERMINATION

In addition to all termination rights for cause under the Contract Documents, Owner shall have the right, for any reason or for no reason, and at any time, by written notice to Contractor, to terminate the Contract and require Contractor to cease the Work hereunder. In the event that Owner shall terminate the Contract pursuant to this Article 20, Contractor shall be paid a pro rata portion of the Contract Price based on the Work in place prior to such termination as Construction Manager, shall determine, and Contractor shall be entitled to no other payment.

ARTICLE 21, COOPERATION WITH LENDERS

Contractor shall at all times cooperate, in the course of its performance of the Work and of the Contract, with any entity or entities providing financing for the Project, and shall agree in writing to all changes, assignments and modifications to the Contract Documents which are requested by such entity or entities that do not impose any substantial additional burdens on Contractor or materially reduce or limit Contractor's rights. Contractor shall supply such information and certifications as reasonably may be required from time to time by the aforesaid lending entity or entities in order that Owner can satisfy conditions to lender's obligations to make advances upon Owner's construction loan.

ARTICLE 22, SURVIVING PROVISIONS

Without limitation, the following obligations, among others, of Contractor shall survive the termination of the Contract whether pursuant to Article 6, Article 20, or otherwise: warranties and guarantees of Work performed; indemnity; payment of taxes, damages, losses and expenses; certifications; delivery of manuals and as-built drawings; correction of Work performed; removal of liens; and cooperation with the construction lender.

ARTICLE 23, CAPTIONS

The captions of Articles are for convenience and reference only and in no way define, limit or describe the scope of any Article or Paragraph.

ARTICLE 24, SEVERABILITY

In the event that any term, provision, or part of the Contract is held to be illegal, invalid or unenforceable under any Legal Requirements, such term, provision, or part shall be deemed severed from the Contract and the remaining term(s), provision(s) and part(s) shall remain unaffected thereby.

ARTICLE 25, ASSIGNMENT

25.1 Contractor hereby assigns to Construction Manager (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work which assignment will be effective upon acceptance by Construction Manager in writing and only as to those subcontracts and purchase orders which Construction Manager designates in said writing. It is agreed and understood that Construction Manager may accept said assignment at any time during the course of construction prior to final completion. It is further agreed that all subcontracts and purchase orders shall provide that they are freely assignable by Contractor to Construction Manager and assigns.

25.2 Owner and/or Construction Manager may assign this Contract at any time without the consent of Contractor.

25.3 It is agreed and understood that the assignments set forth in Paragraphs 25.1 and 25.2 are part of the consideration to Construction Manager for entering into this Contract with Contractor and may not be withdrawn prior to final completion.

ARTICLE 26, NO CLAIMS AGAINST CONSTRUCTION MANAGER OR ARCHITECT/ENGINEER

Contractor acknowledges and agrees that mutuality of obligation, consideration and privity of Contract exists solely between Owner and Contractor. Therefor, Contractor also acknowledges that: (i) Construction Manager and Architect/Engineer are acting solely as agents only and not as principals; (ii) all services rendered and instructions issued by Construction Manager or Architect/Engineer are solely as agents for the Owner and for Owner's benefit; (iii) there is no privity of Contract between Contractor and Construction Manager or between Contractor and Architect/Engineer; and (iv) there are no duties of any kind whatsoever owed by Construction Manager to Contractor or by Architect/Engineer to Contractor. To the maximum extent permitted by law, under no circumstances will Contractor look to or make any claim against Construction Manager or Architect/Engineer. It is acknowledged that the relationship created by the Contract is solely between Owner and Contractor.

ARTICLE 27, NO WAIVER

27.1 The failure of Owner or Construction Manager to insist upon performance or strict performance of any of the terms, covenants or conditions of the Contract shall not be deemed a waiver of any rights or remedies that Owner

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may have; shall not be deemed to constitute an amendment of the Contract; and shall not be deemed a waiver of any subsequent breach or default by Contractor of any of the terms, covenants, or conditions of the Contract.

27.2 The Contract constitutes the entire agreement between the parties. No representations or other agreements have been made other than as set forth in the Contract. The Contract may not be amended or any term or provision waived except in writing signed by Owner. Without limitation, no term or provision of the Contract may be amended or waived by conduct of the parties.

ARTICLE 28, APPLICABLE LAW

The Contract shall be construed and interpreted in accordance with the laws of the State in which the Project is located, and any claims or causes of action arising out of or in connection with the Contract shall be commenced in a State court of competent jurisdiction.

ARTICLE 29, MISCELLANEOUS

29.1 Notices, demands or requests shall be in writing, delivered in person or mailed by registered or certified mail, postage prepaid, addressed to the attention of the parties hereto at their addresses stated on Page 1 of the Trade Contract.

29.2 If Contractor is a partnership, limited partnership, association or joint venture, the separate entities which comprise Contractor shall be jointly and severally bound by the terms and conditions of the Contract Documents, and shall be jointly and severally liable to Construction Manager and Owner for any failure to perform the Work in strict accordance with the Contract Documents.

ARTICLE 30, SETOFF

If Contractor is, or hereafter begins, performing any work for Owner or Construction Manager other than the Work under the Contract and the unpaid balance of the Contract Price becomes insufficient to complete such Work or compensate Owner or Construction Manager for any damages or deficiencies by the Contractor in the performance of the other work, Contractor hereby consents and agrees to allow Owner and/or Construction Manager, in their sole discretion and judgment, to setoff any of Owner's and/or Construction Manager's claims against any funds due, or which may become due, Contractor under any other agreement with Owner or Construction Manager, or any subcontract on any other project. No refusal or failure of Owner and/or Construction Manager to exercise their rights hereunder shall constitute the basis of any right or claim against Owner and/or Construction Manager.

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IN WITNESS WHEREOF, the parties have duly executed this Trade Contract as of the date first above written.

Aquatech Stainless Steel Pools, Ltd.	Bovis Lend Lease, Inc. Acting as Agent for Owner
Contractor	
By:	By:
Printed Name: Ronald J Atlas	Printed Name: Kraig Riebock
Title: President	Title: Sr. Vice President
Attest:	Attest:
	Date Executed by Construction Manager: 11/2/06

Contractor Check ONE: ☐ Corporation ☐ Partnership/Joint Venture ☐ Individual

If your company qualifies as one or more of the business enterprise types listed below, please check the appropriate box(s) and list certifying agency(s) below:

☐ DBE (Disadvantaged Business Enterprise)
☐ MBE (Minority Business Enterprise)
☐ SBE (Small Business Enterprise)
☐ SDVE (Small Disabled Veteran Enterprise)
☐ WBE (Women Business Enterprise)
☐ N/A (Does not apply to your firm)

Certifying Agency(s):

_____

_____

_____

_____

If your company is a Minority Business Enterprise (MBE), please check the appropriate box:

☐ African American
☐ Aleutian Indian
☐ Asian
☐ Hispanic
☐ Native American

LICENSING: By executing this Trade Contract, Contractor affirms that it holds the following contractor license(s) applicable to the Work as required by the state in which the Project is located.

State of _____ License No(s). _____
(If none required, enter "N/A")

License Classification(s): _____ Expiration Date: _____

Payments will not be processed without complete licensing information.

Contractor's Federal Employer Identification No.:

_____

(If no E.I. Number, enter business owner's Social Security No.) *Per IRS 3402(s), 31% of each payment is required to be withheld and remitted to the IRS if E.I. Number or Social Security Number is not provided. This withholding amount will be in addition to Trade Contract retainage

For Bovis Lend Lease, Inc. Use:

☐ License Verified ☐ Not Required By: _____ Date: _____

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SCHEDULE 1 — CONTRACT DOCUMENTS

The Contract Documents referred to in Paragraph 1.1 and elsewhere in this Trade Contract consist of the following:

The Contract Documents, sometimes referred to collectively as the "Contract," are listed below and shall constitute the Contract.

- This Trade Contract with Schedules 1, 2 and 3
- Special Conditions
- Exhibit A (Drawings/Specifications) consisting of 35 pages, dated 10/25/06
- Exhibit B (General Scope of Contractor's Work) consisting of 10 pages, dated 10/25/06
- Exhibit C (Insurance Requirements) consisting of N/A pages
- Exhibit D (Unit Prices) consisting of N/A pages, dated N/A
  (Note: The setting forth of unit prices shall not be construed to require Owner to engage Contractor to perform the work for which unit prices are listed.)
- Exhibit E (Alternates) consisting of 1 pages, dated 10/25/06
- Exhibit F (Bonding Requirements and Sample Bond Forms) consisting of N/A pages
- State Addendum consisting of _1_ page.
- Additional Exhibits:

  Exhibit B-1 consisting of 18 pages dated 1/7/05

  OCIP Manual consisting of 41 pages dated 6/27/06

  Exhibit H - Electronic File & Prolog Web Requirements consisting of 1 page dated 10/15/06

  Supplemental General Conditions consisting of 20 pages dated 3/15/05

The Contractor is bound by the terms of all Contract Documents.

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SCHEDULE 2 — PERFORMANCE SCHEDULE

Pursuant to Article 13 of this Trade Contract and without limiting the provisions thereof, Contractor shall perform the Work and its several parts according to the following specific schedule, and as the same may be revised from time to time by Construction Manager:

See Exhibit B

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SCHEDULE 3 — TEMPORARY FACILITIES

All temporary Project site facilities and storage, sheds, shanties, material storage rooms, field offices, power, hoists, scaffolding, cold weather protection, etc. ("Temporary Facilities") required in performing the Work shall be furnished by Contractor. Contractor agrees to furnish, at Contractor's expense, sufficient Temporary Facilities for the efficient performance of the Work. Contractor agrees to place its Temporary Facilities in locations designated by Owner or Construction Manager. When it becomes necessary, in the opinion of the Construction Manager, for Contractor to provide Temporary Facilities, Contractor will do so in an expeditious manner and at no additional cost. Temporary Facilities shall be equipped with fire extinguishers and shall be of fireproof material only, such as concrete, gypsum block, rated drywall, or sheet metal. The sole exceptions to Contractor's obligations to provide Temporary Facilities are:

NONE

The Temporary Facilities furnished by Owner and/or Construction Manager shall be without charge to Contractor except as otherwise indicated above or in the Contract.

In connection with their furnishing of the Temporary Facilities indicated above, Owner and/or Construction Manager shall not be liable for conditions which may interrupt, delay or otherwise interfere with the availability of such Temporary Facilities to Contractor. Unless otherwise expressly indicated, the Temporary Facilities furnished by Owner and/or Construction Manager shall not be for the exclusive use of Contractor, but shall be shared by Other Contractors performing Other Work on the Project. Owner and/or Construction Manager therefore reserve the exclusive right to schedule the use of any Temporary Facilities in accordance with their determinations as to the needs of the Project and shall incur no liability as a result thereof.

If Owner and/or Construction Manager from time to time furnishes the Contractor a crane, hoisting equipment, or other machinery or equipment, with or without an operator, for Contractor's exclusive use, then Contractor shall at all times furnish adequate and competent supervision and direction therefore and shall be fully liable and responsible for safe and proper care, use, and custody of such machinery or equipment.

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