

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,  
WILLIAM STENGER,  
JAY PEAK, INC.,  
Q RESORTS, INC.,  
JAY PEAK HOTEL SUITES L.P.,  
JAY PEAK HOTEL SUITES PHASE II. L.P.,  
JAY PEAK MANAGEMENT, INC.,  
JAY PEAK PENTHOUSE SUITES, L.P.,  
JAY PEAK GP SERVICES, INC.,  
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,  
JAY PEAK GP SERVICES GOLF, INC.,  
JAY PEAK LODGE AND TOWNHOUSES L.P.,  
JAY PEAK GP SERVICES LODGE, INC.,  
JAY PEAK HOTEL SUITES STATESIDE L.P.,  
JAY PEAK GP SERVICES STATESIDE, INC.,  
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,  
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,  
GSI OF DADE COUNTY, INC.,  
NORTH EAST CONTRACT SERVICES, INC.,  
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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RECEIVER'S MOTION FOR AUTHORIZATION TO ENTER INTO  
A CHANGE ORDER TO THE STATESIDE CONSTRUCTION CONTRACT

<sup>1</sup> See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].

**AND A RECREATION CENTER CONTRACT WITH DEW CONSTRUCTION CORP.  
AND TO RECOMMENCE CONSTRUCTION OF THE STATESIDE PROJECT  
AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg in his capacity as receiver (the "Receiver") of Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services, LLC (collectively, the "Defendants") and Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, the "Relief Defendants") and Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC (together, "Additional Receivership Defendants") (the Defendants, Relief Defendants, and Additional Receivership Defendants, along with their parent companies, subsidiaries and affiliates, including, but not limited to Burke 2000, LLC, shall collectively be referred to as the "Receivership Entities") through undersigned counsel, hereby files his Motion for Authorization to Enter Into a Change Order to the Stateside Construction Contract and a Recreation Center Contract with DEW Construction Corp. and to Recommence Construction of the Stateside Project and Supporting Memorandum of Law (the "Motion"). In support of this motion, the Receiver states as follows:

**PRELIMINARY STATEMENT**

At the time the Receiver was appointed, the Stateside Project was partially complete, work had stopped and the investors who invested in the Stateside Project had little hope of obtaining their green cards. Now, the Receiver intends to re-commence construction in order to

provide the investors in the Stateside Project with the ability to qualify for citizenship under the EB-5 Alien Entrepreneur Investment Program. To that end, the Receiver seeks authority to enter into a Change Order to the Stateside construction contract and a Recreation Center Contract with DEW Construction Corp. (“DEW”) to complete the Stateside Project. The Receiver has a short window of time to resume the Stateside Project in order to complete the Stateside Project before the onset of winter and the commencement of the busy ski season. Accordingly, it is imperative that the Receiver be granted authorization to enter into the Change Order and Recreation Center Contract with DEW so that construction can immediately begin.<sup>2</sup>

The Receiver recently settled claims against Raymond James for \$150 million. Of those funds, approximately \$19.7 million is specifically earmarked to complete the Stateside Project. The settlement is highly beneficial and the Court has already given preliminary approval. However, the hearing to approve the settlement is scheduled to take place on June 30, 2017.<sup>3</sup> Unfortunately, if the Receiver is going to timely complete the Stateside project and do so on budget, he cannot wait until the settlement is formally approved. The Receiver has sufficient funds on hand to fund the construction in the interim, and through this motion, seeks authorization to enter into the construction contract with DEW so that construction can immediately commence.

### **BACKGROUND**

1. On April 12, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida (the “Court”) against the Receivership Defendants, the Relief Defendants, William Stenger (“Stenger”) and Ariel Quiros (“Quiros”), the principal of the Receivership Defendants, alleging

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<sup>2</sup> Construction in Vermont is more difficult and expensive in the winter months.

<sup>3</sup> The Court has set an objection deadline of June 5, 2017, so it is possible the settlement could be approved earlier if no objections are received.

violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors.

2. On April 13, 2016, on the SEC's Motion for Appointment of Receiver [ECF No. 7], the Court entered an Order [ECF No. 13] appointing Michael I. Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the "Receivership Order").

3. The Receivership Order gave the Receiver the authority to take possession of and administer all property and assets of every kind wherever they were located, including those assets held by or belonging to the Receivership Defendants. Receivership Order ¶ 1.

4. Between October 2011 and December 2012, Defendant Jay Peak Hotel Suites Stateside L.P. ("Stateside Phase VI") raised \$67 million from 134 investors through an EB-5 offering of limited partnership interests to build an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center (the "Stateside Project").

5. The purpose of each of the investors' investment into the Stateside Project was to qualify for conditional permanent residency and an EB-5 visa under the Alien Entrepreneur Investment Program administered by U.S. Citizenship and Immigration Services ("USCIS"). To qualify for an EB-5 visa, a foreign applicant must invest \$500,000 or \$1 million (depending on the type of investment) in a commercial enterprise approved by the USCIS. Once he or she has invested, the foreign applicant may apply (an "I-526 Petition") for a conditional green card, which is valid for two years. If the investment creates or preserves at least ten jobs during those two years, the foreign applicant may apply (an "I-829 Petition") to have the conditions removed from his or her green card and live and work in the U.S. permanently.

6. By contract dated on or about June 9, 2015 (the "Stateside Contract"), Jay Peak, Inc. and Stateside Phase VI retained DEW to supply labor and materials for the Stateside Project.

DEW retained subcontractors and suppliers to supply labor and materials to the Stateside Project per the Stateside Contract.

7. The hotel was built and is currently operating. Prior to the appointment of the Receiver, 35 cottages were either fully completed or in some form of completion (including some cottages merely consisting of a foundation and one or more walls). The recreational center and medical centers were never built.

8. Since the Stateside Project was only partially completed, the Receiver seeks to resume construction<sup>4</sup> to assist the Stateside Phase VI investors to fully qualify for citizenship and to generate revenue.

9. The Receiver has worked with DEW to amend the Stateside Contract as it relates to the cottages (the "Change Order") and draft a new construction contract for the recreation center (the "Recreation Center Contract") and revise the budget for the Stateside Project. The Receiver estimates it will cost \$19.7 million to complete the Stateside Project in its revised form. A copy of the Change Order is attached hereto as **Exhibit "1"** and a copy of the Recreation Center Contract is attached hereto as **Exhibit "2"**.

10. The Receiver intends to fund the Stateside Project with a portion of the proceeds of the settlement (the "Settlement") the Receiver has reached with Raymond James & Associates, Inc. ("Raymond James"), as more fully described in the Motion for (I) Approval of Settlement Between Receiver, Interim Class Counsel, and Raymond James & Associates, Inc.; (II) Approval of Form, Content and Manner of Notice of Settlement and Bar Order; (III)

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<sup>4</sup> By separate motion, the Receiver will seek authority from the Court to amend the scope of the Stateside Project by reducing the number of cottages from 84 to 60, eliminating the medical center and revising the recreational offerings to include a movie theater and soccer and lacrosse fields. The Receiver, in consultation with his managers, immigration counsel and economist, has determined that these amendments to the Stateside Partnership Agreement and Subscription documents will eliminate non-revenue producing assets and replace them with revenue producing assets thereby increasing the Resort's profitability while at the same time creating the requisite number of jobs. The details of the proposed amendment will be more fully explained in another motion that will be filed shortly.

Temporary Stay of Related Litigation Against Raymond James & Associates, Inc.; and (IV) Entry of Bar Order (the “Settlement Motion”), dated April 18, 2017 [ECF No. 315].

11. In relevant part, the settlement earmarks \$19,687,000.00 to complete construction of the Stateside Project needed for the Stateside Phase VI investors to become eligible for permanent residency and pay off all construction liens encumbering the Stateside Project. See Settlement Motion at pages 10 – 11.

12. The Court entered an Order preliminarily approving the Settlement Motion and finding “that the settlement is fair, adequate and reasonable, is a prudent exercise of the business judgment by the Receiver, and is the product of good faith, arm’s length and non-collusive negotiations between the Receiver and Raymond James.” However, the Court has reserved a final ruling with respect to the terms of the Settlement, including the entry of a bar Order, until after publication of notice of the Settlement. A final hearing is scheduled for June 30, 2017. See Order (I) Preliminarily Approving Settlement Between Receiver, Interim Class Counsel, and Raymond James & Associates, Inc.; (II) Temporarily Staying Related Litigation Against Raymond James & Associates, Inc.; (III) Approving Form and Content Of Notice, and Manner and Method of Service and Publication; (IV) Setting Deadline to Object to Approval of Settlement and Entry of Bar Order; and (V) Scheduling a Hearing [ECF No. 318].

13. Based on the Receiver’s consultations with DEW, it is in the best interest of all parties to commence construction as soon as possible. It is the Receiver’s aim to complete construction before the end of 2017 in order to generate revenue before the ski season. Moreover, construction is practically impossible and much more costly during the coldest winter months.

14. As this Court is aware, the Vermont Department of Financial Regulation investigated Raymond James' relationship to the Receivership Entities and reached a settlement with Raymond James whereby Raymond James agreed to pay \$4.5 million (the "Vermont Settlement Funds") to the Receiver to be held for the purpose of reimbursing claims to EB-5 investors in this case. A copy of the Administrative Consent Order was filed with this Court on July 22, 2016 [ECF No. 191].

15. The Receiver currently holds the Vermont Settlement Funds in trust. Attached hereto as **Exhibit "3"** is a letter from Michael Pieciak, Commissioner of the Vermont Department of Financial Regulation, authorizing the Receiver to utilize the Vermont Settlement Funds on the Stateside Project. The Receiver intends to return the Vermont Settlement Funds to the escrow account after the Court approves the Settlement Motion and he receives the \$19.687 million.

### ARGUMENT

The Receivership Order provides, among other things, that the Receiver may:

Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties.

Receivership Order ¶ 8.

The Receiver believes it is in the receivership estate's best interest to execute the Change Order and enter into the Recreation Center Contract with DEW to immediately recommence construction of the Stateside Project. If construction is delayed, it will be much more costly to complete during Vermont's harsh weather and will significantly interfere with the Jay Peak's operations during the busy ski season. The Receiver believes that he will ultimately have

sufficient funds to finance the completion of the Stateside Project (as modified) through the funds earmarked in the Receiver's settlement with Raymond James (or, if necessary, through other sources). In the interim, the Receiver intends to use the Vermont Settlement Funds to fund construction costs. The Receiver has conferred with the Commissioner of the Department of Financial Regulation for the State of Vermont who has consented to the use of the Vermont Settlement Funds for this purpose. Under these circumstances, the Receiver believes this is a prudent exercise of the Receiver's judgment and authority.

District courts have broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). "The power of a district court to impose a receivership or grant other forms of ancillary relief . . . derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Moreover, the "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court of the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The court may therefore employ "reasonable procedures" to serve this purpose. *Id.*

**WHEREFORE**, the Receiver respectfully requests that the Court enter an Order in the form attached hereto as **Exhibit "4"** granting the relief requested herein and for such other relief as is just and proper.

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with the Securities and Exchange Commission and to counsel for Defendants Ariel Quiros and William Stenger, all of whom have no objection to this Motion or the relief requested



in this Motion.

Respectfully submitted,

By: /s/ Michael I. Goldberg  
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*Counsel for Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this May 17, 2017 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Michael I. Goldberg  
Michael I. Goldberg, Esq.

SERVICE LIST

**1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:**

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*Attorneys for Raymond James & Associates  
Inc.*

**EXHIBIT 1**



DEW Construction Corp.  
277 Blair Park Road  
Suite 130  
Williston, VT 05495

P 802.872.0505  
F 802.872.0707  
www.dewcorp.com

May 16, 2017

Jay Peak, Inc.  
830 Jay Peak Road  
Jay, VT 05859

Jay Peak Hotel Suites Stateside L.P.  
830 Jay Peak Road  
Jay, VT 05859

**RE: Change Order Request Number \_\_\_\_\_  
Jay Peak Stateside Cottages - Project No. 17-6318**

This Change Order makes adjustments to the Contract for the Stateside Cottages Project due to its suspension from March 2016 to May 2017 ("Suspension Period"). The scope of work has been reduced to delete any remaining work on two (2) 12-plexes. The cost to complete the scope of work as modified is \$8,028,969 per the GMP 5.2 estimate attached as Exhibit E and the Assumptions and Clarifications attached as Exhibit C.

This CO modifies the contract as follows:

1. Exhibits. The Exhibits identified below and attached hereto shall be substituted as the Contract Exhibits and incorporated herein. Exhibit D is the Current Drawing Log, dated June 4, 2015, and remains the same.

Exhibit B	DEW Billable Rates
Exhibit C	Assumptions and Clarifications, dated May 10, 2017, 6 pages
Exhibit E	GMP 5.2, dated May 10, 2017, 11 pages

2. Scope of Work. The Scope of Work has been modified to delete any remaining work on two (2) 12-plexes.

3. Notice to Proceed. Upon execution of this Change Order, the Notice to Proceed is issued as of today's date ("Notice to Proceed").

4. Substantial Completion. The Substantial Completion Date is extended to December 15, 2017.

5. Indemnification. The Owner agrees to indemnify and hold harmless ("Indemnification") the Construction Manager and its subcontractors for any and all deficiencies, defects, claims, or causes of actions related to any work performed or materials purchased for the Project (together, "Work") prior to the Suspension Period. This Indemnification includes, but is not limited to, deficiencies, defects, or impacts (together, "Impacts") to the structural integrity or performance of the Work and extends to any Impacts such Work may have on "new" work performed post-Suspension Period. This Indemnification is to be read as broadly as possible to protect the CM and its subcontractors and to hold them harmless for any circumstances that arise as a result of the Owner's actions that resulted in the suspension of the Project and the Work.

6. Warranties. Any warranties being provided at the Substantial Completion of the SSC Project shall apply only to Work performed or materials supplied after the Notice to Proceed and only to the extent such Work and/or materials are free from any impacts whatsoever as a result of Work and/or materials provided prior to the Suspension Period.



DEW Construction Corp.  
277 Blair Park Road  
Suite 130  
Williston, VT 05495

P 802.872.0505  
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www.dewcorp.com

*SIGNATURE PAGE FOLLOWS*

Jay Peak, Inc.  
Jay Peak Hotel Suites Stateside L.P.

D.E.W. Construction Corp.

By: \_\_\_\_\_  
Michael Goldberg, Esq.  
Duly Authorized Agent

By: \_\_\_\_\_  
Donald E. Wells, President



## Exhibit B

DEW Construction Corp.  
 277 Blair Park Road  
 Suite 130  
 Williston, VT 05495

p 802.872.0505  
 f 802.872.0707

**BILLING RATES**

Effective through December 31, 2017

<b>Labor Rates</b>	<b>S.T.</b>	<b>O.T.</b>
VP of Preconstruction	\$120.00/hr	N/A
Project Manager	\$90.00/hr	N/A
Assistant Project Manager	\$70.00/hr	N/A
Project Engineer	\$60.00/hr	N/A
Office Engineer	\$50.00/hr	N/A
Virtual Construction Engineer	\$65.00/hr	N/A
Senior Estimator	\$120.00/hr	N/A
Estimator	\$85.00/hr	N/A
Scheduler	\$75.00/hr	N/A
Safety Director	\$80.00/hr	N/A
Senior Superintendent	\$120.00/hr	N/A
Superintendent	\$90.00/hr	N/A
Assistant Superintendent	\$70.00/hr	N/A
Foreman	\$65.00/hr	\$90.00/hr
Finish Carpenter	\$55.00/hr	\$75.00/hr
Carpenter	\$50.00/hr	\$67.50/hr
Carpenter Apprentice	\$50.00/hr	\$60.00/hr
Laborer	\$40.00/hr	\$52.50/hr
General Counsel	\$250.00/hr	N/A
Legal Admin	\$75.00/hr	N/A
Senior Project Administrator	\$60.00/hr	\$90.00/hr
Project Administrator	\$50.00/hr	\$75.00/hr
Accounts Payable	\$50.00/hr	\$75.00/hr
Payroll	\$50.00/hr	\$75.00/hr
Contract Administrator	\$56.00/hr	N/A

*Overtime (O.T.) defined as over eight (8) hours per day, all Saturdays, Sundays and holidays.*

**\*\*The above rate format does not include Contractor owned vehicles, fuel, IT, equipment, builders risk insurance or payment & performance bonds.**



DEW Construction Corp.  
277 Blair Park Road  
Suite 130  
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p 802.872.0505  
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## JAY PEAK STATESIDE COTTAGES ASSUMPTIONS AND CLARIFICATIONS

May 10, 2017

### General Clarifications

1. This project has a duration of **30** weeks from start to substantial completion. Note: Project Substantial Completion date is contingent on no delays to start of the project due to permits or holds due to Huntington Homes
2. The schedule does not include any delays for unsuitable soils. If unsuitable soils are encountered that cause a delay DEW will need to evaluate the project schedule and all trades affected. This would result in a day for day delay to the completion of the project.
- ~~3. The schedule is based on a Panel Delivery of June 29<sup>th</sup> 2015~~
4. Building permit costs are not included.
5. The costs for all testing and inspections are borne by owner unless otherwise noted below. DEW assumes that all testing will be done per the specifications. Any deviation from the specifications given by the Owner will be the responsibility of the Owner.
6. Existing site surveys, geo-technical and environmental surveys, County, City or State utility fees, including connection and/or impact fees, are not included.
7. We exclude any items shown on the drawings that do not have a specification section or are not mentioned or detailed in a specification section.
8. We exclude plowing and snow removal for drives and roads.
9. No architectural or engineering design fees are included except as noted below.
10. DEW shall be given sufficient notice prior to commencement of any work done by the Owner under a separate contract to allow for coordination.
11. Our quotation for certain items is based on the volatile price of wood, copper, steel & concrete. Any price adjustment will need to be done at the time the owner releases DEW to award subcontracts. In addition, DEW has secured pricing based on payment for stored material.
12. We have excluded final clean due to this being done by owner. Final cleaning includes the removal of all product stickers, light fixture tags etc. Floor protection will be removed by DEW prior to turn over.
13. We have Included an Allowance for all reprographics
14. We have excluded all propane gas and power charges for the office and temporary heaters due to this being provided/purchased by owner.
15. We have excluded all hard line phone charges as this is being supplied by owner.
16. We have not included any Construction RFIs, except where specifically noted below.
17. Within the contract amount DEW has established a contingency of **Two Hundred Thousand dollars (\$200,000)**. Costs associated with the Contingency will be identified in a Contingency Log which will be maintained by the Contractor and distributed at the Owner/Architect/Contractor meetings. The Contingency is intended to be used to fund any omissions in the Contractor's estimate, work package items that may be uncovered at a later date or errors made by the contractor during construction. Any owner requested changes, errors & omissions from the contract documents or allowance overages will be funded from a separate owner contingency. Any unused funds from this contingency will be returned to the owner by way of a deductive change order to the contract at the end of the project.

#### 1. General

- a. DEW excludes the removal/turnover of items. Any item that the owner wishes to salvage must be done prior to commencement of work in that area. Failure to do so may result in a cost impact, as salvage value has been factored in the awarding of subcontracts.



- b. DEW includes compliance to ADA, ANSI and Vermont Accessibility Regulations in so far as shown on the contract documents. DEW did not include any compliance contrary to the contract documents
- c. DEW has excluded construction protective enclosure fencing.
- d. DEW excluded handling of any owner-furnished items unless specifically mentioned below.
- e. DEW will be submitting a digital copy of the application for payment each period.
- f. Substantial Completion will be based on Certificate of Occupancy and the owner's ability, within the contractor's control, to occupy the buildings. We exclude warranties, maintenance instructions, application for reduction of retainage and consent of surety, final progress photos, lien waivers, application for payment, operation documents, attic stock, punch list completion and removal of temporary facilities as a basis for Substantial Completion. These items will be submitted prior to Final Completion.
- g. DEW excludes providing a certified property survey.
- h. Construction Change Directives (CCD) or Confirming RFIs are to be issued for all changes in work. The CCD should describe the scope of work and direction on how to proceed (i.e. price only, price & proceed, time and material).
- i. DEW will produce all Owner Change Orders per previous projects with the owner
- j. DEW excludes any coordination drawings for this project
- k. DEW excludes any reference to local codes having jurisdiction as the intent of the design is to meet local codes.
- l. We exclude all utility charges and/or fees.
- m. DEW has excluded Material, Payment or Performance Bond
- n. DEW has excluded any delays in the schedule based on Permits and/or the finding of Unsuitable Soils. There will be a direct day for day delay if Permits arrive after April 15th 2015 and there will also be a day for day if Unsuitable soils are encountered. DEW will notify the Owner as soon as an activity has the potential to create a delay.
- o. DEW excludes cost-loaded and resource-loaded schedules.
- p. The Project Manager will be the only one authorized to receive change documents.
- q. Our proposal is based on RFIs being responded to within seven (7) calendar days.
- r. Our proposal is based on RFIs being responded to with direction as required, including cost and time impact.
- s. DEW will be utilizing digital files and correspondence as much as the owner will allow. This includes but is not limited to RFIs, Submittals, Shop Drawings, Coordination Documents and Pay Applications.
- t. Pre-installation Conferences will be done for the following: Sitework
- u. All scheduling will be created and maintained by DEW.
- v. Our proposal is based on submittals being responded to within **seven (7)** calendar days.
- w. Our proposal is based on all submittals being done per section and evaluated per section.
- x. We exclude Environmental Certifications.
- y. Our proposal is based on DEW's standard quality control program and not project specific.
- z. DEW will be utilizing numerous types of temporary heating alternatives during construction which include but not limited to propane, gasoline and kerosene. All of these will be used in a safe and responsible manner according to both DEW's Safety Program and VOSHA.
- aa. DEW has not included any provisions for work requiring special hours due to noise requirements.
- bb. DEW has not included any provisions for security
- cc. DEW has included installation of manufacturer's instructions and recommendations as it relates to the contract documents. DEW excludes any coordination or conflicts between the contract documents and product's manufacturer's instructions/recommendations.
- dd. DEW will provide one digital copy of record documents (drawings, RFI's, specifications, etc.) at the completion of the project. The record drawings will record all as-built conditions for site work, mechanical, electrical and plumbing. DEW excludes putting as-builts into CADD or incorporating any changes or substitutions.
- ee. We have excluded any video recording of demonstration and training.
- ff. DEW excludes any and all work called out on the Project Documents associated with the Huntington Homes Scope of work.
- gg. DEW excludes the Huntington Home Inc contract. DEW has included the managing of the final building punchlist process as it pertains to Huntington Homes, as long as the Jay Peak and HHI contract allows. DEW is to be kept informed regarding payment schedules. DEW has excluded the set day punchlist process, this will remain an Owner item

- hh. DEW has excluded a lift to be used by Huntington Homes during the months of July thru Sept for set days
- ii. DEW will be utilizing the Stateside Parking Lot for the laydown area for this project. DEW has developed a logistics plan that has been approved by Jay Peak.

## 2. Site / Demolition / Landscape

- a. DEW has excluded all blasting and ledge removal.
- b. ~~An Allowance has been set up to cover all testing that is required. DEW will hire the testing agent to perform all required testing as specified in the Project Specifications.~~
- c. There is no tree survey in our price.
- d. DEW has excluded the note on Drawing C2-02 as it pertains to consulting a Structural Engineer for all boulder walls. This coordination is to be done by the Civil Engineer
- e. All wetland layout is by the Owner
- f. Control is to be provided by the Owner
- g. We have excluded any liquidated damages. Damage to trees will be reviewed on a case by case basis. DEW reserves the right to notify the Owner of potential damage to existing landscape features due to their non-removal during construction. DEW has not factored any costs for their potential removal.
- h. We have excluded first mowing by contractor and any subsequent mowing.
- i. ~~DEW has excluded all Landscaping including but not limited to trees, all plantings and sod.~~ An allowance **for landscaping** has been carried by DEW at the request of the Owner
- j. DEW excludes all fencing (This includes but is not limited to Split rail fence, security fence, perimeter fencing)
- k. DEW has excluded all permanent signage including all road/parking lot and building signage
- l. Jay Peak is to purchase and supply all Propane Tanks for the project

## 3. Concrete

- a. We have excluded propane tank pads.
- b. DEW has included only standard saw cutting – Standard set by the ACI
- c. All site concrete for, walk ways and light pole bases have been excluded. Bollards will be filled with concrete
- d. DEW has excluded any moisture barriers not specifically called out in the bid documents

## 4. Masonry

- a. N/A

## 5. Steel

- a. DEW excludes any miscellaneous metal that is not shown on the drawings.
- b. DEW has excluded all steel bollards (Except those shown around fire hydrants)
- c. DEW has included all metal stair systems as detailed on the Structural Drawings

## 6. Wood and Plastics

- a. DEW has excluded all wood bollards
- b. All millwork on the first floor has been excluded except railings associated with each stairwell as it relates to the Cottages built by Huntington Homes Inc.
- c. DEW has included the installation only of the Kitchen Cabinets in the ADA unit supplied by Huntington Homes Inc.

## 7. Thermal & Moisture Protection

- a. DEW has included the specified waterproofing for all foundations
- b. DEW has excluded Boral Trim and will use Miratec Trim for both the 12 Plex Buildings and the Cottages. This is per an Alternate that was requested by Jay Peak during the bidding process.
- c. DEW has included all means to meet the energy codes set forth by the bid documents. DEW has excluded any code changes that have changed since 2014 as it pertains to the Cottages
- d. DEW has included the Insulation Changes that occurred for the 12 Plex buildings based on the Owners Meeting held June 9<sup>th</sup> 2015

## 8. Doors & Windows

- a. DEW has included all RFID
- b. As it pertains to the Cottages, DEW has excluded the furnish of all windows as they are supplied by Huntington Homes Inc.
- c. As it pertains to the Mt Cottages DEW has excluded the furnish and install of all doors located on the First Floor
- d. DEW has included all RFID hardware including Hot Spots and WAPs as called out on the documents
- e. DEW has now included all 12 Plex Windows to be Pella – Proline as approved by the Owner

## 9. Finishes

- a. DEW included the final paint of the First Floor of each Huntington Home Unit. Final paint will occur once HHI had completed their punch
- b. DEW has included the Granite countertops for each Kitchen
- c. DEW has included all grouting of tile installed by Huntington Homes Inc as it pertains to the fire place.
- d. DEW has included the 1 year go back to patch and paint all cracks and screw pops
- e. DEW has included ½" GWB for the 12 Plex attic draft stop

## 10. Specialties

- a. DEW excludes all mop and broom holder as none are shown.
- b. DEW has excluded any required fire extinguishers
- c. All shower curtains have been excluded

## 11. Equipment

- a. DEW has excluded all accessories associated with the Central Vacuum System. This includes but is not limited to hoses, power heads and tool kits

## 12. Furnishings

- a. DEW has excluded install of any furniture, televisions or equipment unless otherwise noted in this document.
- b. DEW has not included any containers to store any FF&E items that may come in prior to them being installed
- c. DEW has not included any dumpsters for FF&E packing Material.
- d. DEW has not included the cleanup of any debris left by the FF&E installation
- e. DEW has excluded all patching necessary after the FF&E installation

## 13. Special Construction

- a. N/A

## 14. Conveying Systems

- a. N/A

## 15. Mechanical

- a. DEW has excluded all propane tanks and piping to the building.
- b. DEW has excluded any and all commissioning
- c. Mechanical CAD Drawings have been excluded from contract
- d. All boilers carried meet the 95% efficiency code

## 16. Electrical

- a. We exclude electrical work not shown on the Electrical Drawings.
- b. We have not included power company fees, equipment, transformers and terminations in our base bid we assume this will be by the owner.
- c. We exclude any "unique" plugs or receptacles for lamps.
- d. DEW will furnish and install all conduit and all cable for the Primary power
- e. DEW has included all MTC cabinets, vaults and manholes

- f. DEW has included the conduit for all fiber
- g. DEW has included all fiber located within the buildings
- h. DEW has excluded the fiber located outside of the building, this is by Owner

**17. Allowances**

**a. Division 1**

- 1) We have included a **twenty three thousand seven hundred forty one dollar (\$23,741) allowance** for temporary heat. Which includes, but is not limited to equipment rental, heater rental, visqueen, tarps, lumber and labor
- 2) DEW has included a twenty five thousand dollar (\$25,000) allowance for all reprographics
- 3) **DEW has included a fifteen thousand dollar (\$15,000) allowance for professional structural inspection of the existing un-completed buildings**
- 4) **DEW has included a seventy five thousand dollar (\$75,000) allowance for the repairs and materials of the existing un-completed buildings**
- 5) **DEW has included a three thousand dollar (\$3,000) allowance for mold & air testing of the existing un-completed buildings**

**b. Division 2**

- ~~1) DEW has included a thirty seven thousand five hundred (\$37,500) for unsuitable soils~~
- ~~2) DEW has included a thirty thousand dollars (\$30,000) for boulders above 2.5cy~~
- 3) DEW has included one hundred thousand dollars (\$100,000) allowance for landscaping

**c. Division 3**

- 1) N/A

**d. Division 4**

- 1) N/A

**e. Division 5**

- 1) N/A

**f. Division 6**

- 1) N/A

**g. Division 7**

- 1) N/A

**h. Division 8**

- 1) N/A

**i. Division 9**

- 1) N/A

**j. Division 10**

- 1) N/A

**k. Division 11**

- 1) N/A

**l. Division 15**

- 1) N/A

**m. Division 16**

- 1) DEW has included a ***twenty three thousand nine hundred eighty five dollar (\$23,985)*** for Temporary Power



**Jay Peak - Stateside 2017**

**Jay Peak Resort - Stateside Cottages & 12 Plexes  
Construction Cost Estimate - GMP 5.2 - May 10, 2017  
C.M. as D.E.W. Construction Corp., Williston, VT, 802-872-0505**

Job size 97614 SF





Jay Peak - Stateside 2017

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>SITWORK</b>						
Sitework						
Sitework-Dale Percy	1.00 ls	-	-	872,746	-	872,746
Sitework-Dale Percy-Less 2 SSC Bldgs	-1.00 ls	-	-	(34,887)	-	(34,887)
Sitework-Electrical Conduits	1.00 ls	-	-	*	-	0
Sitework-Erosion Control-Foreman	19.00 wk	39,900	-	-	-	39,900
Sitework-Propane Tanks-By JPR	0.00 ls	-	-	0	-	0
Sitework-Wood Fence-By JPR	0.00 lf	-	-	0	-	0
Sitework-Site Signage-By JPR	0.00 lf	-	-	0	-	0
Sitework-Landscaping-By JPR	0.00 lf	-	-	0	-	0
Sitework-Lawn Seed & Mulch-By JPR	0.00 lf	-	-	0	-	0
<b>Sitework</b>	<b>97,614.00 SF</b>	<b>39,900</b>	<b>-</b>	<b>837,859</b>	<b>-</b>	<b>877,759</b>
<b>Retaining Walls</b>						
Timber Walls-DEW	5.00 bd	-	-	2,500	-	2,500
Timber Walls-DEW-Less 2 SSC Bldgs	-2.00 bd	-	-	(1,000)	-	(1,000)
<b>Retaining Walls</b>	<b>97,614.00 SF</b>	<b>-</b>	<b>-</b>	<b>1,500</b>	<b>-</b>	<b>1,500</b>
<b>SITWORK</b>	<b>97,614.00 SF</b>	<b>39,900</b>	<b>-</b>	<b>839,359</b>	<b>-</b>	<b>879,259</b>
<b>CONCRETE</b>						
Concrete-Building						
Concrete-Harrison	1.00 ls	-	-	223,570	-	223,570
Concrete-Harrison-Less 2 SSC Bldgs	-1.00 ls	-	-	(63,924)	-	(63,924)
<b>Concrete-Building</b>	<b>97,614.00 SF</b>	<b>-</b>	<b>-</b>	<b>159,646</b>	<b>-</b>	<b>159,646</b>
<b>CONCRETE</b>	<b>97,614.00 SF</b>	<b>-</b>	<b>-</b>	<b>159,646</b>	<b>-</b>	<b>159,646</b>
<b>MASONRY</b>						
Masonry Subcontract						
Masonry-Tanner Masonry	1.00 ls	-	-	84,702	-	84,702
Masonry-Tanner Masonry-Less 2 SSC Bldgs	-1.00 ls	-	-	(63,378)	-	(63,378)
<b>Masonry Subcontract</b>	<b>97,614.00 SF</b>	<b>-</b>	<b>-</b>	<b>31,324</b>	<b>-</b>	<b>31,324</b>
<b>MASONRY</b>	<b>97,614.00 SF</b>	<b>-</b>	<b>-</b>	<b>31,324</b>	<b>-</b>	<b>31,324</b>
<b>METALS</b>						
Misc. Metals						
Misc Metals-Jeffords Steel	1.00 ls	-	-	34,541	-	34,541

Jay Peak - Stateside 2017



Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Misc. Metals						
Misc Metals-Jeffords Steel-Less 2 SSC Bldgs	-1.00 ls	-	-	(33,560)	-	(33,560)
Misc. Metals	97,614.00 SF			981		981
<b>METALS</b>	<b>97,614.00 SF</b>			<b>981</b>		<b>981</b>
<b>WOOD &amp; PLASTICS</b>						
Rough Carpentry						
Rough Carpentry-Northeast & Sticks-L & M-Final	1.00 ls	-	-	502,028	-	502,028
Rough Carpentry-PT Entry-By DEW	8.00 bd	-	-	71,263	-	71,263
Rough Carpentry-Contract Adjustment-As Agreed	1.00 ls	-	-	155,000	-	155,000
Rough Carpentry-Storage Costs-2017	1.00 ls	-	-	4,400	-	4,400
Rough Carpentry-Install Ext Dr & Windws	1.00 ls	-	-	*	-	0
Rough Carpentry-Labor Foreman	24.00 wk	57,600	3,816	-	10,049	71,465
Rough Carpentry-Forklift 4 WD	18.00 wk	19,800	1,908	-	16,218	37,926
Rough Carpentry-Lift Rental-To 40' H	4.00 mn	-	1,272	-	8,304	10,176
Rough Carpentry-Utility Cabinets	8.00 ea	2,640	721	-	-	3,361
Rough Carpentry-Dumpster Fee's	800.00 cy	-	21,200	-	-	21,200
Rough Carpentry-Dumpster Fee's-Less 2 SSC Bldgs	-228.00 cy	-	(6,042)	-	-	(6,042)
Rough Carpentry-Small Tools	32.00 wk	-	1,696	-	-	1,696
<b>Rough Carpentry</b>	<b>97,614.00 SF</b>	<b>80,040</b>	<b>24,571</b>	<b>732,691</b>	<b>35,171</b>	<b>872,473</b>
Finish Carpentry						
Finish Carpentry-Kingdom	1.00 ls	-	-	1,031,963	-	1,031,963
Finish Carpentry-Kingdom-Less 2 SSC Bldgs	-1.00 ls	-	-	(285,771)	-	(285,771)
<b>Finish Carpentry</b>	<b>97,614.00 SF</b>			<b>746,192</b>		<b>746,192</b>
<b>Millwork &amp; Countertops</b>						
Tops-Granite-Kingdom	1.00 ls	-	-	227,966	-	227,966
Tops-Granite-Kingdom-Less 2 SSC Bldgs	-1.00 ls	-	-	(61,340)	-	(61,340)
<b>Millwork &amp; Countertops</b>	<b>97,614.00 SF</b>			<b>166,626</b>		<b>166,626</b>
Fasteners & Misc						
Fasteners-Simpson Connectors	1.00 ls	-	2,301	-	-	2,301
Fasteners & Misc	97,614.00 SF		2,301			2,301
<b>WOOD &amp; PLASTICS</b>	<b>97,614.00 SF</b>	<b>80,040</b>	<b>26,872</b>	<b>1,645,509</b>	<b>35,171</b>	<b>1,787,592</b>
<b>THERM. &amp; MOIST. PROTECT</b>						
Thermal & Moisture - General						



Jay Peak - Stateside 2017



Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>Thermal &amp; Moisture - General</b>						
Thermal-Upgrade-To Energy Code	1.00 Is	-	-	40,015	-	40,015
Thermal-Upgrade-To Energy Code-Less 2 SSC Bldgs	-1.00 Is	-	-	(16,006)	-	(16,006)
<b>Thermal &amp; Moisture - General</b>	<b>97,614.00 SF</b>			<b>24,009</b>		<b>24,009</b>
<b>Insulation</b>						
Insulation-Murphy's Cell Tech	1.00 Is	-	-	267,663	-	267,663
Insulation-Murphy's Cell Tech-Less 2 SSC Bldgs	-1.00 Is	-	-	(167,812)	-	(167,812)
Insulation-Kilbury Construction	1.00 Is	-	-	97,338	-	97,338
Insulation-Kilbury Construction-With Sound Clgs	1.00 Is	-	-	*	-	0
Insulation-Kilbury Construction-Less 2 SSC Bldgs	-1.00 Is	-	-	0	-	0
Insulation-Sill Sealer	750.00 lf	-	151	-	-	151
<b>Insulation</b>	<b>97,614.00 SF</b>		<b>151</b>	<b>197,189</b>		<b>197,340</b>
<b>Insulation-Rigid</b>						
Rigid-Ext Walls-Blue Board- 3.00"	6,139.00 sf	-	13,470	-	-	13,470
Rigid-Ext Walls-Adhesives	6,139.00 sf	-	208	-	-	208
<b>Insulation-Rigid</b>	<b>97,614.00 SF</b>		<b>13,678</b>			<b>13,678</b>
<b>Waterproofing</b>						
Waterproof-Nicom	1.00 Is	-	-	10,920	-	10,920
Waterproof-Nicom-Less 2 SSC Bldgs	-1.00 Is	-	-	0	-	0
<b>Waterproofing</b>	<b>97,614.00 SF</b>			<b>10,920</b>		<b>10,920</b>
<b>Siding &amp; Shingle Roofing</b>						
Exterior Roofs/Siding-Reap-New Work Only-Final	1.00 Is	-	-	729,762	-	729,762
Exterior Roofs/Siding-Contract Adjustment-As Agreed	1.00 Is	-	-	59,000	-	59,000
Exterior-Roofs/Siding-Materials & Repairs	0.00 Is	-	-	0	-	0
<b>Siding &amp; Shingle Roofing</b>	<b>97,614.00 SF</b>			<b>788,762</b>		<b>788,762</b>
<b>THERM. &amp; MOIST. PROTECT</b>	<b>97,614.00 SF</b>		<b>13,829</b>	<b>1,020,880</b>		<b>1,034,709</b>
<b>DOORS &amp; WINDOWS</b>						
<b>Doors General</b>						
PH Door-Interiors-In Kingdom	2.00 Is	-	-	*	-	0
PH Door-Exterior-Sticks & Stuff-w/Windows	1.00 Is	-	245,878	-	-	245,878
PH Door-Exterior-Sticks & Stuff-Less 2 SSC Bldgs	-1.00 Is	-	(113,140)	-	-	(113,140)
<b>Doors General</b>	<b>97,614.00 SF</b>		<b>132,737</b>			<b>132,737</b>
<b>Access Doors</b>						
Access Doors & Hatches-In Trades	1.00 Is	-	-	*	-	0



Jay Peak - Stateside 2017

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>Access Doors</b>						
Access Doors & Hatches	1.00 ls	-	2,006	-	-	2,006
Access Doors	97,614.00 SF	-	2,006	-	-	2,006
<b>Finish Hardware</b>						
Door Hardware-Kelley Brothers	1.00 ls	-	-	32,793	-	32,793
Door Hardware-Kelley Brothers-Less 2 SSC Bldgs	0.00 ls	-	-	0	-	0
Finish Hardware	97,614.00 SF	-	-	32,793	-	32,793
<b>DOORS &amp; WINDOWS</b>			134,743	32,793		167,536
<b>FINISHES</b>						
<b>Gypsum Board Sub</b>						
GWB & Tape-Colchester Contracting	1.00 ls	-	-	673,611	-	673,611
GWB & Tape-Colchester Contracting-Less 2 SSC Bldgs	-1.00 ls	-	-	(273,350)	-	(273,350)
Gypsum Board Sub	97,614.00 SF	-	-	400,261	-	400,261
<b>Flooring-General</b>						
Finish Floors & Tile-Future Floors-Nov 04/11/17	1.00 ls	-	-	386,200	-	386,200
Finish Floors & Tile-Future Floors-Less 2 SSC Bldgs	-1.00 ls	-	-	(129,680)	-	(129,680)
Finish Floors & Tile-Add-Ditra Underlayment	0.00 ls	-	-	-	-	-
Finish Floors & Tile-Add-Wood Transitions	0.00 ls	-	-	-	-	-
Finish Floors & Tile-Add-Daltile Slate ILO Fidenza	0.00 ls	-	-	-	-	-
Flooring-Protection	31,830.00 sf	8,753	2,868	-	-	11,621
Flooring-Protection-Less 2 SSC Bldgs	-12,732.00 sf	(3,501)	(1,147)	-	-	(4,648)
Flooring-Protection	14,932.50 sf	4,106	1,345	-	-	5,452
Flooring-General	97,614.00 SF	9,358	3,066	256,520	-	268,945
<b>Painting</b>						
Finish Paint-Cluba Paint	1.00 ls	-	-	521,688	-	521,688
Finish Paint-Cluba Paint-Less 2 SSC Bldgs	-1.00 ls	-	-	(139,376)	-	(139,376)
Painting	97,614.00 SF	-	-	382,312	-	382,312
<b>Misc. Finishes</b>						
Finishes-Daily Cleanup	32.00 wk	19,200	339	-	-	19,539
Finishes-Final Cleanup-By JPR	0.00 ls	-	-	0	-	0
Finishes-Dumpster Fees	800.00 cy	-	20,000	-	-	20,000
Finishes-Dumpster Fee's-Less 2 SSC Bldgs	-228.00 cy	-	(5,700)	-	-	(5,700)
Finishes-Foreman	24.00 wk	57,600	3,816	-	10,049	71,465
Finishes-Forklift 4WD	18.00 wk	19,800	1,908	-	16,218	37,926
Finishes-Protect Finishes	84.00 un	18,480	890	-	-	19,370
Finishes-Protect Finishes-Less 2 SSC Bldgs	-24.00 un	(5,280)	(254)	-	-	(5,534)

Jay Peak - Stateside 2017



Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Misc. Finishes	97,614.00 SF	109,800	20,999		26,267	157,066
<b>FINISHES</b>	<b>97,614.00 SF</b>	<b>119,158</b>	<b>24,065</b>	<b>1,039,093</b>	<b>26,267</b>	<b>1,208,584</b>
<b>SPECIALTIES</b>						
Louvers & Vents	1.00 ls	-	-	*	-	0
Louvers-Wood-Gables						
Fireplaces Prebuilt	1.00 ls	-	-	82,643	-	82,643
Fireplaces-Chimney Sweep	-1.00 ls	-	-	(40,989)	-	(40,989)
Fireplaces-Chimney Sweep-Less 2 SSC Bldgs	97,614.00 SF	-	-	41,654	-	41,654
Fireplaces Prebuilt						
Signage	0.00 ls	-	-	0	-	0
Signage-By JPR						
Fire Ext. & Cabinets	0.00 ls	-	-	0	-	0
Fire Extinguishers-By JPR						
Storage & Shelving						
Shelving-ClosetMaid Shelf & Rod-Sticks Matts	732.00 lf	2,684	2,485	-	-	5,169
Storage & Shelving	97,614.00 SF	2,684	2,485	-	-	5,169
Toilet Accessories						
Toilet Accessories-Sticks & Stuff	5.00 bd	32,450	38,770	-	-	71,220
Toilet Accessories-Sticks & Stuff-Less 2 SSC Bldgs	-2.00 bd	(12,980)	(15,508)	-	-	(28,488)
Toilet Accessories	97,614.00 SF	19,470	23,262	-	-	42,732
<b>SPECIALTIES</b>	<b>97,614.00 SF</b>	<b>22,154</b>	<b>25,746</b>	<b>41,654</b>		<b>89,554</b>
<b>EQUIPMENT</b>						
Residential Appliances						
Appliances-Cocoplum	1.00 ls	-	-	341,341	-	341,341
Appliances-Cocoplum-Less 2 SSC Bldgs	-1.00 ls	-	-	(101,987)	-	(101,987)
Appliances-Range Hood-Prep Work	60.00 ea	6,600	-	-	-	6,600
Appliances-Range Hood-Prep Work-Less 2 SSC Bldgs	-24.00 ea	(2,640)	-	-	-	(2,640)
Residential Appliances	97,614.00 SF	3,960	-	239,354	-	243,314
General Equipment						
Central Vacuum-Joanne's	1.00 ls	-	-	29,800	-	29,800



Jay Peak - Stateside 2017

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>General Equipment</b>						
Central Vacuum-Joanne's-Less 2 SSC Bldgs	-1.00 ls	-	-	(10,400)	-	(10,400)
General Equipment	97,614.00 SF			19,400		19,400
<b>EQUIPMENT</b>	<b>97,614.00 SF</b>	<b>3,960</b>		<b>258,754</b>		<b>262,714</b>
<b>SPECIAL CONSTRUCTION</b>						
Special Construction	0.00 ls	-	-	0	-	0
Modular Buildings-HH-Buy By JPR	3.00 bd	1,320	-	-	-	1,320
Modular Buildings-Labor-Day 2	97,614.00 SF	1,320	-	-	-	1,320
Special Construction						
<b>SPECIAL CONSTRUCTION</b>	<b>97,614.00 SF</b>	<b>1,320</b>				<b>1,320</b>
<b>MECHANICAL</b>						
Sprinkler	1.00 ls	-	-	115,325	-	115,325
Sprinkler-Mountain Valley	0.00 bd	-	-	0	-	0
Sprinkler-No Work	-1.00 ls	-	-	(70,350)	-	(70,350)
Sprinkler-Mountain Valley-Less 2 SSC Bldgs	97,614.00 SF			44,975		44,975
Sprinkler						
<b>Plumbing &amp; HVAC</b>						
Mechanical-Howarth Group	1.00 ls	-	-	1,037,975	-	1,037,975
Mechanical-Howarth Group-Less 2 SSC Bldgs	-1.00 ls	-	-	(448,940)	-	(448,940)
Plumbing & HVAC	97,614.00 SF			589,035		589,035
<b>MECHANICAL</b>	<b>97,614.00 SF</b>			<b>634,010</b>		<b>634,010</b>
<b>ELECTRICAL</b>						
Electrical	1.00 ls	-	-	619,117	-	619,117
Electrical-Mike's Electric	-1.00 ls	-	-	(137,600)	-	(137,600)
Electrical-Mike's Electric-Less 2 SSC Bldgs	1.00 ls	-	-	*	-	0
Electrical-Site Electric-Primary-In Mike's	1.00 ls	-	-	*	-	0
Electrical-Site-Loop-Conduit	1.00 ls	-	-	*	-	0
Electrical-Site-Loop-Wire	1.00 ls	-	-	*	-	0
Electrical-Power Company Charges	0.00 ls	-	-	0	-	0
Electrical	97,614.00 SF			481,517		481,517

Jay Peak - Stateside 2017



Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>ELECTRICAL</b>	<b>97,614.00 SF</b>			<b>481,517</b>		<b>481,517</b>
<b>GENERAL CONDITIONS</b>						
Project Superintendent	21.00 wk	50,400	3,339	-	8,793	62,532
Superintendent	97,614.00 SF	50,400	3,339	-	8,793	62,532
Project Superintendent						
Project Management	21.00 wk	44,352	-	-	6,767	51,119
Project Manager	21.00 wk	36,960	-	-	6,767	43,727
Project Engineer						
Project Management	97,614.00 SF	81,312	-	-	13,534	94,846
Architect & Engineering						
Design-Architectural-By Owner	0.00 ls	-	-	0	-	0
Design-Structural-By Owner	0.00 ls	-	-	0	-	0
Design-MEPP-By Owner	0.00 ls	-	-	0	-	0
Project Safety						
Safety-Officer	21.00 wk	5,460	334	-	846	6,640
Project Safety	97,614.00 SF	5,460	334	-	846	6,640
Project Assistant						
Project Assistant	21.00 wk	8,400	668	-	-	9,068
Project Assistant	97,614.00 SF	8,400	668	-	-	9,068
Project Accounting						
Accounting Clerk	21.00 wk	3,360	267	-	-	3,627
Project Accounting	97,614.00 SF	3,360	267	-	-	3,627
Job Telephone						
Job Phone-Hookup	0.65 ea	-	345	-	-	345
Job Phone-Useage	5.00 mo	-	3,180	-	-	3,180
Job Phone-Cellular	0.00 mo	-	-	-	-	-
Job Phone-Internet Service	5.00 mo	-	398	-	-	398
Job Telephone	97,614.00 SF	-	3,922	-	-	3,922
Job Electrical						
Job Electrical-Hook Up	0.65 ea	-	345	-	-	345
Job Electrical-Consumption	5.00 mo	-	1,855	-	-	1,855



Jay Peak - Stateside 2017

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>Job Electrical</b>	97,614.00 SF		2,200			2,200
<b>Job Water</b>						
Water-Tank & Accessories-For Trades	0.65 ls	-	-	650	-	650
Job Water-To Build	0.00 mo	-	-	-	-	-
Job Water-Drinking	5.00 mo	-	133	-	-	133
<b>Job Water</b>	97,614.00 SF		133	650		783
<b>Job Office Trailers</b>						
Field Office-Rent & Maintain	5.00 mo	550	398	-	2,120	3,068
Field Office-Deliver & Set	0.65 ls	572	207	-	345	1,123
Field Office-Furnishings	0.65 ls	-	345	-	-	345
Field Office-Equip-Copier	5.00 mo	-	-	-	795	795
Field Office-Equip-Paper Supplies	5.00 mo	-	530	-	-	530
Field Office-Equip-General	5.00 mo	-	795	-	-	795
<b>Job Office Trailers</b>	97,614.00 SF	1,122	2,274		3,260	6,655
<b>Storage Trailer</b>						
Storage-Box Trailer-Rental	5.00 mo	-	-	-	795	795
Storage-Box Trailer-Deliver & Set	0.65 ea	143	103	-	172	419
<b>Storage Trailer</b>	97,614.00 SF	143	103		967	1,214
<b>Job Toilets</b>						
Temp Toilet-Rental-4 Each	5.00 mo	-	2,544	-	-	2,544
<b>Job Toilets</b>	97,614.00 SF		2,544			2,544
<b>Fire Protection</b>						
Fire Extinguishers	7.00 ea	-	371	-	-	371
<b>Fire Protection</b>	97,614.00 SF		371			371
<b>Job Safety</b>						
Safety-Materials-General	0.65 ls	-	689	-	-	689
<b>Job Safety</b>	97,614.00 SF		689			689
<b>First Aid Supplies</b>						
First Aid-Supplies	0.00 mo	-	0	-	-	0
<b>Field Quality Testing</b>						
Testing-VT Energy-Blower Door-By JPR	0.00 ls	-	-	0	-	0
Testing-Field Quality-By Owner	0.00 ls	-	-	0	-	0

Jay Peak - Stateside 2017



Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>Office Expense</b>						
Office-General Supplies-By Week	0.00 wk	-	0	-	-	0
Office-Postage-By Week	0.00 wk	-	0	-	-	0
<b>Blueprint Expense</b>						
Blueprint Expense-By Lump Sum	0.00 ls	-	0	-	-	0
<b>Project Signage</b>						
Job Sign-Architect 4' x 8'	0.65 ea	429	482	-	103	1,015
<b>Project Signage</b>	<b>97,614.00 SF</b>	<b>429</b>	<b>482</b>	<b>-</b>	<b>103</b>	<b>1,015</b>
<b>Job Permits &amp; Fee's</b>						
Permits-By Owner	0.00 ls	-	0	-	-	0
<b>Job Allowances</b>						
Allowances-Site Boulders	0.00 ls	-	-	0	-	0
Allowances-Temporary Power	1.00 ls	-	-	23,985	-	23,985
Allowances-Winter-Temp Heat	1.00 ls	-	-	23,741	-	23,741
Allowances-Blueprints-To Bid & Build	1.00 ls	-	-	25,000	-	25,000
Allowances-Landscaping	1.00 ls	-	-	100,000	-	100,000
Allowances-Unsuitable Soils	0.00 ls	-	-	0	-	0
Allowances-Exist-Structural Survey	1.00 ls	-	-	15,000	-	15,000
Allowances-Exist-Materials & Repairs	1.00 ls	-	-	75,000	-	75,000
Allowances-Exist-Mold-Air Testing	1.00 ls	-	-	3,000	-	3,000
<b>Job Allowances</b>	<b>97,614.00 SF</b>	<b>-</b>	<b>-</b>	<b>265,726</b>	<b>-</b>	<b>265,726</b>
<b>Legal Expense</b>						
Legal Expense	0.00 ls	-	-	-	-	-
<b>GENERAL CONDITIONS</b>	<b>97,614.00 SF</b>	<b>150,626</b>	<b>17,325</b>	<b>266,376</b>	<b>27,503</b>	<b>461,830</b>



Estimate Totals

Description	Amount	Totals	Rate	Cost per Unit
	7,200,575	7,200,575		
Construction Contingency	200,000			
	200,000	7,400,575		
DEW Precon	15,000			
	15,000	7,415,575		
DEW SDI on Subs	198,237			
Insurance - Builders Risk	16,299		0.203 \$ / 100	
Insurance - General Liability	40,145		0.500 %	
	254,681	7,670,256		
HHI CM Fee	32,500			
DEW CM Fee	335,574		4.375 %	
Less NEFF & Reap Markup	(9,361)		(0.122) %	
	358,713	8,028,969		
<b>Total</b>		<b>8,028,969</b>		<b>82.3 /SF</b>



**EXHIBIT 2**

 **AIA® Document A133™ – 2009**

**Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Seventeen  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status and address)*

Jay Peak, Inc.  
830 Jay Peak Rd.  
Jay, Vermont 05859-9621

Jay Peak Hotel Suites Stateside L.P.  
830 Jay Peak Rd.  
Jay, Vermont 05859-9621

and the Construction Manager:  
*(Name, legal status and address)*

D.E.W. Construction Corp.  
227 Blair Park Road, Suite 130  
Williston, VT 05495

for the following Project:  
*(Name and address or location)*

Jay Peak Recreation Center, Jay VT  
This project consists of a 14,725 sq. ft. 2-story metal panel building, located east of the Stateside Hotel and Baselodge ("Hotel 3"). The building will contain a movie theater with seating of approximately 140, a climbing center, ropes course, an arcade, snack bar and office spaces.

The Architect:  
*(Name, legal status and address)*

Scott + Partners  
20 Main Street  
Essex Junction, VT 05452

The Owner's Designated Representative:  
*(Name, address and other information)*

Walter Elander  
Jay Peak, Inc.  
830 Jay Peak Rd.  
Jay, Vermont 05859

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

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

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

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The Construction Manager's Designated Representative:  
(Name, address and other information)

Karl Bahrenburg  
DEW Construction Corp.  
277 Blair Park Road, Suite 130, Williston, VT 05495  
Telephone Number: 802-872-0505, Extension 2359  
Fax Number: 802-872-0707  
Mobile Number: 802-324-9054  
Email Address: kbahrenburg@dewcorp.com

The Architect's Designated Representative:  
(Name, address and other information)

Tyler Scott  
Scott + Partners  
20 Main Street  
Essex Junction, VT 05452  
Phone: 802-879-5153  
Fax: 802-872-2764

The Owner and Construction Manager agree as follows.

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also

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include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

### § 1.2 Relationship of the Parties

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

### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, as amended by the parties, which document is incorporated herein by reference, and attached. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

**§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

**§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

**§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

**§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

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

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Guaranteed Maximum Price Amendment is attached as Exhibit A.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect.

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The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

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§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Owner has designated Walter Elander as its representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

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**§ 3.3 Architect**

The Owner shall retain an Architect to provide Basic Services, including architectural, interior design, and civil engineering services, other than cost estimating services, and any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

**ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 4.1 Compensation**

**§ 4.1.1** For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

**§ 4.1.2** For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Construction Manager shall be paid a lump sum fee for Preconstruction Services and shall be reimbursed for out of pocket expenses incurred in connection with such services, including without limitation, reproduction and printing costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, and reasonable travel expenses. Except as provided in Section 4.1.3, the fee to provide Preconstruction Services up to the point of establishing the Guaranteed Maximum Price has been incorporated into the GMP Final Cost.

**§ 4.1.3 [NOT USED.]**

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**§ 4.2 Payments**

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 4.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

twelve percent (12 %) per annum

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

**§ 5.1.1** The Construction Manager's Fee: *(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

The Construction Manager's fee shall be 4.375% of the Cost of the Work.

**§ 5.1.2** The method of adjustment of the Construction Manager's Fee for changes in the Work:

- (a) for Changes increasing the Cost of the Work add four point three seven five percent (4.375%) of the increase in the Cost of the Work for overhead and profit and an additional one percent (1%) of that total for additional general liability insurance premium.

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- (b) for Changes decreasing the Cost of the Work, no adjustment shall be made to the Construction Manager's Fee, except that in the event the Owner terminates the Construction Manager for cause pursuant to Article 14.2 of the General Conditions, the Construction Manager's Fee shall be decreased in proportion to the percentage of work remaining to Substantial Completion.
- (c) for Changes which include both additions to and deductions from the Cost of the Work, the adjustment to the Construction Manager's Fee shall be calculated on the net increase, if any, to the Cost of the Work.

**§ 5.1.3 [NOT USED]**

**§ 5.1.4 [NOT USED]**

**§ 5.1.5** Unit prices, if

*(Paragraphs deleted)*

any, shall be set out in the Guaranteed Maximum Price Amendment.

*(Table deleted)*

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

**§ 5.3.5** If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Compensation at the rates set out in Exhibit C for construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Compensation at the rates set out in Exhibit C for the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Compensation at the rates set out in Exhibit C for the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3 are included in the rates set out in Exhibit C.

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

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

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

Init.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

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

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

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

§ 6.5.7 Costs of temporary heat and enclosures, temporary utility installation, service and use charges which are incurred in the performance of the Work.

#### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

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**§ 6.7 Other Costs and Emergencies**

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

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

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

**§ 6.8 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

**§ 6.9 Discounts, Rebates and Refunds**

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

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 6.10 Related Party Transactions**

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work,

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equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

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

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect and Owner not later than the twenty-fifth day of a month for work through the end of the month, the Owner shall make payment of the certified amount to the Construction Manager not later than the tenth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen ( 15 ) days after the Architect receives the Application for Payment.

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

#### § 7.1.4 [NOT USED].

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

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of ten percent ( 10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the

Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage of ten percent ( 10 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. 10% retainage will be withheld on the Cost of Work until the project is 50% complete. At this point, the retainage will be fixed at Five percent (5%) of the Contract Sum and no additional retainage will be held on subsequent applications for payment. 0% retainage shall be held on CM Fee and CM General Conditions. Unless otherwise agreed, retention on Subcontracts shall be ten percent (10%) of each progress payment to a maximum of Five percent (5%) of the value of the Subcontract.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 The progress payment amount determined in accordance with Section 7.1.7 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less one hundred fifty percent (150%) of the value of incomplete and punchlist work, and such amounts as the Architect shall determine for unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of A201™-2007.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

§ 7.2.2 The Owner’s auditors will review and report in writing on the Construction Manager’s final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner’s auditors report to be substantiated by the Construction Manager’s final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 7.2.3 If the Owner’s auditors report the Cost of the Work as substantiated by the Construction Manager’s final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

**ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007. Such insurance shall be written for not less than the following limits, or greater if required by law: *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

**§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER**

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™–2007. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers’ Compensation and Employers Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

§ 8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors’ Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

- \$ 1,000,000.00 Each Occurrence
- \$ 2,000,000.00 General Aggregate
- \$ 1,000,000.00 Personal and Advertising Injury
- \$ 2,000,000.00 Products-Completed Operations Aggregate

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least One ( 1 ) year after either 90 days following Substantial Completion or final payment, whichever is earlier.

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.3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of A201™-2007.

§ 8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage: \$ 1,000,000.00 Each Accident

§ 8.1.4 Property insurance per Section 11.3.1 of A201™-2007: \$ 2,500.00 Deductible Per Occurrence \$ 2,500.00 Aggregate Deductible

§ 8.1.5 Umbrella Excess Liability Insurance: \$5,000,000.00

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 DELETED.

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

(Table deleted)

§ 8.3.1 The Construction Manager shall not(insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent ( 100% ) of the Contract Sum.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

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

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

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

[ X ] Litigation in a court of competent jurisdiction

[ ] Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience

Init.

and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA

Init.

Document A201–2007, except that the term "cost" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

**ARTICLE 11 MISCELLANEOUS PROVISIONS**

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

**§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5 Other provisions:**

§ 11.5.1 It is the intent to include the wages and salaries for the following personnel stationed at the Construction Manager’s principal offices in the Cost of the Work for the time spent directly on this project at the rates set out in Exhibit B Schedule of Labor Rates: accounting administration, safety, project management, project administration, legal and project engineer.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager. If anything in any document incorporated into this Agreement and dated prior to this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 Exhibit A –Guaranteed Maximum Price Amendment
- .3 AIA Document A201-2007, General Conditions of the Contract for Construction (as amended by the parties)

.4  
(Paragraphs deleted)  
Exhibit C –DEW Billable Rates

This Agreement is entered into as of the day and year first written above.

Jay Peak, Inc.

DEW CONSTRUCTION CORP.

**OWNER** *(Signature)*

Michael Goldberg, Duly Authorized Agent  
*(Printed name and title)*

**CONSTRUCTION MANAGER** *(Signature)*

Donald E. Wells, President  
*(Printed name and title)*

*(Date Signed)*

Init.

## Additions and Deletions Report for AIA® Document A133™ – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:02:50 on 05/16/2017.

### PAGE 1

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Seventeen

...

<u>Jay Peak, Inc.</u>	<u>Jay Peak Hotel Suites Stateside L.P.</u>
<u>830 Jay Peak Rd.</u>	<u>830 Jay Peak Rd.</u>
<u>Jay, Vermont 05859-9621</u>	<u>Jay, Vermont 05859-9621</u>

...

D.E.W. Construction Corp.  
227 Blair Park Road, Suite 130  
Williston, VT 05495

...

Jay Peak Recreation Center, Jay VT  
This project consists of a 14,725 sq. ft. 2-story metal panel building, located east of the Stateside Hotel and  
Baselodge ("Hotel 3"). The building will contain a movie theater with seating of approximately 140, a climbing  
center, ropes course, an arcade, snack bar and office spaces.

...

Scott + Partners  
20 Main Street  
Essex Junction, VT 05452

...

Walter Elander  
Jay Peak, Inc.  
830 Jay Peak Rd.  
Jay, Vermont 05859

### PAGE 2

Karl Bahrenburg  
DEW Construction Corp.  
277 Blair Park Road, Suite 130, Williston, VT 05495  
Telephone Number: 802-872-0505, Extension 2359  
Fax Number: 802-872-0707  
Mobile Number: 802-324-9054

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User Notes:

(1431859821)

Email Address: kbahrenburg@dewcorp.com

...

Tyler Scott  
Scott + Partners  
20 Main Street  
Essex Junction, VT 05452  
Phone: 802-879-5153  
Fax: 802-872-2764

...

TABLE OF ARTICLES

PAGE 3

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, as amended by the parties, which document is incorporated herein by ~~reference~~-reference, and attached. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

PAGE 4

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager ~~suggests~~-suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

PAGE 5

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Guaranteed Maximum Price Amendment is attached as Exhibit A.

...

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed upon~~-agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

PAGE 6

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a ~~cost plus cost-plus a fee~~ basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

...

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems~~, systems sustainability and site requirements.

PAGE 7

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in ~~Section~~

4.2.1 of A201-2007, the Contract Documents, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Owner has designated Walter Elander as its representative.

PAGE 8

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, Basic Services, including architectural, interior design, and civil engineering services, other than cost estimating services, and any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

Construction Manager shall be paid a lump sum fee for Preconstruction Services and shall be reimbursed for out of pocket expenses incurred in connection with such services, including without limitation, reproduction and printing costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, and reasonable travel expenses. Except as provided in Section 4.1.3, the fee to provide Preconstruction Services up to the point of establishing the Guaranteed Maximum Price has been incorporated into the GMP Final Cost.

~~§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. [NOT USED.]~~

...

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

% twelve percent (12 %) per annum

...

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds, ~~funds for the Construction Manager's performance of the Contract.~~ The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

...

The Construction Manager's fee shall be 4.375% of the Cost of the Work.

...

- (a) for Changes increasing the Cost of the Work add four point three seven five percent (4.375%) of the increase in the Cost of the Work for overhead and profit and an additional one percent (1%) of that total for additional general liability insurance premium.
- (b) for Changes decreasing the Cost of the Work, no adjustment shall be made to the Construction Manager's Fee, except that in the event the Owner terminates the Construction Manager for cause pursuant to Article 14.2 of the General Conditions, the Construction Manager's Fee shall be decreased in proportion to the percentage of work remaining to Substantial Completion.



(c) for Changes which include both additions to and deductions from the Cost of the Work, the adjustment to the Construction Manager's Fee shall be calculated on the net increase, if any, to the Cost of the Work.

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

**[NOT USED]**

§ 5.1.4 ~~Rental rates for Construction Manager owned equipment shall not exceed \_\_\_\_\_ percent (\_\_\_\_ %) of the standard rate paid at the place of the Project.~~

**[NOT USED]**

§ 5.1.5 ~~Unit prices, if any; (Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.) any, shall be set out in the Guaranteed Maximum Price Amendment.~~

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

PAGE 10

§ 6.2.1 ~~Wages of Compensation at the rates set out in Exhibit C for construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~

§ 6.2.2 ~~Wages or salaries of Compensation at the rates set out in Exhibit C for the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.~~

...

§ 6.2.3 ~~Wages and salaries of Compensation at the rates set out in Exhibit C for the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

§ 6.2.4 ~~Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3-6.2.3 are included in the rates set out in Exhibit C.~~

PAGE 11

§ 6.5.7 ~~Costs of temporary heat and enclosures, temporary utility installation, service and use charges which are incurred in the performance of the Work.~~

PAGE 12

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

PAGE 13

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

...

§ 7.1.3 Provided that an Application for Payment is received by the Architect and Owner not later than the twenty-fifth day of a month for work through the end of the month, the Owner shall make payment of the certified amount to the Construction Manager not later than the tenth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen ( 15 ) days after the Architect receives the Application for Payment.

...

§ 7.1.4 ~~With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.~~ [NOT USED].

...

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

...

- .3 Add the Construction Manager's Fee, less retainage of ten percent ( 10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent ( 10 %) from that portion of the Work that the Construction Manager self-performs;

PAGE 14

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. 10% retainage will be withheld on the Cost of Work until the project is 50% complete. At this point, the retainage will be fixed at Five percent (5%) of the Contract Sum and no additional retainage will be held on subsequent applications for payment. 0% retainage shall be held on CM Fee and CM General Conditions. Unless otherwise agreed, retention on Subcontracts shall be ten percent (10%) of each progress payment to a maximum of Five percent (5%) of the value of the Subcontract.

...

§ 7.1.11 The progress payment amount determined in accordance with Section 7.1.7 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less one hundred fifty percent (150%) of the value of incomplete and punchlist work, and such amounts as the Architect shall determine for unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of A201™-2007.

PAGE 15

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. Such insurance shall be written for not less than the following limits, or greater if required by law: (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

**§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER**

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™-2007. Such insurance shall be written for not less than the following limits, or greater if required by law:

**§ 8.1.1 Workers' Compensation and Employers Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:**

**§ 8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):**

- \$ 1,000,000.00 Each Occurrence
- \$ 2,000,000.00 General Aggregate
- \$ 1,000,000.00 Personal and Advertising Injury
- \$ 2,000,000.00 Products-Completed Operations Aggregate

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least One ( 1 ) year after either 90 days following Substantial Completion or final payment, whichever is earlier.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of A201™-2007.

**§ 8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:**

- \$ 1,000,000.00 Each Accident

**§ 8.1.4 Property insurance per Section 11.3.1 of A201™-2007:**

- \$ 2,500.00 Deductible Per Occurrence
- \$ 2,500.00 Aggregate Deductible

**§ 8.1.5 Umbrella Excess Liability Insurance: \$5,000,000.00**

*(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)*

§ 8.2 DELETED.

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

§ 8.3.1 The Construction Manager shall not (insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent ( 100% ) of the Contract Sum.

PAGE 16

[ X ] Litigation in a court of competent jurisdiction

PAGE 17

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum-Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "cost" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

PAGE 18

§ 11.5.1 It is the intent to include the wages and salaries for the following personnel stationed at the Construction Manager's principal offices in the Cost of the Work for the time spent directly on this project at the rates set out in Exhibit B Schedule of Labor Rates: accounting administration, safety, project management, project administration, legal and project engineer.

...

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager. If anything in any document incorporated into this Agreement and dated prior to this Agreement is inconsistent with this Agreement, this Agreement shall govern.

...

- .2 AIA Document A201-2007, Exhibit A -Guaranteed Maximum Price Amendment
- .3 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following: (as amended by the parties)
- .4 AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

.5 Other documents:

(List other documents, if any, forming part of the Agreement.) Exhibit C – DEW Billable Rates

PAGE 19

Jay Peak, Inc.

DEW CONSTRUCTION CORP.

...

Michael Goldberg, Duly Authorized Agent

Donald E. Wells, President

...

(Date Signed)

## **Certification of Document's Authenticity**

*AIA® Document D401™ – 2003*

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:02:50 on 05/16/2017 under Order No. 5521485371 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

# AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Jay Peak Recreation Center, Jay VT

This project consists of a 14,725 sq. ft. 2-story metal panel building, located east of the Stateside Hotel and Baselodge ("Hotel 3"). The building will contain a movie theater with seating of approximately 140, a climbing center, ropes course, an arcade, snack bar and office spaces.

### THE OWNER:

*(Name, legal status and address)*

Jay Peak, Inc.  
830 Jay Peak Rd.  
Jay, Vermont 05859-9621

Jay Peak Hotel Suites Stateside, L.P.  
830 Jay Peak Rd.  
Jay, Vermont 05859-9621

### THE ARCHITECT:

*(Name, legal status and address)*

Scott + Partners  
20 Main Street  
Essex Junction, VT 05452

### ADDITIONS AND DELETIONS:

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### TABLE OF ARTICLES

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

Init.

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User Notes:

(810116697)

- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.

User Notes:

(810116697)



**INDEX**

(Numbers and Topics in Bold are Section Headings)

**Acceptance of Nonconforming Work**

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

**Access to Work**

**3.16**, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.4.2, 13.7.1, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

**Additional Inspections and Testing**

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

**Additional Time, Claims for**

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

**Administration of the Contract**

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

**Allowances**

**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

**Applications for Payment**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.10,

11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,

4.2.7, 9.3.2, 13.5.1

**Arbitration**

8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**

**ARCHITECT**

**4**

**Architect**, Definition of

**4.1.1**

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4,

9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1,

12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,

4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4.1,

9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14,

6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4.1, 9.5, 9.8.4,

9.9.1, 13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1,

3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,

4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5,

15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

**Award of Subcontracts and Other Contracts for**

**Portions of the Work**

**5.2**

**Basic Definitions**

**1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1,

15.3.2, 15.4.1

**Boiler and Machinery Insurance**

**11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

**Bonds, Performance, and Payment**

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Init.

Building Permit  
3.7.1

**Capitalization**  
**1.3**

Certificate of Substantial Completion  
9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1,  
9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval  
13.5.4

Certificates of Insurance  
9.10.2, 11.1.3

**Change Orders**

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8,  
5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10,  
8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9,  
12.1.2, 15.1.3

**Change Orders, Definition of**  
**7.2.1**

**CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1,  
9.3.1.1, 11.3.9

**Claims, Definition of**  
**15.1.1**

**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15,  
15.4

Claims and Timely Assertion of Claims  
15.4.1

**Claims for Additional Cost**

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

**Claims for Additional Time**

3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, 15.1.5

**Concealed or Unknown Conditions, Claims for**  
**3.7.4**

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,  
11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration  
15.3.1, 15.4.1

**Cleaning Up**  
**3.15, 6.3**

Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,  
15.1.4

**Commencement of the Work, Definition of**  
**8.1.2**

**Communications Facilitating Contract**  
**Administration**

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
9.10, 12.2, 13.7, 14.1.2

**COMPLETION, PAYMENTS AND**  
**9**

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,  
12.2, 13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4,  
10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,  
14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,  
9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

**Consolidation or Joinder**

**15.4.4**

**CONSTRUCTION BY OWNER OR BY**  
**SEPARATE CONTRACTORS**

1.1.4, 6

**Construction Change Directive, Definition of**  
**7.3.1**

**Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3,  
9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Contingent Assignment of Subcontracts**

**5.4, 14.2.2.2**

**Continuing Contract Performance**  
**15.1.3**

**Contract, Definition of**

**1.1.2**

**CONTRACT, TERMINATION OR**  
**SUSPENSION OF THE**

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating  
to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

**Contract Documents, The**

**1.1.1**

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.2.5, 5.3

**Contract Documents, Definition of**

**1.1.1**

**Contract Sum**

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4,  
9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4,  
15.2.5

**Contract Sum, Definition of**

**9.1**

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,  
8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2,  
15.1.5.1, 15.2.5

Init.

**Contract Time, Definition of**  
**8.1.1**  
**CONTRACTOR**  
**3**  
**Contractor, Definition of**  
**3.1, 6.1.2**  
**Contractor's Construction Schedules**  
**3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2**  
 Contractor's Employees  
 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,  
**Contractor's Liability Insurance**  
**11.1**  
 Contractor's Relationship with Separate Contractors and Owner's Forces  
 3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4  
 Contractor's Relationship with Subcontractors  
 1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8  
 Contractor's Relationship with the Architect  
 1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1  
 Contractor's Representations  
 3.2.1, 3.2.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2  
 Contractor's Responsibility for Those Performing the Work  
 3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8  
 Contractor's Review of Contract Documents  
 3.2  
 Contractor's Right to Stop the Work  
 9.7  
 Contractor's Right to Terminate the Contract  
 14.1, 15.1.6  
 Contractor's Submittals  
 3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2  
 Contractor's Superintendent  
 3.9, 10.2.6  
 Contractor's Supervision and Construction Procedures  
 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3  
 Contractual Liability Insurance  
 11.1.1.8, 11.2  
 Coordination and Correlation  
 1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1  
 Copies Furnished of Drawings and Specifications  
 1.5, 2.2.5, 3.11  
 Copyrights  
 1.5, **3.17**  
 Correction of Work  
 2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**  
**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost, Definition of**  
**7.3.7**  
 Costs  
 2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14  
**Cutting and Patching**  
**3.14, 6.2.5**  
 Damage to Construction of Owner or Separate Contractors  
 3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4  
 Damage to the Work  
 3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4  
 Damages, Claims for  
 3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6  
 Damages for Delay  
 6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2  
**Date of Commencement of the Work, Definition of**  
**8.1.2**  
**Date of Substantial Completion, Definition of**  
**8.1.3**  
**Day, Definition of**  
**8.1.4**  
 Decisions of the Architect  
 3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2  
**Decisions to Withhold Certification**  
 9.4.1, **9.5**, 9.7, 14.1.1.3  
 Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
 2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1  
**Defective Work, Definition of**  
**3.5.1**  
 Definitions  
 1.1, 2.1.1, 3.1.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1  
**Delays and Extensions of Time**  
 3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5  
 Disputes  
 6.3.1, 7.3.9, 15.1, 15.2  
**Documents and Samples at the Site**  
**3.11**  
**Drawings, Definition of**  
**1.1.5**  
 Drawings and Specifications, Use and Ownership of  
 3.11  
 Effective Date of Insurance  
 8.2.2, 11.1.2  
**Emergencies**  
**10.4**, 14.1.1.2, 15.1.4

Init.

Employees, Contractor's  
 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or  
 1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1,  
 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,  
 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work  
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5.1,  
 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,  
 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time  
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1, 9.7.1,  
 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5

**Failure of Payment**  
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Faulty Work  
 (See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,  
 12.3.1, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
 2.2.1, 13.2.2, 14.1.1.4

Fire and Extended Coverage Insurance  
 11.3.1.1

**GENERAL PROVISIONS**

**1**

**Governing Law**

**13.1**  
 Guarantees (See Warranty)

**Hazardous Materials**  
 10.2.4, 10.3

Identification of Subcontractors and Suppliers  
 5.2.1

**Indemnification**  
 3.17.1, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,  
 11.3.7

**Information and Services Required of the Owner**  
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,  
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

**Initial Decision**

**15.2**

**Initial Decision Maker, Definition of**  
 1.1.8

Initial Decision Maker, Decisions  
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority  
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,  
 15.2.5

**Injury or Damage to Person or Property**

**10.2.8, 10.4.1**

Inspections  
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders  
 1.1.1

Instructions to the Contractor  
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

**Instruments of Service, Definition of**  
**1.1.7**

Insurance  
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

**Insurance, Boiler and Machinery**  
**11.3.2**

**Insurance, Contractor's Liability**  
**11.1**  
 Insurance, Effective Date of  
 8.2.2, 11.1.2

**Insurance, Loss of Use**  
**11.3.3**

**Insurance, Owner's Liability**  
**11.2**

**Insurance, Property**  
 10.2.5, 11.3

Insurance, Stored Materials  
 9.3.2, 11.4.1.4

**INSURANCE AND BONDS**

**11**

Insurance Companies, Consent to Partial Occupancy  
 9.9.1, 11.4.1.5

Insurance Companies, Settlement with  
 11.4.10

Intent of the Contract Documents  
 1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

**Interest**  
**13.6**

**Interpretation**  
 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written  
 4.2.11, 4.2.12, 15.1.4

Judgment on Final Award  
 15.4.2

**Labor and Materials, Equipment**  
 1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,  
 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes  
 8.3.1

Laws and Regulations  
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,  
 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,  
 13.6.1, 14, 15.2.8, 15.4

Liens  
 2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of  
 12.2.5, 13.7, 15.4.1.1

Limitations of Liability  
 2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6,  
 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3,  
 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

Limitations of Time  
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2.1, 9.3.1,

Init.

9.3.3, 9.4.1, 9.5, 9.6, 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

**Loss of Use Insurance**

**11.3.3**

Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

**Materials, Hazardous**

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 15.2.8

**Mediation**

8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1

**Minor Changes in the Work**

1.1.1, 3.12.8, 4.2.8, 7.1, 7.4

**MISCELLANEOUS PROVISIONS**

**13**

**Modifications**, Definition of

**1.1.1**

Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1, 10.3.2, 11.3.1

**Mutual Responsibility**

**6.2**

**Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of

2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Notice

2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

**Notice, Written**

2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1

**Notice of Claims**

3.7.4, 4.5, 10.2.8, **15.1.2**, 15.4

Notice of Testing and Inspections

13.5.1, 13.5.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.2.2, 9.6.6, 9.8, 11.3.1.5

Orders, Written

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

**OWNER**

**2**

**Owner**, Definition of

**2.1.1**

**Owner, Information and Services Required of the**

2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority

1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3.1, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1.4

**Owner's Liability Insurance**

**11.2**

**Owner's Loss of Use Insurance**

**11.3.3**

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**

2.4, 14.2.2

**Owner's Right to Clean Up**

**6.3**

**Owner's Right to Perform Construction and to Award Separate Contracts**

**6.1**

**Owner's Right to Stop the Work**

**2.3**

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2

**Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17.1, 4.2.12, 5.3.1

**Partial Occupancy or Use**

9.6.6, **9.9**, 11.3.1.5

**Patching, Cutting and**

**3.14**, 6.2.5

Patents

3.17

**Payment, Applications for**

4.2.5, 7.3.9, 9.2.1, **9.3**, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

Init.

**Payment Bond, Performance Bond and**  
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, 11.4

**Payments, Progress**  
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**PAYMENTS AND COMPLETION**  
9

Payments to Subcontractors  
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8,  
14.2.1.2

PCB  
10.3.1

**Performance Bond and Payment Bond**  
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, 11.4

**Permits, Fees, Notices and Compliance with Laws**  
2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF**  
10

Polychlorinated Biphenyl  
10.3.1

**Product Data, Definition of**  
3.12.2

**Product Data and Samples, Shop Drawings**  
3.11, 3.12, 4.2.7

**Progress and Completion**  
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

**Progress Payments**  
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**Project, Definition of the**  
1.1.4

Project Representatives  
4.2.10

**Property Insurance**  
10.2.5, 11.3

**PROTECTION OF PERSONS AND PROPERTY**  
10

Regulations and Laws  
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,  
15.2.8, 15.4

Rejection of Work  
3.5.1, 4.2.6, 12.2.1

Releases and Waivers of Liens  
9.10.2

Representations  
3.2.1, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1,  
9.8.2, 9.10.1

Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1,  
5.1.2, 13.2.1

Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field Conditions by Contractor**  
3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor  
3.12

**Rights and Remedies**  
1.1.2, 2.3, 2.4, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4,  
6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2,  
12.2.4, 13.4, 14, 15.4

**Royalties, Patents and Copyrights**  
3.17

Rules and Notices for Arbitration  
15.4.1

**Safety of Persons and Property**  
10.2, 10.4

**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4

**Samples, Definition of**  
3.12.3

**Samples, Shop Drawings, Product Data and**  
3.11, 3.12, 4.2.7

**Samples at the Site, Documents and**  
3.11

**Schedule of Values**  
9.2, 9.3.1

Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7,  
12.1.2

**Shop Drawings, Definition of**  
3.12.1

**Shop Drawings, Product Data and Samples**  
3.11, 3.12, 4.2.7

**Site, Use of**  
3.13, 6.1.1, 6.2.1

Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing  
4.2.6, 12.2.1, 13.5

**Specifications, Definition of the**  
1.1.6

**Specifications, The**  
1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations  
13.7, 15.4.1.1

Stopping the Work  
2.3, 9.7, 10.3, 14.1

Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

**Subcontractor, Definition of**  
5.1.1

**SUBCONTRACTORS**  
5

Init.

Subcontractors, Work by  
 1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations**  
 5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1

Submittals  
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule  
 3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**  
 6.1.1, 11.4.5, 11.3.7

**Substantial Completion**  
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

**Substantial Completion, Definition of**  
 9.8.1

Substitution of Subcontractors  
 5.2.3, 5.2.4

Substitution of Architect  
 4.1.3

Substitutions of Materials  
 3.4.2, 3.5.1, 7.3.8

**Sub-subcontractor, Definition of**  
 5.1.2

Subsurface Conditions  
 3.7.4

**Successors and Assigns**  
 13.2

**Superintendent**  
 3.9, 10.2.6

**Supervision and Construction Procedures**  
 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety  
 5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of  
 9.10.2, 9.10.3

Surveys  
 2.2.3

**Suspension by the Owner for Convenience**  
 14.3

Suspension of the Work  
 5.4.2, 14.3

Suspension or Termination of the Contract  
 5.4.1.1, 11.4.9, 14

**Taxes**  
 3.6, 3.8.2.1, 7.3.7.4

**Termination by the Contractor**  
 14.1, 15.1.6

**Termination by the Owner for Cause**  
 5.4.1.1, 14.2, 15.1.6

**Termination by the Owner for Convenience**  
 14.4

Termination of the Architect  
 4.1.3

Termination of the Contractor  
 14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT**  
 14

**Tests and Inspections**  
 3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5

**TIME**  
 8

**Time, Delays and Extensions of**  
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Time Limits  
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

**Time Limits on Claims**  
 3.7.4, 10.2.8, 13.7, 15.1.2

Title to Work  
 9.3.2, 9.3.3

**Transmission of Data in Digital Form**  
 1.6

**UNCOVERING AND CORRECTION OF WORK**  
 12

**Uncovering of Work**  
 12.1

Unforeseen Conditions, Concealed or Unknown  
 3.7.4, 8.3.1, 10.3

Unit Prices  
 7.3.3.2, 7.3.4

Use of Documents  
 1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

**Use of Site**  
 3.13, 6.1.1, 6.2.1

**Values, Schedule of**  
 9.2, 9.3.1

Waiver of Claims by the Architect  
 13.4.2

Waiver of Claims by the Contractor  
 9.10.5, 11.4.7, 13.4.2, 15.1.6

Waiver of Claims by the Owner  
 9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages  
 14.2.4, 15.1.6

Waiver of Liens  
 9.10.2, 9.10.4

**Waivers of Subrogation**  
 6.1.1, 11.4.5, 11.3.7

**Warranty**  
 3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1

Weather Delays  
 15.1.5.2

Init.

**Work, Definition of**

**1.1.3**

**Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

**Written Interpretations**

4.2.11, 4.2.12

**Written Notice**

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

**Written Orders**

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

Init.



**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1 BASIC DEFINITIONS**

**§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

**§ 1.1.2 THE CONTRACT**

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

**§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 THE PROJECT**

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

**§ 1.1.5 THE DRAWINGS**

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

**§ 1.1.6 THE SPECIFICATIONS**

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

**§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

**§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

**§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

Init.

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

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

Init.

**§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

**§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

Init.

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

### § 3.5 WARRANTY

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

### § 3.6 TAXES

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

### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

Init.

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness so as not to delay the performance of the Work.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals.

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

Init.

**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

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

**§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

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

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

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

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

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

Init.

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

### § 3.13 USE OF SITE

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

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

### § 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 ACCESS TO WORK

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

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

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**§ 3.18 INDEMNIFICATION**

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

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

**ARTICLE 4 ARCHITECT**

**§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

Init.

**§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

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

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

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

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness so as not to delay the performance of the Work while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as not to delay the performance of the Work.

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

Init.

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

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

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

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

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

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the

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Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

**§ 6.2 MUTUAL RESPONSIBILITY**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

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the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

**§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

**ARTICLE 7 CHANGES IN THE WORK**

**§ 7.1 GENERAL**

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

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

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

**§ 7.2 CHANGE ORDERS**

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

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

**§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

Init.

.4 As provided in Section 7.3.7.

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

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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**ARTICLE 8 TIME**

**§ 8.1 DEFINITIONS**

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

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

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

**§ 8.2 PROGRESS AND COMPLETION**

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

**§ 8.3 DELAYS AND EXTENSIONS OF TIME**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**ARTICLE 9 PAYMENTS AND COMPLETION**

**§ 9.1 CONTRACT SUM**

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

**§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 9.3 APPLICATIONS FOR PAYMENT**

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

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

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

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor or the claim is covered by insurance;

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- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding the foregoing provisions of this Section 9.6.2 regarding the timing of payment to a Subcontractor, to the extent permitted by the terms of the Subcontract the Contractor may withhold additional retainage or payments from a Subcontractor as necessary to insure its compliance with the terms and conditions of the Subcontract. Nothing in this Section shall be deemed to limit the authority of the Contractor to pay a Subcontractor or supplier with joint checks to any Subcontractor and its lower tier subcontractor or material or equipment supplier.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

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

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### § 9.7 FAILURE OF PAYMENT

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

### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

#### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

##### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

##### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

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

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, or if the Contractor encounters Hazardous Substances regulated by applicable federal, state or local law or regulations, not introduced to the site by the Contractor, its agents or its Subcontractors, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the

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Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. Notwithstanding any other provision of the Agreement, the Contractor shall not be required pursuant to Article 7 to perform without consent any Work related to Hazardous Substances, which consent may be withheld in Contractor's sole discretion.

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

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

**§ 10.3.7** If the Project includes renovation or demolition, the Owner shall require that an asbestos and lead survey be performed on the facility to be renovated or demolished in accordance with the applicable rules and regulations of the Environmental Protection Agency and the State of Vermont and other regulations pertaining to such work. The Owner shall make such survey results available to the Contractor prior to commencement of construction. If asbestos or lead is found to be present in any of the pre-existing building material that will be affected by the demolition or renovation, prior to construction commencement the Owner shall be solely responsible for removing, encapsulating, or otherwise remediating the asbestos- or lead-containing materials in a lawful manner.

#### **§ 10.4 EMERGENCIES**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

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- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.2 OWNER'S LIABILITY INSURANCE**

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

**§ 11.3 PROPERTY INSURANCE**

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

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testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Contractor does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Contractor shall so inform the Owner in writing prior to commencement of the Work. The Owner may then effect insurance that will protect the interests of the Owner, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Contractor. If the Owner is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above, without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs properly attributable thereto.

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

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

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

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### § 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.3. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration, or is threatened or otherwise may occur, whichever comes first.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate

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contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Owner shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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

§ 11.3.10 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Contractor as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

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**§ 12.2 CORRECTION OF WORK**

**§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

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

**§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

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

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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

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

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

**§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

**§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the

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other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice, or if delivered by fax, provided that a copy of the notice is promptly sent by registered or certified mail. Written notice shall also be deemed to have been duly served if and when actually received by an officer or the Project Manager or Superintendent of the Contractor or an officer of the Owner, regardless of the manner of delivery. Notice given solely by email shall be deemed "actually received" only if receipt is shown by clear and convincing evidence, such as acknowledgment of receipt of the email notice, written response to the email notice or inclusion of the email notice in a written communication from the party receiving the notice. Email may constitute writing for purposes of this Section.

### § 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

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

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

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

**§ 13.6 INTEREST**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

**§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**§ 14.1 TERMINATION BY THE CONTRACTOR**

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

**§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

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

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**§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

**§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

**§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 NEGOTIATION OF CLAIMS; INITIAL DECISION**

In the event of any dispute, claim, question or disagreement arising out of or relating to this Agreement or the breach thereof prior to Final Completion (other than those covered by insurance), the parties agree to use their best efforts to settle such dispute, claim, question or disagreement. To this effect, upon written demand by either party the parties agree to convene a meeting of senior management with decision-making authority within fourteen (14) days after such demand (or such other time as may be mutually agreed) and to consult and negotiate with each other in good faith and recognizing their mutual interests, in an attempt to reach a just and equitable solution satisfactory to both parties. Such an attempt by senior management shall be a condition precedent to referral to an Initial Decision Maker which is not the Architect under Section 15.2.1, or to a mediation pursuant to Section 15.3.1, if the Initial Decision Maker is the Architect. Nothing in this Agreement shall restrict the parties from settling a dispute by negotiation at any time during the dispute resolution process.

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been

rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

### § 15.3 MEDIATION

§ 15.3.1 If not settled by negotiation, claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. The parties shall attempt to appoint jointly a mutually acceptable mediator who shall administer the mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and, if the parties are unable to agree on a mediator, filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section

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15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, unless such agreements provide a different mechanism for resolution of disputes thereunder. The parties consent to the inclusion in any mediation (by consolidation, joinder, or any other manner) of third parties substantially involved in a question of law or fact common to a dispute between the parties under this Contract. This Section 15.3 shall survive termination of this Contract.

#### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. Unless otherwise agreed by the parties, all arbitration hearings shall be held within a fifty (50) mile radius of the Project site.

§ 15.4.2 The arbitrator or arbitrators shall provide a reasoned explanation of the award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

This Section 15.4 shall survive termination of this Contract.

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 **AIA<sup>®</sup> Document A201<sup>™</sup> – 2007**

***General Conditions of the Contract for Construction***

**ADDITIONS AND DELETIONS:**

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

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

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## Additions and Deletions Report for AIA® Document A201™ – 2007

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### PAGE 1

#### Jay Peak Recreation Center, Jay VT

This project consists of a 14,725 sq. ft. 2-story metal panel building, located east of the Stateside Hotel and Baseldodge ("Hotel 3"). The building will contain a movie theater with seating of approximately 140, a climbing center, ropes course, an arcade, snack bar and office spaces.

...

*(Name, legal status and address)*

<u>Jay Peak, Inc.</u>	<u>Jay Peak Hotel Suites Stateside, L.P.</u>
<u>830 Jay Peak Rd.</u>	<u>830 Jay Peak Rd.</u>
<u>Jay, Vermont 05859-9621</u>	<u>Jay, Vermont 05859-9621</u>

...

*(Name, legal status and address)*

Scott + Partners  
20 Main Street  
Essex Junction, VT 05452

### PAGE 3

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3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, ~~13.7,~~13.7.1, 14.1, 15.2

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1.1.1, ~~3.11.1,~~11.1

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4.2.5, 7.3.9, 9.2, **9.3,** 9.4, 9.5.1, 9.6.3, ~~9.7,~~9.7.1, 9.10, 11.1.3

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8.3.1, 11.3.10, ~~13.1,~~13.1.1, 15.3.2, **15.4**

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~~2.4, 2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 6.3.1, 7.1.2, 7.3.7, 7.4, 9.2, 9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1~~

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2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, ~~7.4, 7.4.1, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2~~

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~~2.4, 2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4~~

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~~2.4, 3.1.3, 3.5, 2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7~~

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~~3.5, 3.5.1, 4.2.6, 12.1.2, 12.2.1~~

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3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, ~~6.3, 6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3~~

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1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, ~~3.5, 3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2~~

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~~9.7, 9.7.1, 11.3.9, 11.3.10, 13.1, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1~~

**PAGE 4**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, ~~9.7, 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3~~

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1.1.1, ~~2.4, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3~~

...

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9

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3.2.4, 6.1.1, ~~6.3, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4~~

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3.2.4, ~~3.7.4, 6.1.1, 3.7.46.1.1, 8.3.2, 10.3.2, 15.1.5~~

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~~4.6, 1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3~~

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**Contract Documents, The**

**1.1.1**

Contract Documents, Copies Furnished and Use of

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3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, ~~9.7, 9.7.1~~, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

**PAGE 5**

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, ~~14.2.1, 14.2.1.1~~,

...

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, ~~3.5, 3.5.1~~, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

...

3.2.1, 3.2.2, ~~3.5, 3.5.1~~, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

...

3.3.2, 3.18, ~~5.3, 5.3.1~~, 6.1.3, 6.2, 9.5.1, 10.2.8

...

~~2.4, 2.4.1~~, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

...

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, ~~10.4, 10.4.1~~, 11.3.1, 12.2.4

...

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, ~~9.2, 9.2.1~~, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

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~~2.3, 2.4, 3.5, 2.3.1, 2.4.1, 3.5.1~~, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

**Defective Work, Definition of**

**3.5.1**

1.1, 2.1.1, 3.1.1, ~~3.5, 3.5.1~~, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

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~~3.2, 3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5~~

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~~6.3, 6.3.1, 7.3.9, 15.1, 15.2~~

PAGE 6

1.1.3, 1.1.6, 3.4, ~~3.5, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2~~

...

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, ~~3.5, 3.5.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3~~

...

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, ~~7.4, 9.5.1, 9.7, 10.3.2, 10.4, 7.4.1, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5~~

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4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, ~~12.3, 12.3.1, 14.2.4, 14.4.3~~

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~~3.17, 3.17.1, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7~~

...

**10.2.8, 10.4.10.4.1**

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~~9.3.29.3.2, 11.4.1.4~~

...

Insurance Companies, Consent to Partial Occupancy

9.9.1, 11.4.1.5

Insurance Companies, Settlement with

9.9.11.4.10

...

1.1.3, 1.1.6, **3.4, 3.5, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2**

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1.5, 3.2.3, 3.6, 3.7, 3.12.10, ~~3.13, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6, 13.6.1, 14, 15.2.8, 15.4~~

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~~2.3, 3.2.2, 3.5, 3.12.10, 3.17, 2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2~~

...

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, ~~5.3, 5.3.1~~, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, ~~9.2, 9.2.1~~, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, ~~9.7, 9.7.1~~, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

**PAGE 7**

1.1.3, 1.1.6, 1.5.1, 3.4.1, ~~3.5, 3.5.1~~, 3.8.2, 3.8.3, 3.12, ~~3.13, 3.13.1~~, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

...

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, ~~9.7, 9.7.1~~, 10.3.2, 11.3.1

...

~~2.3, 2.4, 3.5, 2.3.1, 2.4.1, 3.5.1~~, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

...

2.2.1, ~~2.3, 2.4, 2.3.1, 2.4.1~~, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, ~~9.7, 9.7.1~~, 9.10, 10.2.2, 11.1.3, ~~11.4.6~~, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

...

~~2.3, 2.4, 2.3.1, 2.4.1~~, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, ~~9.7, 9.7.1~~, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1

...

3.7.4, ~~4.5~~, 10.2.8, **15.1.2**, 15.4

...

1.5, 2.1.1, ~~2.3, 2.4, 2.3.1, 2.4.1~~, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, ~~6.3, 6.3.1~~, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, ~~12.3, 12.3.1~~, 13.2.2, 14.3, 14.4, 15.2.7

...

**Owner's Loss of Use Insurance**

**11.3.3**

**Owner's Relationship with Subcontractors**

...

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, ~~3.11, 3.17~~, ~~4.2.12, 5.33~~, 11.1, 3.17.1, 4.2.12, 5.3.1

...

4.2.5, 7.3.9, ~~9.2, 9.2.1~~, **9.3**, 9.4, 9.5, 9.6.3, ~~9.7, 9.7.1~~, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

...

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, ~~9.7, 9.7.1~~, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

...

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, ~~12.3, 11.4.5~~, 12.3.1, 13.7, 14.2.4, 14.4.3

PAGE 8

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, 11.4

...

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2

...

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, 11.4

...

**Project, Definition of the**

...

~~3.5~~, 3.5.1, 4.2.6, 12.2.1

...

3.2.1, ~~3.5~~, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

...

3.3.2, 3.18, 4.2.3, ~~5.3~~, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

...

1.1.2, 2.3, 2.4, ~~3.5~~, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4

...

3.3.1, 4.2.2, 4.2.7, ~~5.3~~, 5.3.1, **10.1**, 10.2, 10.4

...

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7, 12.1.2

...

**Specifications, Definition of the**

...

~~Specifications~~ **Specifications, The**

...

6.2.1, 9.3.2, 10.2.1.2, ~~10.2.4~~ 10.2.4, 11.4.1.4

PAGE 9

**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1

...

6.1.1, 11.4.5, 11.3.7

...

3.4.2, ~~3.5~~, 3.5.1, 7.3.8

...

5.4.1.1, 11.4.9, 14

...

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, ~~11.4.1~~, 11.4.1.1, 12.2.1, **13.5**

...

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, ~~7.4~~, 7.4.1, **8.3**, 9.5.1, ~~9.7~~, ~~10.3.2~~, ~~10.4~~, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

...

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

...

9.10.5, 11.4.7, 13.4.2, 15.1.6

...

9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

...

6.1.1, 11.4.5, 11.3.7

...

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, ~~13.7~~13.7.1

**PAGE 10**

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

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1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

**PAGE 15**

**§ 3.7**

**PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the ~~Contractor~~ Owner shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for

proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

PAGE 16

- .1 ~~Allowances~~allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- ...
- .3 ~~Whenever~~whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable ~~promptness~~promptness so as not to delay the performance of the Work.

...

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

PAGE 19

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

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate ~~for~~For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

PAGE 20

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness so as not to delay the performance of the Work while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which



remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

...

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness~~ promptness so as not to delay the performance of the Work.

PAGE 21

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

PAGE 25

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

PAGE 26

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

...

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

PAGE 27

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding the foregoing provisions of this Section 9.6.2 regarding the timing of payment to a

Subcontractor, to the extent permitted by the terms of the Subcontract the Contractor may withhold additional retainage or payments from a Subcontractor as necessary to insure its compliance with the terms and conditions of the Subcontract. Nothing in this Section shall be deemed to limit the authority of the Contractor to pay a Subcontractor or supplier with joint checks to any Subcontractor and its lower tier subcontractor or material or equipment supplier.

PAGE 28

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

PAGE 29

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

PAGE 30

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, or if the Contractor encounters Hazardous Substances regulated by applicable federal, state or local law or regulations, not introduced to the site by the Contractor, its agents or its Subcontractors, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. Notwithstanding any other provision of the Agreement, the

Contractor shall not be required pursuant to Article 7 to perform without consent any Work related to Hazardous Substances, which consent may be withheld in Contractor's sole discretion.

PAGE 31

§ 10.3.7 If the Project includes renovation or demolition, the Owner shall require that an asbestos and lead survey be performed on the facility to be renovated or demolished in accordance with the applicable rules and regulations of the Environmental Protection Agency and the State of Vermont and other regulations pertaining to such work. The Owner shall make such survey results available to the Contractor prior to commencement of construction. If asbestos or lead is found to be present in any of the pre-existing building material that will be affected by the demolition or renovation, prior to construction commencement the Owner shall be solely responsible for removing, encapsulating, or otherwise remediating the asbestos- or lead-containing materials in a lawful manner.

PAGE 32

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants-Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

...

§ 11.3.1 Unless otherwise provided, the Owner-Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

PAGE 33

§ 11.3.1.2 If the Owner-Contractor does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner-Contractor shall so inform the Contractor-Owner in writing prior to commencement of the Work. The Contractor-Owner may then effect insurance that will protect the interests of the Contractor, Owner, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner-Contractor. If the Contractor-Owner is damaged by the failure or neglect of the Owner-Contractor to purchase or maintain insurance as described above, without so

notifying the ~~Contractor~~ Owner in writing, then the ~~Owner~~ Contractor shall bear all reasonable costs properly attributable thereto.

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

...

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

...

§ 11.3.6 Before an exposure to loss may occur, the ~~Owner~~ Contractor shall file with the ~~Contractor~~ Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. ~~Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~ The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.3. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration, or is threatened or otherwise may occur, whichever comes first.

...

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the ~~Owner~~ Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the ~~Owner's~~ Contractor's property insurance shall be adjusted by the ~~Owner~~ Contractor as fiduciary and made payable to the ~~Owner~~ Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The ~~Contractor~~ Owner shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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

§ 11.3.10 The ~~Owner~~ Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the ~~Owner's~~ Contractor's

exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the ~~Owner-Contractor~~ as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

**PAGE 36**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice, or if delivered by fax, provided that a copy of the notice is promptly sent by registered or certified mail. Written notice shall also be deemed to have been duly served if and when actually received by an officer or the Project Manager or Superintendent of the Contractor or an officer of the Owner, regardless of the manner of delivery. Notice given solely by email shall be deemed "actually received" only if receipt is shown by clear and convincing evidence, such as acknowledgment of receipt of the email notice, written response to the email notice or inclusion of the email notice in a written communication from the party receiving the notice. Email may constitute writing for purposes of this Section.

**PAGE 39**

**§ 15.2 NEGOTIATION OF CLAIMS; INITIAL DECISION**

In the event of any dispute, claim, question or disagreement arising out of or relating to this Agreement or the breach thereof prior to Final Completion (other than those covered by insurance), the parties agree to use their best efforts to settle such dispute, claim, question or disagreement. To this effect, upon written demand by either party the parties agree to convene a meeting of senior management with decision-making authority within fourteen (14) days after such demand (or such other time as may be mutually agreed) and to consult and negotiate with each other in good faith and recognizing their mutual interests, in an attempt to reach a just and equitable solution satisfactory to both parties. Such an attempt by senior management shall be a condition precedent to referral to an Initial Decision Maker which is not the Architect under Section 15.2.1, or to a mediation pursuant to Section 15.3.1, if the Initial Decision Maker is the Architect. Nothing in this Agreement shall restrict the parties from settling a dispute by negotiation at any time during the dispute resolution process.

**PAGE 40**

**§ 15.3.1 Claims.** ~~If not settled by negotiation,~~ claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by ~~mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement,~~ mediation. The parties shall attempt to appoint jointly a mutually acceptable mediator who shall administer the mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and and, if the parties are unable to agree on a mediator, filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction ~~thereof;~~ thereof, unless such agreements provide a different mechanism for resolution of disputes thereunder. The parties consent to the inclusion in any mediation (by consolidation, joinder, or any other manner) of third parties substantially involved in a question

of law or fact common to a dispute between the parties under this Contract. This Section 15.3 shall survive termination of this Contract.

PAGE 41

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. Unless otherwise agreed by the parties, all arbitration hearings shall be held within a fifty (50) mile radius of the Project site.

§ 15.4.2 The arbitrator or arbitrators shall provide a reasoned explanation of the award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

...

This Section 15.4 shall survive termination of this Contract.

### **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:02:04 on 05/16/2017 under Order No. 5521485371 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009 Exhibit A

## Guaranteed Maximum Price Amendment

**for the following PROJECT:**

*(Name and address or location)*

Jay Peak Recreation Center, Jay VT

This project consists of a 14,725 sq. ft. 2-story metal panel building, located east of the Stateside Hotel and Baseloage ("Hotel 3"). The building will contain a movie theater with seating of approximately 140, a climbing center, ropes course, an arcade, snack bar and office spaces.

**THE OWNER:**

*(Name, legal status and address)*

Jay Peak, Inc.  
830 Jay Peak Rd.  
Jay, Vermont 05859-9621

Jay Peak Hotel Suites Stateside L.P.  
830 Jay Peak Rd.  
Jay, Vermont 05859-9621

**THE CONSTRUCTION MANAGER:**

*(Name, legal status and address)*

D.E.W. Construction Corp.  
227 Blair Park Road, Suite 130  
Williston, VT 05495

**ARTICLE A.1**

**§ A.1.1 Guaranteed Maximum Price**

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

**§ A.1.1.1** The Contract Sum is guaranteed by the Construction Manager not to exceed Four Million One Hundred Sixty-Three Thousand Three Hundred Sixty-One Dollars (\$4,163,361) subject to additions and deductions by Change Order as provided in the Contract Documents.

**§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.  
*(Provide below or reference an attachment.)*

Refer to Exhibit E – GMP Narrative, dated May 8, 2017, 18 pages.

**§ A.1.1.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this*

**ADDITIONS AND DELETIONS:**

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

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

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

Init.



*Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

Refer to Exhibit E - GMP Narrative, dated May 8, 2017, 18 pages.

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

Refer to Exhibit E - GMP Narrative, dated May 8, 2017, 18 pages.

*(Table deleted)*

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

Refer to Exhibit E - GMP Narrative, dated May 8, 2017, 18 pages.

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
A201	General Conditions of the Contract for Construction		

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:  
*(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)*

See Exhibit D - Current Drawing Log, dated September 26, 2016, 9 pages.

*(Table deleted)*

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:  
*(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)*

See Exhibit D - Current Drawing Log, dated September 26, 2016, 9 pages.

*(Table deleted)*

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:  
*(List any other documents or information here, or refer to an exhibit attached to this Agreement.)*

	Standard Form of Agreement between Owner and Construction Manager, AIA Document A133, as modified by the parties, dated effective _____.
Exhibit A	GMP Amendment
Exhibit B	General Conditions of the Contract for Construction, AIA Document A201, as modified by the parties.
Exhibit C	DEW Billable Rates.
Exhibit D	Current Drawing Log, dated September 26, 2016, 9 pages.
Exhibit E	GMP Narrative, dated May 8, 2017, 18 pages.

**ARTICLE A.2**

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment: Substantial Completion Date shall be December 15, 2017, this date is based on a commencement date of \_\_\_\_\_ for work on-site.

**Jay Peak, Inc.**

**DEW CONSTRUCTION CORP.**

\_\_\_\_\_  
**OWNER (Signature)**

\_\_\_\_\_  
**CONSTRUCTION MANAGER (Signature)**

Michael Goldberg, Duly Authorized Agent  
*(Printed name and title)*

Donald E. Wells, President  
*(Printed name and title)*

\_\_\_\_\_  
*(Date Signed)*

\_\_\_\_\_  
*(Date Signed)*

**Jay Peak Hotel Suites Stateside L.P.**

**BY: Jay Peak GP Services Stateside, Inc. General Partner**

\_\_\_\_\_  
**OWNER (Signature)**

\_\_\_\_\_  
**OWNER (Signature)**

Michael Goldberg, Duly Authorized Agent  
*(Printed name and title)*

*(Printed name and title)*

\_\_\_\_\_  
*(Date Signed)*

\_\_\_\_\_  
*(Date Signed)*

Init.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:00:43 on 05/16/2017 under Order No. 5521485371 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009 Exhibit A, Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

## Additions and Deletions Report for AIA® Document A133™ – 2009 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:00:43 on 05/16/2017.

### PAGE 1

#### Jay Peak Recreation Center, Jay VT

This project consists of a 14,725 sq. ft. 2-story metal panel building, located east of the Stateside Hotel and Baseldodge ("Hotel 3"). The building will contain a movie theater with seating of approximately 140, a climbing center, ropes course, an arcade, snack bar and office spaces.

...

<u>Jay Peak, Inc.</u>	<u>Jay Peak Hotel Suites Stateside L.P.</u>
<u>830 Jay Peak Rd.</u>	<u>830 Jay Peak Rd.</u>
<u>Jay, Vermont 05859-9621</u>	<u>Jay, Vermont 05859-9621</u>

...

D.E.W. Construction Corp.  
227 Blair Park Road, Suite 130  
Williston, VT 05495

...

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (~~\$—~~), Four Million One Hundred Sixty-Three Thousand Three Hundred Sixty-One Dollars (\$4,163,361) subject to additions and deductions by Change Order as provided in the Contract Documents.

...

Refer to Exhibit E – GMP Narrative, dated May 8, 2017, 18 pages.

### PAGE 2

Refer to Exhibit E - GMP Narrative, dated May 8, 2017, 18 pages.

...

Refer to Exhibit E - GMP Narrative, dated May 8, 2017, 18 pages.

<u>Item</u>	<u>Price (\$0.00)</u>
-------------	-----------------------

...

Refer to Exhibit E - GMP Narrative, dated May 8, 2017, 18 pages.

...

<u>A201</u>	<u>General Conditions of the Contract for Construction</u>
-------------	--

...

See Exhibit D - Current Drawing Log, dated September 26, 2016, 9 pages.

Section	Title	Date	Pages
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...

See Exhibit D - Current Drawing Log, dated September 26, 2016, 9 pages.

Number	Title	Date
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...

	<u>Standard Form of Agreement between Owner and Construction Manager, AIA Document A133, as modified by the parties, dated effective _____.</u>	
<u>Exhibit A</u>	<u>GMP Amendment</u>	
<u>Exhibit B</u>	<u>General Conditions of the Contract for Construction, AIA Document A201, as modified by the parties.</u>	
<u>Exhibit C</u>	<u>DEW Billable Rates.</u>	
<u>Exhibit D</u>	<u>Current Drawing Log, dated September 26, 2016, 9 pages.</u>	
<u>Exhibit E</u>	<u>GMP Narrative, dated May 8, 2017, 18 pages.</u>	

PAGE 3

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment: Substantial Completion Date shall be December 15, 2017, this date is based on a commencement date of \_\_\_\_\_ for work on-site.

Jay Peak, Inc.

DEW CONSTRUCTION CORP.

...

Michael Goldberg, Duly Authorized Agent  
*(Printed name and title)*

Donald E. Wells, President  
*(Printed name and title)*

*(Date Signed)*

*(Date Signed)*

Jay Peak Hotel Suites Stateside L.P.

BY: Jay Peak GP Services Stateside, Inc. General Partner

*(Date Signed)*

*(Date Signed)*

OWNER (Signature)

OWNER (Signature)

Michael Goldberg, Duly Authorized Agent

...



Exhibit C

DEW Construction Corp.  
277 Blair Park Road  
Suite 130  
Williston, VT 05495

p 802.872.0505  
f 802.872.0707

**BILLING RATES**

Effective through December 31, 2017

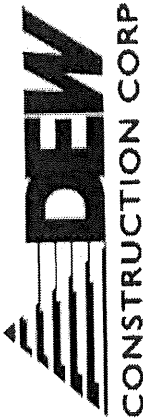
<b>Labor Rates</b>	<b>S.T.</b>	<b>O.T.</b>
VP of Preconstruction	\$120.00/hr	N/A
Project Manager	\$90.00/hr	N/A
Assistant Project Manager	\$70.00/hr	N/A
Project Engineer	\$60.00/hr	N/A
Office Engineer	\$50.00/hr	N/A
Virtual Construction Engineer	\$65.00/hr	N/A
Senior Estimator	\$120.00/hr	N/A
Estimator	\$85.00/hr	N/A
Scheduler	\$75.00/hr	N/A
Safety Director	\$80.00/hr	N/A
Senior Superintendent	\$120.00/hr	N/A
Superintendent	\$90.00/hr	N/A
Assistant Superintendent	\$70.00/hr	N/A
Foreman	\$65.00/hr	\$90.00/hr
Finish Carpenter	\$60.00/hr	\$75.00/hr
Carpenter	\$55.00/hr	\$67.50/hr
Carpenter Apprentice	\$50.00/hr	\$60.00/hr
Laborer	\$40.00/hr	\$52.50/hr
General Counsel	\$250.00/hr	N/A
Legal Admin	\$75.00/hr	N/A
Senior Project Administrator	\$60.00/hr	\$90.00/hr
Project Administrator	\$50.00/hr	\$75.00/hr
Accounts Payable	\$50.00/hr	\$75.00/hr
Payroll	\$50.00/hr	\$75.00/hr
Contract Administrator	\$56.00/hr	N/A

Overtime (O.T.) defined as over eight (8) hours per day, all Saturdays, Sundays and holidays.

**\*\*The above rate format does not include Contractor owned vehicles, fuel, IT, equipment, warehouse and warranty, building permits, builders risk insurance, general liability insurance, default insurance or payment & performance bonds. If applicable these charges will be billed at the rates shown above or in the GMP and considered a cost of work.**



Exhibit D



Current Document Log

Section VIII.4

DEW Construction Corp.

Jay Peak Recreation Center  
 Jay Peak Resort  
 Jay VT 05859

Project # 13-4859.02  
 Tel: Fax:

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
<b>Drawing</b>								
<b>Architectural</b>								
A0.0	1	Cover Sheet	3/3/2014	Revision 1	100	Bid	Bid Set	
A1.1	1	Code Summary	3/3/2014	Revision 1	100	Bid	Bid Set	
A11.1	2	Door Schedule, Window & Partition Types	3/21/2014	Addendum 01	100	Bid	Bid Set	
A2.1	1	Level 1 + Mezzanine Floor Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
A2.1A	1	Severy Enlarged Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
A2.2	1	Level 2 Floor Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
A2.2A	1	Concession Enlarged Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
A2.3	1	Level 1 + Mezzanine Finish Plans	3/3/2014	Revision 1	100	Bid	Bid Set	
A2.4	1	Level 2 Finish Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
A2.5	2	Roof Plan	3/21/2014	Addendum 01	100	Bid	Bid Set	
A3.1	1	Level 1 + Mezzanine Reflected Ceiling Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
A3.2	2	Level 2 Reflected Ceiling Plan	3/21/2014	Addendum 01	100	Bid	Bid Set	
A4.1	2	Exterior Elevations	3/21/2014	Addendum 01	100	Bid	Bid Set	
A4.2	2	Exterior Elevations	3/21/2014	Addendum 01	100	Bid	Bid Set	
A5.1	2	Building Sections	3/21/2014	Addendum 01	100	Bid	Bid Set	
A5.2	2	Building Sections	3/21/2014	Addendum 01	100	Bid	Bid Set	
A6.1	1	Wall Sections	3/3/2014	Revision 1	100	Bid	Bid Set	
A6.2	2	Wall Sections	3/21/2014	Addendum 01	100	Bid	Bid Set	
A7.1	1	Exterior Details	3/3/2014	Revision 1	100	Bid	Bid Set	
A7.2	2	Exterior Details	3/21/2014	Addendum 01	100	Bid	Bid Set	
A7.3	2	Exterior Details	3/21/2014	Addendum 01	100	Bid	Bid Set	

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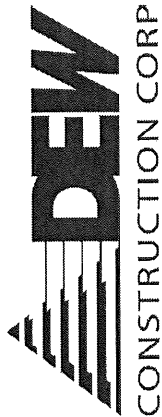


Exhibit D

Current Document Log  
Section VIII.4

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
A7.4	1	Exterior Plan Details	3/3/2014	Revision 1	100	Bid	Bid Set	
A7.5	1	Door & Window Details	3/3/2014	Revision 1	100	Bid	Bid Set	
A8.1	2	Interior Elevations	3/21/2014	Addendum 01	100	Bid	Bid Set	
A8.2	1	Interior Elevations	3/3/2014	Revision 1	100	Bid	Bid Set	
A8.3	1	Interior Elevations	3/3/2014	Revision 1	100	Bid	Bid Set	
A9.1	1	Interior Details	3/3/2014	Revision 1	100	Bid	Bid Set	
A9.2	1	Casework Details	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Civil</b>								
C1-01	1	Legend and Notes	3/3/2014	Revision 1	100	Bid	Bid Set	
C2-01	2	Site Plan	3/3/2015	Revision 2	100	Bid	Bid Set	
C4-01	1	Pre-Post Development Watershed	3/3/2014	Revision 1	100	Bid	Bid Set	
C5-01	1	EPSC Site Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
C5-02	1	EPSC Phase Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
C8-01	1	Site Details	3/3/2014	Revision 1	100	Bid	Bid Set	
C8-02	2	Site Details	3/3/2015	Revision 2	100	Bid	Bid Set	
C8-03	2	Site Details	3/3/2015	Revision 2	100	Bid	Bid Set	
C8-04	1	Erosion Control Details	3/3/2014	Revision 1	100	Bid	Bid Set	
C8-05	1	Erosion Control Details	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Electrical</b>								
E1	1	Electrical Site Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
E2	1	Electrical Lighting Plans	3/3/2014	Revision 1	100	Bid	Bid Set	
E3	3	Electrical Power & Signal Plans	5/19/2015	RFI Revision	100	Construction	Post Bid	
E4	2	Electrical Roof Plan	5/19/2015	RFI Revision	100	Construction	Post Bid	
E5	1	Electrical Equipment Schedule	3/3/2014	Revision 1	100	Bid	Bid Set	
E6	2	Electrical Panel Schedule	3/26/2015	Addendum 01	100	Bid	Bid Set	
<b>Fire Protection</b>								
F1	1	Fire Protection Mezzanine and	3/3/2014	Revision 1	100	Bid	Bid Set	

Page 2

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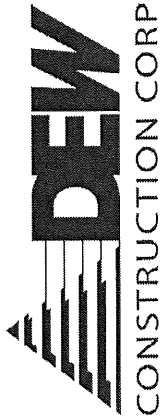


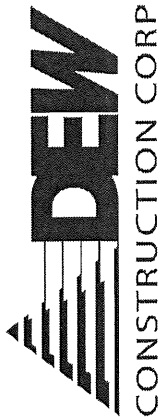
Exhibit D

Current Document Log  
Section VIII.4

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
F2	1	Level 1 Fire Protection Level 2	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Mechanical</b>								
M1	1	Mechanical Level 1	3/3/2014	Revision 1	100	Bid	Bid Set	
M2	1	Mechanical Level 2	3/3/2014	Revision 1	100	Bid	Bid Set	
M3	1	Mechanical Roof Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
M4	1	Mechanical Details	3/3/2014	Revision 1	100	Bid	Bid Set	
M5	1	Mechanical Schedules	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Plumbing</b>								
P1	3	Plumbing Mezzanine and Level 1	5/8/2015	RFI Revision	100	Construction	Post Bid	
P2	2	Plumbing Level 2	3/26/2015	Addendum 01	100	Bid	Bid Set	
P3	1	Plumbing Roof Plan	3/3/2014	Revision 1	100	Bid	Bid Set	
P4	1	Plumbing Details and Legend	3/3/2014	Revision 1	100	Bid	Bid Set	
P5	1	Plumbing Schedules and Details	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Structural</b>								
S0.1	1	Standard Notes	3/3/2014	Revision 1	100	Bid	Bid Set	
S0.2	2	3D Renderings	3/21/2014	Addendum 01	100	Bid	Bid Set	
S1.1	2	Foundation Plan	3/21/2014	Addendum 01	100	Bid	Bid Set	
S1.2	2	Mezzanine & Level 2 Framing Plan	3/21/2014	Addendum 01	100	Bid	Bid Set	
S1.3	2	Low & High Roof Framing Plans	3/21/2014	Addendum 01	100	Bid	Bid Set	
S2.1	1	Foundation Elevations & Column Schedule	3/3/2014	Revision 1	100	Bid	Bid Set	
S2.2	2	Wall Panel Support Framing	3/21/2014	Addendum 01	100	Bid	Bid Set	
S3.1	2	Sections	3/21/2014	Addendum 01	100	Bid	Bid Set	
S3.2	2	Sections	3/21/2014	Addendum 01	100	Bid	Bid Set	
S3.3	2	Sections	3/21/2014	Addendum 01	100	Bid	Bid Set	

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Exhibit D



Current Document Log  
Section VIII.4

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
S4.1	2	Standard Details	3/21/2014	Addendum 01	100	Bid	Bid Set	
<b>General</b>								
<b>Addendum #1</b>								
ADD. #01	0	Addendum #01	3/21/2014	Addendum 01	100	Bid	Bid Set	
<b>General</b>								
Boaring Report	0	2012 Boaring Report	12/24/2012	Issued for Bid	100	Bid	Bid Set	
<b>Sketch</b>								
<b>Architectural</b>								
SKA-1	0	Fire Extinguisher Cab. Locations	3/3/2014		100	Construction	Sketch	
SKA-2	0	Door 100D Revision	4/30/2015	RFI Revision	100	Construction	Post Bid	
SKA-3	0	Theater Railing	5/4/2015	RFI Revision	100	Construction	Post Bid	
SKA-4	0	Outdoor Hotspot Location	5/4/2015	RFI Revision	100	Construction	Post Bid	
<b>Civil</b>								
SKC-01	0	Gate Valve	5/15/2015	RFI Revision	100	Construction	Post Bid	
<b>Structural</b>								
SKS-1	0	Boilable Embed Plate	3/30/2015	Addendum 01	100	Bid	Bid Set	
<b>Specification</b>								
<b>Appendices</b>								
Appendix-A	1	Permits	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Proflog Manager</b>								
Printed on: 6/4/2015 DEWMAN								

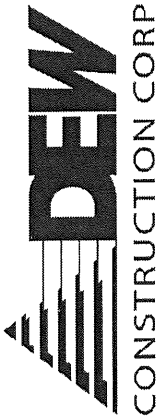


Exhibit D

Current Document Log  
Section VIII.4

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
<b>Division 0</b>								
000110	1	Table of Contents	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 1</b>								
012300	1	Alternates	3/3/2014	Revision 1	100	Bid	Bid Set	
013000	1	Administrative Requirements	3/3/2014	Revision 1	100	Bid	Bid Set	
014000	1	Quality Requirements	3/3/2014	Revision 1	100	Bid	Bid Set	
016000	1	Product Requirement	3/3/2014	Revision 1	100	Bid	Bid Set	
017000	1	Executed and Closeout	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 2</b>								
021000	1	Sitework	3/3/2014	Revision 1	100	Bid	Bid Set	
021400	1	Dewatering	3/3/2014	Revision 1	100	Bid	Bid Set	
021600	1	Excavation Support	3/3/2014	Revision 1	100	Bid	Bid Set	
022020	1	Rock Removal, Drilling and Blasting	3/3/2014	Revision 1	100	Bid	Bid Set	
022700	1	Soil Erosion and Sediment Control	3/3/2014	Revision 1	100	Bid	Bid Set	
023200	1	Utility Crossings & Adjustments	3/3/2014	Revision 1	100	Bid	Bid Set	
024100	1	Testing Laboratory Services	3/3/2014	Revision 1	100	Bid	Bid Set	
024850	1	Seeding	3/3/2014	Revision 1	100	Bid	Bid Set	
024900	1	Tree and Shrub Planting	3/3/2014	Revision 1	100	Bid	Bid Set	
025100	1	Roadway and Parking	3/3/2014	Revision 1	100	Bid	Bid Set	
025200	1	Temporary Signing and Traffic Control Devices	3/3/2014	Revision 1	100	Bid	Bid Set	
025610	1	Protection of Existing Trees	3/3/2014	Revision 1	100	Bid	Bid Set	
025700	1	Maintenance of Traffic	3/3/2014	Revision 1	100	Bid	Bid Set	
027130	1	Water Distribution System	3/3/2014	Revision 1	100	Bid	Bid Set	
027210	1	Storm Drainage System	3/3/2014	Revision 1	100	Bid	Bid Set	
027220	1	Sanitary Sewer	3/3/2014	Revision 1	100	Bid	Bid Set	

Page 5

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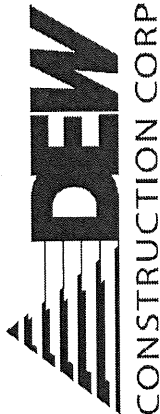


Exhibit D

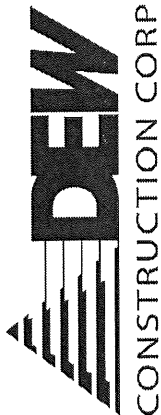
Current Document Log  
Section VIII.4

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
<b>Division 5</b>								
055000	1	Metal Fabrications	3/3/2014	Revision 1	100	Bid	Bid Set	
055100	1	Metal Stairs	3/3/2014	Revision 1	100	Bid	Bid Set	
055213	1	Pipe and Tube Railings	3/3/2014	Revision 1	100	Bid	Bid Set	
055305	1	Metal Gratings and Floor Plates	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 6</b>								
061000	1	Rough Carpentry	3/3/2014	Revision 1	100	Bid	Bid Set	
062000	0	Finish Carpentry	3/3/2014	Issued for Bid	100	Bid	Bid Set	
064100	1	Architectural Wood Casework	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 7</b>								
071400	1	Fluid-Applied Waterproofing	3/3/2014	Revision 1	100	Bid	Bid Set	
072100	1	Thermal Insulation	3/3/2014	Revision 1	100	Bid	Bid Set	
072119	1	Foamed-in-Place Insulation	3/3/2014	Revision 1	100	Bid	Bid Set	
074214	1	Insulated Metal Wall Panels	3/3/2014	Revision 1	100	Bid	Bid Set	
075300	1	Elastomeric Membrane Roofing	3/3/2014	Revision 1	100	Bid	Bid Set	
076100	1	Sheet Metal Roofing	3/3/2014	Revision 1	100	Bid	Bid Set	
076200	1	Sheet Metal Flashing and Trim	3/3/2014	Revision 1	100	Bid	Bid Set	
077200	1	Roof Accessories	3/3/2014	Revision 1	100	Bid	Bid Set	
078400	1	Firestopping	3/3/2014	Revision 1	100	Bid	Bid Set	
079005	1	Joint Sealer	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 8</b>								
081113	1	Hollow Doors and Frames	3/3/2014	Revision 1	100	Bid	Bid Set	
081416	1	Flush Wood Doors	3/3/2014	Revision 1	100	Bid	Bid Set	
083326	1	Overhead Coiling Grilles	3/3/2014	Revision 1	100	Bid	Bid Set	
084313	1	Aluminum Framed Storefronts	3/3/2014	Revision 1	100	Bid	Bid Set	
086223	1	Tubular Skylights	3/3/2014	Revision 1	100	Bid	Bid Set	

Page 6

Prolog Manager Printed on: 6/4/2015 DEWMMAIN

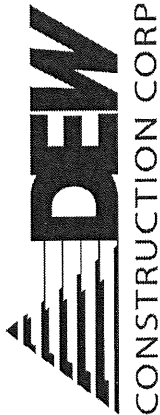
Exhibit D



Current Document Log  
Section VIII.4

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
087100	1	Door Hardware	3/3/2014	Revision 1	100	Bid	Bid Set	
087100.1	0	Hardware Schedule	3/3/2014	Issued for Bid	100	Bid	Bid Set	
088000	1	Glazing	3/3/2014	Revision 1	100	Bid	Bid Set	
088300	1	Mirrors	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 9</b>								
092116	1	Gypsum Board Assemblies	3/3/2014	Revision 1	100	Bid	Bid Set	
093000	1	Tiling	3/3/2014	Revision 1	100	Bid	Bid Set	
095100	1	Acoustical Ceilings	3/3/2014	Revision 1	100	Bid	Bid Set	
096500	1	Resilient Flooring	3/3/2014	Revision 1	100	Bid	Bid Set	
096800	1	Carpeting	3/3/2014	Revision 1	100	Bid	Bid Set	
097733	0	Glass Fiber Reinforced Plastic Panels	3/3/2014	Issued for Bid	100	Bid	Bid Set	
099000	1	Painting and Coating	3/3/2014	Revision 1	100	Bid	Bid Set	
099600	0	High-Performance Coatings	3/3/2014	Issued for Bid	100	Bid	Bid Set	
<b>Division 10</b>								
102113.19	1	Plastic Toilet Compartments	3/3/2014	Revision 1	100	Bid	Bid Set	
102601	0	Wall and Corner Guards	3/3/2014	Issued for Bid	100	Bid	Bid Set	
102800	1	Toilet, Bath & Laundry Accessories	3/3/2014	Revision 1	100	Bid	Bid Set	
104400	1	Fire Protection Specialties	3/3/2014	Revision 1	100	Bid	Bid Set	
105100	0	Lockers	3/3/2014	Issued for Bid	100	Bid	Bid Set	
<b>Division 12</b>								
123600	1	Countertops	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 14</b>								
142010	1	Passenger Elevators	3/3/2014	Revision 1	100	Bid	Bid Set	

Exhibit D



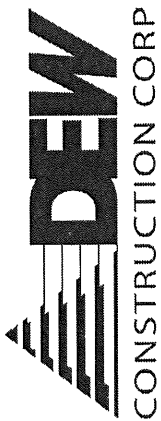
Current Document Log  
Section VIII.4

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
<b>Division 21 - Fire Suppression</b>								
211313	1	Sprinkler Work	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 22 - Plumbing</b>								
220500	1	Plumbing General Requirements	3/3/2014	Revision 1	100	Bid	Bid Set	
220510	1	Plumbing Basic Materials and Methods	3/3/2014	Revision 1	100	Bid	Bid Set	
220719	1	Plumbing Systems Insulation	3/3/2014	Revision 1	100	Bid	Bid Set	
221116	1	Domestic Water Systems	3/3/2014	Revision 1	100	Bid	Bid Set	
224210	1	Plumbing Work	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 23 - HVAC</b>								
230500	1	Mechanical General Requirements	3/3/2014	Revision 1	100	Bid	Bid Set	
230510	1	Mechanical Basic Material and Methods	3/3/2014	Revision 1	100	Bid	Bid Set	
230719	1	Mechanical Systems Insulation	3/3/2014	Revision 1	100	Bid	Bid Set	
230900	1	Temperature Controls	3/3/2014	Revision 1	100	Bid	Bid Set	
231123	1	Gas Piping System	3/3/2014	Revision 1	100	Bid	Bid Set	
233113	1	Air Distribution System and Equipment	3/3/2014	Revision 1	100	Bid	Bid Set	
235400	1	Gas Furnaces and Accessories	3/3/2014	Revision 1	100	Bid	Bid Set	
237413	1	Packaged Rooftop Units	3/3/2014	Revision 1	100	Bid	Bid Set	
<b>Division 26 - Electrical</b>								
260010	1	Electrical General Provisions	3/3/2014	Revision 1	100	Bid	Bid Set	
260513	1	Medium Voltage Cables	3/3/2014	Revision 1	100	Bid	Bid Set	
260519	1	Low Voltage Electrical Power Conductors and Cables	3/3/2014	Revision 1	100	Bid	Bid Set	
260523	1	Control Voltage Electrical Power Cables	3/3/2014	Revision 1	100	Bid	Bid Set	
260526	1	Grounding and Bonding for Electrical Systems	3/3/2014	Revision 1	100	Bid	Bid Set	

Page 8

Prolog Manager Printed on: 6/4/2015 DEWMAIN

Exhibit D



Current Document Log  
Section VIII.4

Number	Rev	Title	Rev Date	Bulletin	% Complete	Status	Category	General Notes
260529	1	Hangers and Supports for Electrical Systems	3/3/2014	Revision 1	100	Bid	Bid Set	
260533	1	Raceways and Boxes for Electrical System	3/3/2014	Revision 1	100	Bid	Bid Set	
260543	1	Underground Ducts and Raceways for Electrical Systems	3/3/2014	Revision 1	100	Bid	Bid Set	
260544	1	Sleeves and Sleeve Seals for Electrical Raceways and Cabling	3/3/2014	Revision 1	100	Bid	Bid Set	
260553	1	Identification for Electrical Systems	3/3/2014	Revision 1	100	Bid	Bid Set	
260923	1	Lighting Control Devices	3/3/2014	Revision 1	100	Bid	Bid Set	
261200	1	Medium Voltage Transformer	3/3/2014	Revision 1	100	Bid	Bid Set	
262416	1	Panelboards	3/3/2014	Revision 1	100	Bid	Bid Set	
262726	1	Wiring Devices	3/3/2014	Revision 1	100	Bid	Bid Set	
262813	1	Fuses	3/3/2014	Revision 1	100	Bid	Bid Set	
262816	1	Enclosed Switched and Circuit Breakers	3/3/2014	Revision 1	100	Bid	Bid Set	
262913	1	Enclosed Controllers	3/3/2014	Revision 1	100	Bid	Bid Set	
265100	1	Lighting	3/3/2014	Revision 1	100	Bid	Bid Set	

**Division 27 - Communications**

271100	1	Communications Equipment Room Filings	3/3/2014	Revision 1	100	Bid	Bid Set	
271500	1	Communications Horizontal Cabling	3/3/2014	Revision 1	100	Bid	Bid Set	

**Division 28 - Electronic Safety & Security**

283111	1	Digital, Addressable Fire Alarm System	3/3/2014	Revision 1	100	Bid	Bid Set	
283112	1	Voice Evacuation System	3/3/2014	Revision 1	100	Bid	Bid Set	





JPR Rec Center

Jay Peak Resort - Stateside - Recreation Center  
GMP Construction Cost Estimate - Final For Contract - May 08, 2017  
C.M. as D.E.W. Construction Corp., Williston, VT, 802-872-0505

Job size 14725 SF

Exhibit E

Page 1  
5/8/2017



JPR Rec Center

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>SITWORK</b>						
Sitework						
Sitework-Dale Percy-Now 04/11/17	1.00 ls			363,362		363,362
Sitework-Add-Conc Curbs & Walks-HCI	1.00 ls			16,071		16,071
Sitework-Erosion Control-Foreman	0.00 wk					0
Sitework	14,725.00 SF			379,433		379,433
Vapor Barrier						
Vapor Barrier-In Div 03	1.00 ls			*		0
Site Utilities						
Gas Piping-To Building-By Others	0.00 ls			0		0
<b>SITWORK</b>	<b>14,725.00 SF</b>			<b>379,433</b>		<b>379,433</b>
<b>CONCRETE</b>						
Concrete - Sub						
Building Concrete-Harrison-Now 04/12/17	1.00 ls			357,500		357,500
Concrete - Sub	14,725.00 SF			357,500		357,500
<b>CONCRETE</b>	<b>14,725.00 SF</b>			<b>357,500</b>		<b>357,500</b>
<b>METALS</b>						
Structural Framing						
Structural & Misc. Steel-LWI Metals-Now 04/11/17	1.00 ls			423,721		423,721
Structural & Misc.-RFI 13-Theater Railing	1.00 ls			*		
Structural Framing	14,725.00 SF			423,721		423,721
<b>METALS</b>	<b>14,725.00 SF</b>			<b>423,721</b>		<b>423,721</b>
<b>WOOD &amp; PLASTICS</b>						
Plywood Sheathing						
Sheathing-1/2-PT-Canopy Sidewall	260.00 sf		331			927
Plywood Sheathing	14,725.00 SF		331			927
Stressed Skin Panels						
SIP Panels-At Metal Roof Deck-In Roofing	1.00 ls			*		0

JPR Rec Center



Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Blocking						
Blocking - 2 x 4 - FT	578.00 lf	1,325	460	-	-	1,784
Blocking - 2 x 8 - FT	374.00 lf	857	591	-	-	1,448
Blocking	14,725.00 SF	2,182	1,050	-	-	3,232
Exterior Millwork						
Ext Trim-1 x 6-Canopy Beams	48.00 lf	880	153	-	-	1,033
Exterior Millwork	14,725.00 SF	880	153	-	-	1,033
Cabinets-Shelves						
Millwork-Windham Millwork-Now 04/11/17	1.00 ls	-	-	70,007	-	70,007
Cabinets-Shelves	14,725.00 SF	-	-	70,007	-	70,007
Fasterers & Misc						
Carpentry-Fasterers	1.00 ls	-	159	-	-	159
Carpentry-Rough Hardware	1.00 ls	-	82	-	-	82
Fasterers & Misc	14,725.00 SF	-	241	-	-	241
Misc. Carpentry						
Carpentry-Labor Foreman	15.00 wk	36,000	-	-	-	36,000
Misc. Carpentry	14,725.00 SF	36,000	-	-	-	36,000
<b>WOOD &amp; PLASTICS</b>	<b>14,725.00 SF</b>	<b>39,657</b>	<b>1,775</b>	<b>70,007</b>		<b>111,439</b>
<b>THERM. &amp; MOIST. PROTECT</b>						
Insulation						
Insulation-Spray Foam-Bugbee-Now 04/20/17	1.00 ls	-	-	7,900	-	7,900
Insulation	14,725.00 SF	-	-	7,900	-	7,900
Board Insulation						
Rigid Board-Cover Board-7/16"	540.00 sf	396	1,145	-	18	1,559
Board Insulation	14,725.00 SF	396	1,145	-	18	1,559
Waterproofing						
Waterproofing-Nicom-Now 04/11/17	1.00 ls	-	-	16,800	-	16,800
Waterproofing-Crystalline-Pits	146.00 sf	-	-	1,168	-	1,168
Waterproofing	14,725.00 SF	-	-	17,968	-	17,968
Sheetmetal						



JPR Rec Center

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Sheetmetal						
Sheet Metal-Cover-At Rigid To Conc	170.00 sf	623	908	-	28	1,560
Sheetmetal	14,725.00 SF	623	908	-	28	1,560
Metal Siding						
Metal Wall Panels-Construx-Now 04/11/17	1.00 ls	-	-	229,000	-	229,000
Metal Wall Panels-Construx-Add-Horiz Band	1.00 ls	-	-	6,900	-	6,900
Metal Wall Panels-Construx-Add-Bottom Panel Color	1.00 ls	-	-	4,000	-	4,000
Metal Wall Panels-Construx-Add-Color-Interior	0.00 ls	-	-	0	-	0
Metal Wall Panels-Parapet Cap-Extruded	338.00 lf	-	-	6,760	-	6,760
Metal Wall Panels-Steel Angles	843.00 lf	-	-	9,197	-	9,197
Metal Siding	14,725.00 SF	-	-	255,857	-	255,857
Membrane Roofing						
Memb & Metal Roof-Palmieri-Now 04/11/17	1.00 ls	-	-	167,773	-	167,773
Memb & Metal Roof-Add Alts 01 & 02	0.00 ls	-	-	0	-	0
Membrane Roofing	14,725.00 SF	-	-	167,773	-	167,773
Caulking & Sealants						
Sealants-Exterior-Misc.	745.00 lf	1,707	652	-	621	2,980
Caulking & Sealants	14,725.00 SF	1,707	652	-	621	2,980
<b>THERM. &amp; MOIST. PROTECT</b>	<b>14,725.00 SF</b>	<b>2,727</b>	<b>2,705</b>	<b>449,498</b>	<b>667</b>	<b>455,596</b>
<b>DOORS &amp; WINDOWS</b>						
Doors General						
DFH-Commercial Door-No Saito Locks-Now 04/24/17	1.00 ls	-	33,609	-	-	33,609
DFH-Labor To Install-Now 04/24/17	1.00 ls	14,190	-	-	-	14,190
DFH-Labor To Install-Saito Locks-Now 04/24/17	1.00 ls	-	-	4,942	-	4,942
DFH-RFI 11-Hardware Changes	0.00 ls	-	0	-	-	0
Doors General	14,725.00 SF	14,190	33,609	4,942	-	52,741
Hollow Metal						
HM-Unload & Stock	60.00 ea	825	-	-	-	825
Hollow Metal	14,725.00 SF	825	-	-	-	825
Coiling Doors						
Coiling Grille-Champlain Door-Now 04/11/17	1.00 ls	-	-	4,185	-	4,185
Coiling Doors	14,725.00 SF	-	-	4,185	-	4,185
Aluminum Storefront						



JPR Rec Center

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Aluminum Storefront						
Aluminum-Portland Glass-Now 04/11/17	1.00 ls	-	-	70,593	-	70,593
Aluminum Storefront	14,725.00 SF	-	-	70,593	-	70,593
Glass & Glazing						
Glass-Int Door-NL x Fire Lite	2.00 sf	-	-	300	-	300
Glass & Glazing	14,725.00 SF	-	-	300	-	300
<b>DOORS &amp; WINDOWS</b>	<b>14,725.00 SF</b>	<b>15,015</b>	<b>33,609</b>	<b>80,020</b>		<b>128,644</b>
<b>FINISHES</b>						
Metal Studs & GWB @ ACT						
Drywall & ACT-Colchester Contract-Now 04/11/17	1.00 ls	-	-	285,069	-	285,069
Metal Studs & GWB @ ACT	14,725.00 SF	-	-	285,069	-	285,069
Acoustical Treatment						
Sound Panels-Theater	0.00 ls	-	-	0	-	0
Special Floor Finish						
Flooring-Concrete Sealer	1,155.00 sf	1,271	-	-	-	1,638
Flooring-Barrier Coat-Vapor	0.00 sf	-	-	0	-	0
Special Floor Finish	14,725.00 SF	1,271	-	-	-	1,638
Finish Flooring & Tile						
Finish Floors & Tile-Future Floors-Now 04/11/17	1.00 ls	-	-	80,420	-	80,420
Finish Flooring & Tile	14,725.00 SF	-	-	80,420	-	80,420
Finish Paint						
Finish Paint-Cluba Paint-Now 04/11/17	1.00 ls	-	-	77,261	-	77,261
Finish Paint-Cluba Paint-Add-Exterior Lift	1.00 ls	-	-	3,600	-	3,600
Finish Paint-Cluba Paint-Alt-Int Panels	0.00 ls	-	-	0	-	0
Finish Paint	14,725.00 SF	-	-	80,861	-	80,861
Misc. Finishes						
Finishes-Daily Job Cleanup	22.00 wk	9,900	233	-	-	10,133
Finishes-Final Cleanup	13,570.00 sf	-	-	4,750	-	4,750
Finishes-Final Cleanup-Broom	1,155.00 sf	208	31	-	-	239
Finishes-Protection	14,725.00 sf	3,240	1,327	-	-	4,566
Finishes-Foreman	15.00 wk	36,000	-	-	-	36,000
Finishes-Temporary Heat	0.00 ls	0	0	0	-	0



JPR Rec Center

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Misc. Finishes	14,725.00 SF	49,347	1,591	4,750		55,687
<b>FINISHES</b>	<b>14,725.00 SF</b>	<b>50,618</b>	<b>1,958</b>	<b>451,100</b>		<b>503,675</b>
<b>SPECIAL CONDITIONS</b>						
Toilet Partition	1.00 ls	-	-	*	-	0
Toilet Partitions						
Wall/Corner Guards	33.00 ea	-	-	*	-	0
Corner Guards-Stainless-1.5"x 1.5" x 48"						
Signage	0.00 ls	-	-	0	-	0
Signage-Exterior-By Owner	0.00 ls	-	-	0	-	0
Signage-Interior-By Owner						
Lockers & Benches	20.00 ea	-	-	*	-	0
Lockers-Penco-Dble Tier-12 x 12 x 36-Std Lock						
Fire Ext. & Cabinets	0.00 ea	-	-	0	-	0
FEC-Extinguisher-By Owner	6.00 ea	-	-	*	-	0
FEC-Extinguisher-Cabinets						
Toilet Accessories	28.00 ea	-	-	*	-	0
TA-Install-Owner Furnished	8.00 ea	-	-	*	-	0
TA-Grab Bars						
General Specialties	1.00 ls	-	-	23,999	-	23,999
Specialties-Lajeunesse-Now 04/11/17						
General Specialties	14,725.00 SF			23,999		23,999
<b>SPECIAL CONDITIONS</b>	<b>14,725.00 SF</b>			<b>23,999</b>		<b>23,999</b>
<b>EQUIPMENT</b>						
Commercial Kitchen						
Kitchen Equip-Kittedge Equip-Now 04/11/17	1.00 ls	-	-	102,471	-	102,471
Kitchen Equip-RFI 12-Owner Supplied-Now Deleted	-1.00 ls	-	-	*	-	0
Kitchen Equip-Excludes-Dishwash/Fryers/Micro/Shelf	-1.00 ls	-	-	*	-	0
Kitchen Equip-Excludes-All Hood Work	-1.00 ls	-	-	*	-	0
Commercial Kitchen	14,725.00 SF			102,471		102,471
Misc. Equipment						



JPR Rec Center

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Misc. Equipment						
Equip-Cash & POS	0.00 ls	-	-	0	-	0
Equip-ATM Machines	0.00 ls	-	-	0	-	0
Equip-Theater-Projection & Sound	0.00 ls	-	-	0	-	0
Equip-Climbing & Ropes	0.00 ls	-	-	0	-	0
Equip-Concessions	0.00 ls	-	-	0	-	0
Equip-Bowling & Arcade	0.00 ls	-	-	0	-	0
<b>EQUIPMENT</b>	<b>14,725.00 SF</b>			<b>102,471</b>		<b>102,471</b>
<b>FURNISHINGS</b>						
Fixed Seating						
Seating-Theater-By Owner	0.00 ea	-	-	0	-	0
Misc. Furnishings						
Furnishings-Window Treatments	0.00 ls	-	-	0	-	0
Furnishings-Loose & FFE	0.00 ls	-	-	0	-	0
<b>CONVEYING SYSTEM</b>						
Elevators						
Elevator-Hydraulic-Bay State-Now 04/11/17	1.00 ls	-	-	62,200	-	62,200
Elevators	14,725.00 SF			62,200		62,200
<b>CONVEYING SYSTEM</b>	<b>14,725.00 SF</b>			<b>62,200</b>		<b>62,200</b>
<b>MECHANICAL</b>						
Sprinkler						
Sprinkler-Mountain Valley-Now 04/11/17	1.00 ls	-	-	31,500	-	31,500
Sprinkler	14,725.00 SF			31,500		31,500
Plumbing & HVAC						
Plumbing & HVAC-Vermont Mech-Now 04/11/17	1.00 ls	-	-	497,557	-	497,557
Plumbing & HVAC-RFI 14-Meter Propane-In (?)	1.00 ls	-	-	2,449	-	2,449
Plumbing & HVAC-Add-Coordination Drwgs (?)	0.00 ls	-	-	0	-	0
Plumbing & HVAC	14,725.00 SF			500,006		500,006
<b>MECHANICAL</b>	<b>14,725.00 SF</b>			<b>531,506</b>		<b>531,506</b>



JPR Rec Center

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
<b>ELECTRICAL</b>						
Electrical	1.00 ls	-	-	387,000	-	387,000
Electrical-Mikes Electric-Now 04/11/17	0.00 ls	-	-	0	0	0
Electrical-Radio Conduit-PVC To Galv	0.00 ls	-	-	0	-	0
Electrical-Site-Primary-By Owner						
Electrical	14,725.00 SF	-	-	387,000	-	387,000
<b>ELECTRICAL</b>	<b>14,725.00 SF</b>			<b>387,000</b>		<b>387,000</b>
<b>ALLOWANCES</b>						
Allowances	7.00 mn	-	-	4,200	-	4,200
Allowance-Temp Power	1.00 ls	-	-	6,000	-	6,000
Allowance-Blueprints-Bid & Build	1.00 ls	-	-	15,000	-	15,000
Allowance-Site-Unsuitables & Debris	0.00 ls	-	-	0	-	0
Allowance-Field Quality Testing	0.00 ls	-	-	0	-	0
Allowance-Landscape & Plantings	0.00 ls	-	-	0	-	0
Allowance-Theater Panel	0.00 ls	-	-	0	-	0
Allowance-Exist-Materials & Repairs	1.00 ls	-	-	25,000	-	25,000
Allowance-Site-Perimeter & Underdrain	1.00 ls	-	-	6,000	-	6,000
Allowance-Insurance-Builders Risk	1.00 ls	-	-	6,300	-	6,300
Allowances	14,725.00 SF	-	-	62,500	-	62,500
<b>ALLOWANCES</b>	<b>14,725.00 SF</b>			<b>62,500</b>		<b>62,500</b>
<b>GENERAL CONDITIONS</b>						
Project Superintendent	41.00 wk	98,400	6,519	-	16,195	121,114
Superintendent						
Project Superintendent	14,725.00 SF	98,400	6,519	-	16,195	121,114
Project Management	11.00 wk	23,232	-	-	3,344	26,576
Project Manager	11.00 wk	19,360	-	-	3,344	22,704
Project Engineer						
Project Management		42,592	-	-	6,688	49,280
Architect & Engineering	0.00 ls	-	-	-	-	-
Design-Architectural-By Owner	1.00 ls	-	-	5,250	-	5,250
Design-Hardy Engineering	0.00 ls	-	-	-	-	-
Design-Structural-By Owner	0.00 ls	-	-	-	-	-
Design-MIEPF-By Owner	0.00 ls	-	-	-	-	-
Design-Engineering Services of VT	1.00 ls	-	-	10,962	-	10,962





JPR Rec Center

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Architect & Engineering	14,725.00 SF			16,212		16,212
Project Safety						
Safety-Officer	11.00 wk	2,860	175		418	3,453
Project Safety		2,860	175		418	3,453
Project Assistant						
Project Assistant	11.00 wk	4,400	350			4,750
Project Assistant		4,400	350			4,750
Project Accounting						
Accounting Clerk	11.00 wk	1,760	140			1,900
Project Accounting		1,760	140			1,900
Job Telephone						
Job Phone-Hookup	0.35 ea		186			186
Job Phone-Usage	3.00 mo		1,908			1,908
Job Phone-Cellular	0.00 mo					
Job Phone-Internet Service	3.00 mo		239			239
Job Telephone			2,332			2,332
Job Electrical						
Job Electrical-Hook Up	0.35 ea		186			186
Job Electrical-Consumption	3.00 mo		1,113			1,113
Job Electrical			1,299			1,299
Job Water						
Water-Tank & Accessories-For Trades	0.35 ls			350		350
Job Water-To Build	0.00 mo					
Job Water-Drinking	3.00 mo		80			80
Job Water			80			80
Job Office Trailers						
Field Office-Rent & Maintain	10.00 mo	1,293	795		4,000	6,088
Field Office-Deliver & Set	1.35 ls	968	429		675	2,072
Field Office-Furnishings	1.35 ls		716			716
Field Office-Equip-Copier	3.00 mo				450	450
Field Office-Equip-Paper Supplies	3.00 mo					318
Field Office-Equip-General	10.00 mo		1,590			1,590
Job Office Trailers	14,725.00 SF	2,261	3,848		5,125	11,233
Storage Trailer						



JPR Rec Center

Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Storage Trailer	3.00 mo	-	-	-	450	450
Storage-Box Trailer-Rental	0.35 ea	77	56	-	88	220
Storage-Box Trailer-Deliver & Set		77	56	-	538	670
Storage Trailer						
Job Toilets						
Temp Toilet-Rental-3 Each	7.00 mo	-	2,671	-	-	2,671
Temp Toilet-Rental-4 Each	3.00 mo	-	1,526	-	-	1,526
Job Toilets	14,725.00 SF		4,198			4,198
Job Fencing						
Temp Fence-Chainlink-Round Hill	1.00 ls	-	-	8,453	-	8,453
Temp Fence-Chainlink-Add-15 %	1.00 ls	-	-	1,268	-	1,268
Job Fencing	14,725.00 SF			9,721		9,721
Fire Protection						
Fire Extinguishers	3.00 ea		159			159
Fire Protection			159			159
Job Safety						
Safety-Materials-General	0.35 ls		371			371
Protection-Safety-Rails-In Steel	1.00 ls		-	*		0
Job Safety	14,725.00 SF		371			371
First Aid Supplies						
First Aid-Supplies	0.00 mo					
Field Quality Testing						
Testing-VT Energy-Blower Door-By JPR	0.00 ls					
Testing-Field Quality-By Owner	0.00 ls					
Rubbish Removal						
Dumpsters-Per Cuyd	450.00 cy		11,925			11,925
Dumpsters-To Recycle	28.00 wk		4,452			4,452
Rubbish Removal	14,725.00 SF		16,377			16,377
Office Expense						
Office-General Supplies-By Week	0.00 wk					
Office-Postage-By Week	0.00 wk					
Blueprint Expense						
Blueprint Expense-By Lump Sum	0.00 ls					



JPR Rec Center

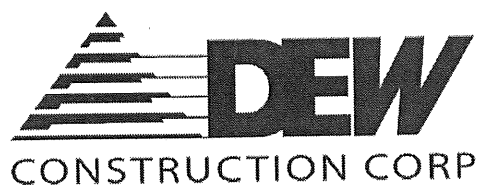
Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Total Amount
Project Signage						
Job Sign-Architect 4' x 8'	0.35 ea	231	260	-	53	543
Project Signage		231	260		53	543
Job Permits & Fee's						
Permits-By Owner	1.00 ls	-				
<b>GENERAL CONDITIONS</b>	<b>14,725.00 SF</b>	<b>152,581</b>	<b>36,161</b>	<b>26,283</b>	<b>29,016</b>	<b>244,041</b>



JPR Rec Center

Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	260,598		4,484.395 hrs	
Material	76,208			
Subcontract	3,407,237			
Equipment	29,683		2,437.579 hrs	
Other	<u>3,773,726</u>	3,773,726		
Estimate Contingency	150,000			
	<u>150,000</u>	3,923,726		
DEW Precon	10,000			
DEW GL Insurance	20,817			0.500 %
SDI Insurance - Sub > \$ 100K	34,306			
	<u>65,123</u>	3,988,849		
DEW CM Fee	174,512			4.375 %
	<u>174,512</u>	4,163,361		
<b>Total</b>		<b>4,163,361</b>		



DEW Construction Corp.  
277 Blair Park Road  
Suite 130  
Williston, VT 05495

p 802.872.0505  
f 802.872.0707

Jay Peak Resort  
Recreation Center Project GMP Narrative  
**May 08, 2017**

### **Project Brief**

This project consists of a **14,725** sqft 2-story metal panel building, located across from the main entrance of new hotel on Stateside. The building will contain a movie theater with seating of 140, a climbing center, ropes course, an arcade, snack bar and office spaces.

### **Divisional Clarifications**

#### **Division 1 - General Conditions & Requirements**

**General Conditions ( GC )** costs are included for a project of this size. The estimated GC costs are for field management personnel cost only; including project offices, temporary services and related costs. The included GC costs are:

- a. Project Manager
- b. Superintendent and Assistant Superintendent
- c. Safety personnel
- d. Field office trailers and enclosures
- e. Field office equipment & supplies
- f. Drinking water
- g. Power consumption for office trailers
- h. Telephone and portable communications
- i. Computers
- j. Transportation costs
- k. Temporary facilities

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Recreation Center Project GMP Narrative  
May 08, 2017

**General Requirements ( GR )** costs are included for a project of this size. The estimated General Requirements costs are for field-related work not included in the General Conditions. The included GR costs are:

- a. General construction cleaning, dumpster/debris removal fees
- b. Temporary sanitary facilities (construction personnel)
- c. Safety barriers & support
- d. Temporary protection
- e. Temporary water usage for subcontractors

#### **Division 2 – Site Work & Landscaping**

- a. Sitework by Dale E. Percy
- b. Temporary construction chain link fence to 6' high
- c. Site layout from Owner provided control points
- d. Excavation and backfill of all gas lines from tank to building (Tanks/Line Install by Owner)

#### **Division 3 – Concrete**

- a. Building and site concrete bid by Harrison Concrete
- b. All standard saw cutting has be included

#### **Division 4 - Masonry**

- a. None.

#### **Division 5 - Metals, Structural & Misc. Steel**

- a. Structural Steel and Misc Metals is by LWI
- b. The metal stair systems as detailed on the structural documents has been included

#### **Division 6 - Wood, Plastics and Composites**

- a. Rough carpentry blocking materials as specified
- b. Finish Carpentry by *Windham Millwork*.
- c. Daily job cleanup to dumpster.

#### **Division 7 - Thermal & Moisture Protection**

- a. Waterproof building foundation walls by Nicom. A crystalline waterproof coating is included at the elevator pit, as specified by Nicom Coatings.

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Recreation Center Project GMP Narrative  
May 08, 2017

- b. Spray Foam as specified has been carried. A bid was received from Bugbee
- c. Membrane Roofing by Palmieri
- d. Metal Wall panels by Construx
- e. Exterior sealants.

#### **Division 8 - Openings**

- a. Doors and Hardware by **Commercial Door Company.**
- b. All RFID hardware **will be provided from existing stock, by the owner. Labor to install is carried within the cost estimate.**
- c. Coiling Door is by Champlain Door
- d. Aluminum and glazing is Portland Glass

#### **Division 9 - Finishes**

- a. Interior gypsum wall & ceiling board as indicated, gypsum ceiling suspension systems, suspended acoustical ceilings and a 3 coat finish tape system, ready for paint finish as bid by Colchester Contracting
- b. All metal framing (Non Structural Steel) is by Colchester Contracting
- c. Tile work & resilient finish flooring as bid by Future Floors.
- d. Concrete floor sealer, as a standard product.
- e. **Finish** painting by Cluba Painting
- f. General building cleaning, final cleaning of the building prior to completion, temporary heat for the building shell and to install the building's interior finishes at suitable temperatures.

#### **Division 10 - Specialties**

- a. **Building specialties are by** Lajeunesse Interiors.
- b. Fire extinguishers are by Owner

#### **Division 11- Equipment**

- a. None.

#### **Division 12 - Furnishings**

- a. All Arcade equipment is by the Owner, DEW will provide power and data as called out in the document
- b. All Clip N Climb is by the Owner, DEW will provide attachment points as called out in the documents
- c. The **furnishing** and installation of all theater seating is by the Owner. DEW will work with all groups to ensure that the seats mounting plate will not interfere with the rebar and that all power is provided to the isle lights

Jay Peak Resort  
Recreation Center Project GMP Narrative  
**May 08, 2017**

- d. The furnishing and installation of the theater equipment, **including** the screen and projector is by the Owner. DEW will coordinate with the Owner for necessary blocking and power requirements
- e. All interior and exterior signage is by the Owner. DEW will coordinate for interior blocking

**Division 13 - Special Conditions**

- a. None

**Division 14 - Conveying**

- a. Elevator is by Bay State Elevator as called out on the bid documents

**Division 15 - Mechanical**

- a. Fire protection system **by Mountain Valley Sprinkler.**
- b. Plumbing, heating, cooling & ventilation by Vermont Mechanical
- c. Interior gas piping has been included, all exterior propane tanks and piping to the building **are** excluded

**Division 16 - Electrical**

- a. Electrical work per the drawings and schedules, by Mikes Electric
- b. Primary Transformer is by the Owner

**Allowances**

- a. Temporary Power \$4,200
- b. Reprographics \$6,000
- c. Unsuitable Soils and Debris \$15,000
- d. Repairs of existing, \$ 25,000**
- e. Site, perimeter and underdrain piping system, \$ 6,000**
- f. Builders risk insurance coverage, \$ 6,300**

**Included Soft Costs**

- a. Construction contingency, \$ **150,000**
- b. General liability insurance
- c. CM payment and performance bonds
- d. CM fee



Jay Peak Resort  
Recreation Center Project GMP Narrative  
*May 08, 2017*

### **Exclusions/Qualifications**

The following items ***are not*** included in this design development estimate;

- a. Commissioning consultant expense.
- b. Owner's construction contingency.
- c. Owner's representative expense.
- d. Building permits ( the MEPF subcontractors will include the VT Fire Safety building work trade permits )
- e. Building impact fees.
- f. Owners, insurance deductibles.
- g. Unusual insurance requirements or limits.
- h. Unusual or excessive legal expenses.
- i. Field quality testing expenses.***
- j. Site, property survey or final survey.
- k. Site, hazardous material testing or removal.
- l. Site, professional monitoring & inspection.
- m. Site, rock or large boulder blasting or removal.
- n. Site, low bearing capacity soils.
- o. Site, monumental & traffic signage.
- p. Site, landscape plantings & ground covers.
- q. Site, lawns, fine-grading, seeding, mulching, establishment & maintenance.
- r. Building, special foundations or special support.
- s. Building, special acoustical wall & ceiling treatments.
- t. Building, exterior or interior signage
- u. Building, window treatments or applied window films.
- v. Building, loose furnishings and equipment.
- w. Building, Prim play equipment and accessories
- f. Building, the popcorn machine is by Owner
- x. Building, sprinkler fire pumps or storage tanks.
- y. Building, lightning protection systems.
- z. LEED's or Green Building certifications and management required to conform.

Jay Peak Resort  
Recreation Center Project GMP Narrative  
*May 08, 2017*

- aa. Phasing of construction ( construction will be continuous ).
- bb. Specification of proprietary building materials or systems.
- cc. Schedule, unusual labor over-time and schedule acceleration.
- dd. Building information modeling expense ( B.I.M. )
- ee. Final cleaning, including the removal of all sticker

### **Schedule**

For this project, we anticipate total building construction duration to be thirty (30) weeks of continuous construction. See current DEW construction schedule.

**EXHIBIT 3**



**State of Vermont**  
**Department of Financial Regulation**  
89 Main Street  
Montpelier, VT 05620-3101  
[www.dfr.vermont.gov](http://www.dfr.vermont.gov)

For consumer assistance  
[All Insurance] 800-964-1784  
[Securities] 877-550-3907  
[Banking] 888-568-4547

April 18, 2017

Michael I. Goldberg, Receiver  
Akerman LLP  
Las Olas Centre II, Suite 1600  
350 East La Olas Blvd.  
Fort Lauderdale, FL 33301-2229

Re: Authorization regarding \$4.5 million for Stateside construction

Dear Mr. Goldberg:

On June 29, 2016, the Commissioner of the Vermont Department of Financial Regulation (“DFR”) entered an Administrative Consent Order (16-026-S) resolving DFR’s potential claims against Raymond James and Associates, Inc. (“RJA”) arising from the use of certain RJA accounts by Ariel Quiros and multiple limited partnerships and other entities under his control, all tied to Vermont-based EB-5 construction projects (the “Order”).

Pursuant to the Order, RJA transferred \$4.5 million to your control in July 2016 to be held “for the sole purpose of reimbursing claims by the EB-5 investors.” The \$150 million settlement reached last week between you and RJA includes this \$4.5 million and provides that you may use the \$4.5 million to pay contractor claims and expenses related to finishing the construction at Stateside Phase VI.

Completion of construction at Stateside will significantly benefit the financial position of Jay Peak investors by finishing partially built assets and allowing them to produce revenue. DFR understands construction needs to commence by mid-May for the Stateside construction to be completed in 2017. DFR further understands that you may not receive settlement monies beyond the \$4.5 million for eight to twelve weeks as the approval for the settlements works its way through the Federal Court.

Accordingly, DFR explicitly authorizes you to use the \$4.5 million currently in your possession from the Order to fund the commencement of Stateside construction. Best of luck during construction and congratulations on achieving such a beneficial settlement.

All the best,

Michael S. Pieciak  
Commissioner



**EXHIBIT 4**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,  
WILLIAM STENGER,  
JAY PEAK, INC.,  
Q RESORTS, INC.,  
JAY PEAK HOTEL SUITES L.P.,  
JAY PEAK HOTEL SUITES PHASE II. L.P.,  
JAY PEAK MANAGEMENT, INC.,  
JAY PEAK PENTHOUSE SUITES, L.P.,  
JAY PEAK GP SERVICES, INC.,  
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,  
JAY PEAK GP SERVICES GOLF, INC.,  
JAY PEAK LODGE AND TOWNHOUSES L.P.,  
JAY PEAK GP SERVICES LODGE, INC.,  
JAY PEAK HOTEL SUITES STATESIDE L.P.,  
JAY PEAK GP SERVICES STATESIDE, INC.,  
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,  
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,  
GSI OF DADE COUNTY, INC.,  
NORTH EAST CONTRACT SERVICES, INC.,  
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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**ORDER AUTHORIZING RECEIVER TO ENTER INTO  
A CHANGE ORDER TO THE STATESIDE CONSTRUCTION CONTRACT**

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<sup>1</sup> See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [D.E. No.: 60].

CASE NO.: 16-cv-21301-GAYLES

**AND A RECREATION CENTER CONTRACT WITH DEW CONSTRUCTION CORP.  
AND TO RECOMMENCE CONSTRUCTION OF THE STATESIDE PROJECT**

**THIS MATTER** comes before the Court upon the receiver, Michael I. Goldberg's (the "Receiver") Motion for Authorization to Enter Into a Change Order to the Stateside Construction Contract and a Recreation Center Contract With DEW Construction Corp. and to Recommence Construction of the Stateside Project and Supporting Memorandum of Law (the "Motion") [ECF No. \_\_\_\_]. The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission and Defendants Ariel Quiros and William Sanger have no objection to the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

**IT IS ORDERED, ADJUDGED AND DECREED**, as follows:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to execute the Change Order to the Stateside Contract and enter into the Recreation Center Contract (collectively, the "Contracts") with DEW Construction Corp. and to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated in the Contracts, without further Order of the Court.
3. Notwithstanding the terms of the Contracts, the Court retains jurisdiction over all matters relating to the Stateside Project, including the Stateside Contract, the Change Order, and the Recreation Center Contract.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_\_ day of May, 2017.

\_\_\_\_\_  
DARRIN P. GAYLES  
UNITED STATES DISTRICT COURT JUDGE

Copies to:  
Counsel of Record

{41782382;1}