



WISCONSIN PROFESSIONAL BASEBALL PARK DISTRICT

ADDRESS: 1 BREWERS WAY MILWAUKEE, WI 53214 EMAIL: CONTACT@WIBASEBALLDISTRICT.COM PHONE: (414) 902-4040



ADDENDUM #1

Date: September 21, 2026

Addendum #1 adds the draft AIA contract documents to **Appendix B**.

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the [] day of [] in the year []
(In words, indicate day, month and year.)

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

Wisconsin Professional Baseball Park District
One Brewers Way
Milwaukee, WI 53214
Brian Dworak, Facility Manager

The development of the Project (defined herein) is subject to the terms and conditions set forth in that certain Third Amended and Restated American Family Field (f/k/a Miller Park) Lease Agreement between the Milwaukee Brewers Baseball Club, Limited Partnership as “Tenant”, and the Owner as “Landlord” (the “Lease”). The Contractor shall comply with Owner’s reasonable requests and instructions to ensure Owner’s compliance with the Lease, including, but not limited to, construction and improvement provisions of the Lease.

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

for the following Project:
(Name, location and detailed description)

Seating improvements at American Family Field (the “Ballpark” or “AFF”), including the creation of a new row of fixed seating behind the home plate area of the Ballpark, located at American Family Field, One Brewers Way, Milwaukee, WI 53214.

The Project is to be performed pursuant to A Request for Proposals for Seating Improvements dated September 2, 2026, including all appendices, drawings, specifications, responses, and addenda, attached hereto as Exhibit C (the “RFP”).

The Architect:
(Name, legal status, address and other information)

Ramlow/Stein Architecture & Interiors
322 E. Michigan Street, Suite 400
Milwaukee, WI 53202
Attn: Nat Stein, Architect

ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, 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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(414) 615-1773
nats@ramlowstein.com

The Owner and Contractor agree as follows.

Deleted: ¶



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EXHIBIT A AIA DOCUMENT A201™-2017, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
EXHIBIT B INSURANCE REQUIREMENTS
EXHIBIT C A REQUEST FOR PROPOSALS FOR SEATING IMPROVEMENTS DATED SEPTEMBER 2, 2026, ISSUED BY OWNER

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

§ 2.1 The Contractor shall fully execute the Work described in the Contract Documents or reasonably inferable by the Contract Documents as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.2 Except as expressly provided for in the Contract Documents to the contrary, the Contractor at its sole cost, risk, and expense shall construct, equip, provide, purchase, pay for, and furnish all of the Work in accordance with the Contract Documents and applicable law, governmental codes, ordinances, and regulations as they apply to performance of the Work.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- [] The date of this Agreement.
- [X] A date set forth in a notice to proceed issued by the Owner.
- [] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[] Not later than () calendar days from the date of commencement of the Work.

[X] By the following date: February 19, 2027

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 3.3.3 Contractor shall complete the Work to 100% completion according to the following schedule (the "Project Schedule"):

Project Schedule	Event
Est. October 9, 2026	Notice to Proceed / Material Procurement
November 1, 2026 (or at end of Tenant's postseason baseball season, if earlier)	Anticipated Construction Commencement Date
February 19, 2027	Substantial Completion
March 12, 2027	100% Final Completion (Seating Included)
March 25, 2027	Opening Day at American Family Field

§ 3.4 The Contractor acknowledges and agrees that the Owner and Tenant are entitled to full and beneficial occupancy and use of the completed Work in accordance with the Project Schedule, and that the Owner and/or the Tenant has entered into, or will enter into, binding agreements with third parties based upon the Contractor's achievement of Substantial Completion and Final Completion of the Work in accordance with the Project Schedule. The Contractor further acknowledges and agrees that if the Contractor fails to achieve Substantial Completion of the Work in accordance with the Project Schedule, the Owner and/or the Tenant will sustain extensive damages and serious loss as a result of such failure. The amount of such damages are extremely difficult to determine and accurately specify. Therefore, the Owner and the Contractor agree as set forth below in this Section 3.4 and Section 4.5.

§ 3.4.1 If the Contractor fails to achieve Substantial Completion on or before February 19, 2027, the Owner and/or the Tenant shall be entitled to retain and/or recover from the Contractor, as liquidated damages and not as a penalty, the amount set forth in Section 4.5.

Deleted: as provided in this Section 3.3

Deleted: , if any, shall be assessed as

§ 3.4.2 The Owner may deduct liquidated damages owed by Contractor described in Sections 3.4.1 and 4.5 from any unpaid amounts then or thereafter due the Contractor under this Contract. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable by the Contractor to the Owner or, if directed by the Owner in writing to the Contractor, to the Tenant, upon the demand of the Owner.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price

§ 4.4 Unit prices, if any: (Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

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

§ 4.5 Liquidated damages, if any: (Insert terms and conditions for liquidated damages, if any.)

\$10,000.00 per game day and \$1,000.00 per non-game day, commencing February 20, 2027

§ 4.6 Other: (Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

§ 5.1.3 Provided that an Application for Payment, including all supporting documentation, is received by the Owner and

the Architect not later than the fifth (5th) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the twenty-fifth (25th) day of the _____ month (subject to the terms and conditions of the Contract Documents, including but not limited to Section 9.5 of AIA Document A201™-2017, General Conditions of the Contract for Construction. If an Application for Payment, including all supporting documentation, is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than the twenty-fifth (25th) day of the subsequent month after the Architect receives the Application for Payment.

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

Deleted: _____ (_____) days

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. 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 of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 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. In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Wisconsin:

- (i) A current Sworn Statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with a current, duly executed waiver of construction, mechanics', and material suppliers' liens (each a "Lien" and, collectively, "Liens") from the Contractor establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment.
- (ii) Commencing with the second (2nd) Application for Payment submitted by the Contractor, duly executed so-called "after-the-fact" or "trailing" waivers of Liens from all Subcontractors, consultants, contractors, material suppliers, and all other parties that provided labor or material for the Project, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment, plus sworn statements from all Subcontractors, consultants, contractors, material suppliers, and all other parties that provided labor or material for the Project, covering all amounts described in this clause (ii) of Section 5.1.5.
- (iii) Such other information, documentation, and materials as the Owner, the Architect, or the title insurer (if applicable) may require.
- (iv) In addition to the certifications set forth in each Application for Payment submitted by the Contractor, the Contractor shall: (1) be deemed to have certified that (a) there are no known Liens outstanding as of the date of the Application for Payment, (b) there is no known basis for the filing of any Liens on the Work and waivers from the Architect, Subcontractors, consultants, contractors, all material suppliers, and all other parties that provided labor or material for the Project, have been obtained in such form as to constitute an effective waiver of Lien under applicable state law, and (c) no public authority, private authority or utility company has contacted the Contractor alleging or claiming that the Work or the Contractor's performance of the Work is not in full compliance with all laws, ordinances, rules, regulations and lawful orders; and (2) provide (a) Contractor waiver of Lien naming the Owner and Tenant for all amounts requested in such Application for Payment, (b) waivers of Lien naming the Owner and Tenant from the Architect, Subcontractors, consultants, contractors, all materials suppliers, and all other parties that provided labor or material for which payment was requested under previous Applications for Payment (in furtherance, and not in limitation of the foregoing, the Contractor and the Owner agree and acknowledge that this requirement (b) does not require the Contractor to provide Lien waivers from such parties for amounts requested until the Application for Payment immediately following the Application for Payment on which such amounts are included), and (c) any other information reasonably requested by Owner or Tenant.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- 1 That portion of the Contract Sum properly allocable to completed Work;
- 2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- 3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- 1 The aggregate of any amounts previously paid by the Owner;
- 2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- 3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- 4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- 5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Pursuant to Section 66.0901(9)(b) of the Wisconsin Statutes, five percent (5%) will be withheld until fifty percent (50%) of the Work has been completed. At fifty percent (50%) completion or any time after fifty percent (50%) completion when the progress of the Work is not satisfactory, additional amounts may be retained but the total retainage may not be more than ten percent (10%) of the value of the Work completed.

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Except as hereinafter provided, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor or (ii) any other right or remedy that the Owner or the Tenant has under the Contract Documents, at law or in equity.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

One hundred fifty percent (150%) of the reasonable estimated cost of any incomplete Work and any unsettled Claims. Such withheld amount shall be paid to Contractor monthly as such incomplete Work is completed and Claims are settled, provided that all other requirements for progress payments set forth in this Article 5 are satisfied.

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§ 5.1.8 If Final Completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

§ 5.2 Final Payment

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

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- 2 the Contractor has certified completion of all punch-list items;
- 3 a final Certificate for Payment has been issued by the Architect; and
- 4 as-built drawings have been provided to the Owner.

Deleted: and

Deleted: 2

Final payment shall not become due until the Contractor has delivered to Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner, the Tenant or the property of the Owner, the Tenant, or the Property of the Owner or the Tenant 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 reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents and plans marked to indicate field changes and selections made during construction, (6) manufacturer's warranties and assignments thereof from the Contractor, Subcontractors, consultants, material suppliers, and all other parties that provided labor or material for the Project; (7) all manufacturer's product data, and maintenance and operations manuals, (8) final Lien waivers and releases from the Contractor, and all Subcontractors, consultants, material suppliers, and all other parties that provided any labor, materials, or Work for the Project, provided the Contractor may submit conditional Lien waivers to comply with the terms of this subsection, (9) if required by the Owner, close out documentation or other data establishing payment or satisfaction of obligations, such as receipts, or 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, (10) a complete list of Subcontractors, principal vendors, consultants, material suppliers, and all other parties that provided any labor, materials, or Work for the Project, along with their addresses and telephone numbers, (11) an electronic compilation of complete installation, operation, and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work (12) an electronic compilation containing all inspection reports, permits, and temporary and final certificates of occupancy and licenses necessary for the occupancy of the Project, (13) all warranties and guarantees and assignments of all guaranties and warranties from Subcontractors, vendors, suppliers, or manufacturers, (14) record drawings, and (15) any and all other items required pursuant to the Contract Documents. If a Subcontractor, consultant, material supplier, or any other party that provided any labor, materials, or Work for the Project refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such Lien, claim, security interest, or encumbrance. If any Liens, claims, security interests, or encumbrances remain 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 costs and reasonable attorneys' fees.

Deleted: or

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§ 5.2.2 Subject to Section 5.2.1, and the terms and conditions set forth in AIA Document A201–2017, the Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated in Section 13.5 of the AIA Document A201-2017.

Deleted: below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this 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.)

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

%

N/A

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2017

☒ Litigation in a court of competent jurisdiction pursuant to Section 15.4 of AIA Document A201-2017

☐ Other (Specify)

Deleted:

If the Owner and Contractor do not select a method of binding dispute resolution, 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.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

Deleted: § 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows: (Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Brian Dworak, Facility Manager

One Brewers Way

Milwaukee, WI 53214

(414) 902-4042

bdworak@wibaseballdistrict.com

Deleted:

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in [Article 11 of the AIA Document A201-2017](#) and [Exhibit B to this Agreement](#).

Deleted: AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

▼
§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

Deleted: § 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.7 Other provisions:

§ 8.7.1 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- (i) that it is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- (ii) that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- (iii) that it is authorized to do business in the State of Wisconsin and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- (iv) that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- (v) that its duly authorized representative has visited the site of the Property, familiarized himself or herself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents; and
- (vi) that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

§ 8.7.2 Drone Use

The use of a drone anywhere on the Ballpark site or within the Ballpark facility requires prior written consent from the Owner and the Tenant, which consent may be withheld in the Owner's and the Tenant's sole discretion and may be limited to specific date(s) and time(s) of use.

§ 8.7.3 Hot Work

The Contractor acknowledges and agrees that if any "Hot Work" (any operation involving open flames or producing

heat and/or sparks conducted outside a Hot Work Designated Area) is required as part of the Work, a Hot Work Permit provided by FM Global will be required prior to commencement of any Hot Work. The Contractor further acknowledges and agrees that it will be required to either: (1) bring a completed Hot Work Permit to AFF, or (2) complete a Hot Work Permit at AFF on the date which Work is to be provided.

§ 8.7.4 Construction Site Pollution Control

Prior to any land disturbance Work commencement, the Contractor shall supply an erosion and sediment control plan, details, notes, and necessary sequencing plan (collectively, the “Plan”) to the Owner that the Contractor shall implement to comply with the Construction Site Erosion & Sediment Control Standards applicable to the Work. The Plan shall outline all necessary Wisconsin Department of Natural Resources approved technical standards related to erosion/sediment control and/or storm water management that the Contractor will implement, maintain, and inspect as required throughout the duration of construction until final restoration (as needed) is achieved. The Contractor shall be responsible for the proper design; and the Contractor shall be responsible for the proper installation, inspection and repair/maintenance of the erosion/sediment control measures and/or storm water management measures and shall document records of inspections (on DNR inspection reports: <http://dnr.wi.gov/topic/stormwater/construction/forms.html>) and records of repair/maintenance activities in daily logs during the Work in accordance with ch. NR 151 and ch. NR 216, Wisconsin Administrative Code. The inspection reports and repair/maintenance logs shall be kept on-site in an accessible location along with the approved Plan

Contractor acknowledges that certain portions of the land surrounding AFF are subject to Cap Maintenance Plans. Any Work that requires excavation below the subgrade within the land covered under the Cap Maintenance Plan will be coordinated in advance with the Owner to ensure proper approval of disturbance, disposal of excavated material, and restoration of the cap. The Cap Maintenance Plans can be found at <https://wibaseballdistrict.com/operations-committee/>.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- 1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- 2 [Exhibit A – AIA Document A201™-2017, General Conditions of the Contract for Construction](#)
- 3 [Exhibit B – Insurance Requirements](#)
- 4 [Exhibit C – A Request for Proposals for Seating Improvements dated September 2, 2026, issued by Owner](#)

Building information modeling exhibit, dated as indicated below:
(Insert the date of the building information modeling exhibit incorporated into this Agreement.)

- 5 Drawings

Number	Title	Date

- 6 Specifications

Section	Title	Date	Pages

- 7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

Deleted: AIA Document A101™-2017, Exhibit A, Insurance and Bonds

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Seating improvements at American Family Field (the “Ballpark” or “AFF”), including the creation of a new row of fixed seating behind the home plate area of the Ballpark, located at American Family Field, One Brewers Way, Milwaukee, WI 53214.

The development of the Project is subject to the terms and conditions set forth in that certain Third Amended and Restated American Family Field (f/k/a Miller Park) Lease Agreement between the Milwaukee Brewers Baseball Club, Limited Partnership as “Tenant”, and the Owner as “Landlord” (the “Lease”). The Contractor shall comply with Owner’s reasonable requests and instructions to ensure Owner’s compliance with the Lease, including, but not limited to, construction and improvement provisions of the Lease.

THE OWNER:

(Name, legal status and address)

Wisconsin Professional Baseball Park District
One Brewers Way
Milwaukee, WI 53214
Brian Dworak, Facility Manager

THE ARCHITECT:

(Name, legal status and address)

Ramlow/Stein Architecture & Interiors
322 E. Michigan Street, Suite 400
Milwaukee, WI 53202
Attn: Nat Stein, Architect
(414) 615-1773
nats@ramlowstein.com

TABLE OF ARTICLES

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- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

ADDITIONS AND DELETIONS:

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™–2017, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the 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 Owner or 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 or proposal requirements. The most recently issued document takes precedence over previously issued forms of the same document. Figures given on Drawings govern scale measurements, and large scale details govern smaller scale Drawings. If an item is shown one place in the Drawings, but not another, or called for in a schedule but not shown on the Drawings, it is to be included. Existing conditions take precedence over Drawings and Specifications for dimensions and shall be verified by Contractor. In the event of any conflict in the terms and conditions of the Contract Documents, the more stringent terms and conditions shall apply.

§ 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 written 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 permitting, construction, and related 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 in order to fulfill the Contractor's obligations under the Contract Documents. 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, digital models and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be

liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Knowledge

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

§ 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.

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

§ 1.2.2 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. Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall present an affidavit from the manufacturer when requested by the Architect or required in the Specifications, certifying the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate such compliance. Further, whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a change in the Work.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined herein and/or in the AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as modified by the parties, or (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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the 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 suppliers are authorized to use and reproduce the

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Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.5.3 All documents, reports, data, drawings, specifications and other materials prepared by the Contractor for performance of the Work (the "Contractor Documents") are instruments of the Contractor's Work and are for use solely with respect to this Project. All Contractor Documents shall be the property of the Owner, or, where applicable, of the Tenant. Upon payment of all sums approved by the Architect as being due the Contractor, the Owner, or, where applicable, the Tenant, shall own all common law, statutory, and other reserved rights, in addition to the copyrights, in and to the Contractor Documents. Contractor shall not withhold delivery of the Contractor Documents on account of any dispute with the Owner, or, where applicable, the Tenant, including a dispute over any sums claimed due and owing to Contractor. The Contractor Documents are not to be used by the Contractor or any subcontractor on any other project without prior written consent of the Owner, or, where applicable, the Tenant, which may be withheld in the Owner's or the Tenant's sole discretion.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Standard of Care

Contractor shall prosecute the Work in a good, workmanlike, and first-class manner, continuously, expeditiously and diligently in accordance with a fast-track policy of construction management and practice for construction of projects similar to the Project, using qualified, careful, and efficient workers and in conformity with the provisions of the Contract Documents, which may require overtime and shift work to achieve Substantial Completion on or before the Substantial Completion Date. The Contractor has included provisions in the Guaranteed Maximum Price for critical construction activities to work beyond a standard 40-hour work week, as needed to achieve Milestone Schedule and Substantial Completion.

§ 1.10 Confidentiality

§ 1.10.1 The Contractor warrants and represents that the Contractor shall not communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner or Tenant, as applicable, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The

Contractor shall not disclose to others that specific information was received from the Owner or Tenant, as applicable, even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's and Tenant's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner or Tenant Information, prior to any disclosure thereof, the Contractor shall notify the Owner or Tenant, as applicable, and shall give the Owner or Tenant, as applicable, the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.10.2 The Contractor, at any time upon the request of the Owner or Architect, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.10.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.10.

§ 1.10.4 The representations and warranties contained in this Section 1.10 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.10.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

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.

§ 2.1.3 The presence of the Owner, Architect, or Tenant, as applicable, at the Project does not imply acceptance or approval of the Work.

§ 2.2 Intentionally Omitted

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including

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§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

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

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

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

those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction.

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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 reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information 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.

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§ 2.3.6 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.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or 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.

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§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 in the Contract Documents or at law or in equity, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. The right granted Owner in this Section 2.5 shall be in addition to, and not in restriction of, all other rights that the Owner has under the Contract Documents and at law or in equity, and shall not give rise to any duty on the part of the Owner to exercise such right for the benefit of the Contractor or any other person or entity.

§ 2.6 Extent of Owner Rights

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

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. The Architect and the Owner shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner shall not have control over or charge of, and shall not be responsible for acts or omissions of the Contractor or its agents or employees, or any other persons or entities performing portions of the Work for the Contractor.

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

§ 3.1.4 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such prepurchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any prepurchased items, unless the Contract Documents specifically provide otherwise.

§ 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 2.3.4, 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. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect, the Owner, or the Tenant, as applicable. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 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. The Contractor shall comply with all applicable federal, state and local laws, statutes, rules, codes, orders, regulations, and ordinances. The Owner, in its sole discretion, may terminate this Contract immediately if, at any time during the term of this Contract, the Contractor violates or is in breach of any provision of this Section 3.2.3. The Contractor shall require all of its subcontractors and sub-subcontractors to make the representations and warranties set forth in this Section 3.2.3 and to be bound by the same

[requirements set forth in this Section 3.2.3.](#)

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, ~~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.

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§ 3.3 Supervision and Construction Procedures

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. ~~It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make the Contractor the agent, servant, or employee of the Owner or Tenant, or (2) create any partnership, joint venture, or other association between Owner and Contractor or between the Tenant and Contractor. Any direction or instruction by the Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.~~

§ 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. ~~If any of the Work is required to be inspected or approved by any local, county or state public authority, the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner or any of its authorized representatives shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.~~

§ 3.3.4 ~~For each portion of the Work, before ordering the materials or starting that portion of the Work, the Contractor shall verify all dimensions and check all conditions in order to confirm that they properly reflect those on the Drawings. Any inconsistency shall be brought to the attention of the Owner and Architect. In the event that discrepancies occur between ordered material and actual conditions of which the Architect was not notified beforehand, costs (if any) to correct such discrepancies shall be borne by the Contractor. The Contractor's responsibility shall include instances in which it recognized such discrepancies using the proper diligence and care exercised by other contractors within the region of the Project with experience and resources similar to the Contractor.~~

§ 3.4 Labor and Materials

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

damage or wear to the Contractor's tools, materials, and/or equipment.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the prior 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. The Contractor shall use commercially reasonable efforts to ensure harmonious interaction among all of the persons working on the Project, and the Contractor shall use commercially reasonable efforts to minimize the possibility of a strike, work stoppage, or other labor disturbance. The Contractor shall promptly remove any persons of whom the Owner has a reasonable objection to their fitness for work. The Contractor shall not employ personnel, or contract with Subcontractors or suppliers, to whom the Owner has made timely objection.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including, but not limited to, substitutions not properly approved or authorized, shall, 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 not performed by the Contractor, 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. The warranties set out in this Section 3.5.1 are not exclusive of any warranties or guarantees set out in other places in the Contract Documents or available under applicable law or in equity.

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

§ 3.5.3 Prior to final payment, the Contractor shall furnish and/or assign to the Owner as-built drawings and all operating and maintenance data, and any manufacturer warranties required by the Contract Documents and/or supplied by manufacturers of materials and equipment incorporated into the Work.

§ 3.5.4 The warranties of the Contractor provided in Subparagraph 3.5.1 shall in no way limit or abridge the warranties of the suppliers or equipment and systems which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. The Contractor shall take no action and shall not fail to act in any way which results in the termination, expiration or modification of such third party warranties or which otherwise results in prejudice to the rights of the Owner or the Tenant, as applicable, under such warranties. The Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby the Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

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§ 3.5.5 The period for the Contractor's obligation to correct the Work under the Agreement shall commence, with respect to any portion of the Work, not earlier than the date of Substantial Completion of the entire Work.

§ 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.

§ 3.6.1 Sales Tax Exemption. The Owner represents that it is an entity exempt from sales and use tax in Wisconsin, and that Wis. Stat. §77.54(11) permits the Contractor to directly purchase all materials, equipment and supplies for the Work of construction under this Agreement without incurring Wisconsin sales or use tax. Accordingly, the Contractor shall, and

shall cause each Subcontractor, Sub-subcontractor, manufacturer, supplier to purchase all such materials, equipment and supplies in order to pass to the Owner any sales and use tax savings for the Project.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

§ 3.7.2 The Contractor shall comply with and shall be responsible for ensuring that its employees, agents, Subcontractors, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor comply with, and give notices required by all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public and private authorities, and utility companies 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 5 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents, or which should have been known to the Contractor, and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by prior inspections, tests, reviews or preconstruction services for the Project, or inspections, tests, reviews or preconstruction services that the Contractor made in connection with the Project. The Contractor hereby acknowledges that the Contractor shall not have any right to and the Owner will not consider any requests for an increase in the Contract Sum or for additional time under Sections 3.7.4 and 3.7.5 that is not submitted in compliance with the foregoing requirements.

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

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. The Contractor shall notify the Owner of any potential shortfalls in allowances to meet actual cost of the work included in the allowance prior to placing orders for such materials. The Contractor shall provide recommendations to the Owner for alternatives which may bring the required materials within compliance with the parameters of the allowances.

§ 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.

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

§ 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 and Submittal Schedules

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

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

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

§ 3.10.4 The Contractor acknowledges that the Work will be performed within an existing professional sports stadium ("American Family Field" or "AFF") that will be operating throughout the performance of the Work. The Contractor shall perform the Work in a manner that causes minimal disruption to the normal, day-to-day operations at AFF and in a manner that addresses life safety and traffic considerations as directed by the Owner and the Tenant. The Contractor further acknowledges and agrees that during performance of the Work, AFF may continue to host professional sporting events, concerts, and other public and private events ("Event(s)"). Unless otherwise approved by the Owner and the Tenant in writing, within twenty-four (24) hours before and for the full duration of all Events, the Contractor shall ensure that its performance of the Work does not interfere with the functionality of the lighting systems, concessions,

bathrooms, audio systems, player and employee facilities, playing field, stadium seats, parking facilities and all ingress/egress to the seating bowl and playing field, including emergency egress, along with any other functions that are required for the Event(s) as directed by Owner or Tenant ("Required Functionality").

§ 3.10.5 The Contractor shall (i) coordinate the activities under this Agreement with the activities it is performing on the Work and with all separate contractors, consultants and third parties performing work on projects at AFF, including delivery, offloading, storage, protection, hoisting and distribution of equipment and materials on the site, (ii) participate with the Owner and the Tenant and all separate contractors, consultants, and third parties working for the Owner or the Tenant in reviewing and coordinating the schedules of the separate contractors with the schedule approved under this Agreement and shall coordinate work schedules, parking for those performing work on projects at AFF and AFF access with Tenant on days when Event(s) occur; and (iii) coordinate installation and connection of mechanical, electrical, plumbing, fire sprinkler and fire alarm interfaces and services in accordance with the specifications of the separate contractors as needed to complete their work, especially during commissioning and performance testing of their work. The Contractor shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the separate contractors with the Work without additional compensation or additional time, unless agreed to by previously executed Change Order. The Contractor shall afford the Owner, the Tenant, and all separate contractors a reasonable opportunity for storage of materials and equipment and performance of their work. The Contractor shall also connect and coordinate its Work and operations with the Owner and the Tenant and all separate contractors' operations for the successful performance of the Work.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain for the Owner, at the Project site, one copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in available to the Architect and the Owner, and shall be delivered to the Owner upon completion of the Work.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor acknowledges that the Work can be performed without use of any areas outside of the Project site owned by the Owner and any use by the Contractor of areas outside of the Project site owned by the Owner shall be solely at the Contractor's risk, including any use for parking, ingress, egress, and material storage, and the Owner and the Tenant shall have no obligation whatsoever to secure any rights to such areas.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely

to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner and the Tenant, which may be withheld in the sole discretion of the Owner or the Tenant.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the site of the Work. Without prior written approval of the Owner and the Tenant, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner or the Tenant, as applicable.

§ 3.13.4.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner or the Tenant in connection with the use and occupancy of the Project site, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract on a daily basis. 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 and provide a final clean-up of all surfaces.

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

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§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, the Architect, the Tenant, Major League Baseball, and the directors, authorized representatives, owners, employees, consultants and agents of each of them ("Indemnitees") from and against all claims, liabilities, costs, damages, liens, losses, payments, judgments, and expenses including, but not limited to, reasonable attorneys' fees and other litigation expenses (collectively, "Losses"), arising out of or resulting from: (a) bodily injury, death of any person, sickness, disease, or damage to real property resulting from the willful, fraudulent, or negligent acts or omissions of the Contractor or the Contractor's agents and Subcontractors, or anyone directly or indirectly employed by them; or (b) the Contractor's breach of any representation, warranty, or obligation of the Contractor set forth in the Contract Documents (including, without limitation, any violation of any laws, ordinances, rules, regulations, and lawful orders of public or private authorities). This obligation is in addition to any other obligations set forth herein or under applicable law or in equity.

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

§ 3.18.3 The Contractor shall defend, indemnify, and hold harmless the Indemnitees from and against all Losses based on a claim that any of the Work, or the Owner's or the Tenant's receipt or use thereof, infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall the Contractor enter into any settlement without the Owner's or applicable Indemnitee's prior written consent.

§ 3.18.4 The provisions of this Section 3.18 shall survive the expiration or earlier termination of the Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will 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.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or

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employees, or any other persons or entities performing portions of the Work. In no event shall the Owner or any other party have control over or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Work, since these are solely the Contractor's responsibility. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Owner will not have control over or charge of and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that poses a potential danger or does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

§ 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 Contractor shall make good faith effort to achieve 15% diverse firm participation as outlined in the Wisconsin Professional Baseball Park District Diversity Contracting Program Adopted June 9, 2020, and provided to the Contractor.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume

toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect, and the Tenant as applicable. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall be responsible for preparing bid packages, receiving and analyzing bids, and making recommendations for award and preparation of contracts for Owner's approval.

§ 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; 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 direct costs incurred by such Subcontractor as a result of the suspension.

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

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

§ 5.4.5 The Contractor shall be fully responsible for the performance of the Subcontractors, including those selected or approved by the Owner.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

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

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions

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to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a change in the Contract Time unless and until such alteration or addition has been authorized either by: (a) a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents; or (b) a written authorization by Owner specifically authorizing same, with a Change Order regarding such change executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents within fifteen (15) days after the date of such written authorization. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner or the Tenant has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or change in the Contract Time.

§ 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 with the prior written approval of the Owner.

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

§ 7.2 Change Orders

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

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

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement by the Contractor of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Contract Sum and the Project Schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 Construction Change Directives

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

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

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

- 1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- 3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 As provided in Section 7.3.4.

§ 7.3.3.1 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and the Architect within five (5) days 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.

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

§ 7.3.4 If the Contractor disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this

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Section 7.3.4 shall be limited to the following:

1. Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
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, directly related to the change; and
5. Costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.8 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 ~~Owner and the Contractor shall execute~~ a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. ~~The Contractor's agreement to a Change Order shall constitute a waiver and release by the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work for any claim for delay, cumulative impact, cost of extended general conditions, and any other indirect cost associated with the Construction Change Directive.~~

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

§ 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.

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

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§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine and only to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay caused by, or at the request of, the written direction of Owner or Tenant, or otherwise only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one (1) day.

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

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 8.3.1, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting intentional interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional interference with the Contractor's performance of the Work.

§ 8.3.4 Except as expressly stated otherwise, this Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

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§ 9.2 Schedule of Values

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

§ 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of Liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. ~~Each Application for Payment shall include all items required under Article 5 of the AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as modified by the parties.~~

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made ~~for services provided as well as~~ 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. ~~Partial or complete payment for materials and equipment stored off site shall not be construed as relieving the Contractor of its responsibility for the care and protection of such materials and equipment used. The Contractor shall be responsible for any and all damage to such materials and equipment occurring prior to the incorporation of such materials and equipment into the Work on the Project site, and the Owner shall have the right, in addition to all other remedies available to the Owner under the Contract Documents, to reject any such materials and equipment damaged prior to the incorporation thereof into the Work on the Project site. Materials and equipment stored off site requiring protection from weather, heat, cold or moisture shall be suitably protected by the Contractor as required by the material manufacturer. The materials and equipment shall be labeled as the property of the Owner and shall be accessible to the Owner for inspection at all times and shall be segregated from other materials and equipment at the storage facility. Notwithstanding anything to the contrary set forth in this Section 9.3.2 or any of the other Contract Documents, the Owner shall not be responsible for the payment of the storage of materials or equipment stored off site during any suspension of the Work pursuant to Section 2.4.~~

§ 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, ~~and all~~ other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Liens.

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§ 9.3.4.1 The Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from Liens and claims of Lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 9.3.4.2 The Contractor shall provide the Owner with copies of all notices received by the Contractor from Subcontractors, sub-subcontractors, and/or suppliers to Contractor, or any other party regarding the Project or the Work.

§ 9.3.4.3 In the event that any Contractor, Subcontractor, supplier, design professional or any other party of any tier for whom the Contractor is responsible establishes a Lien against the Project and/or the Project site, the Contractor shall, as long as the Owner has not failed to pay undisputed amounts as and when due pursuant to the Contract Documents, within fifteen (15) business days of receipt of notice of such Lien, cause the Lien to be discharged (either by obtaining and recording a Lien discharge bond from a surety and in a form acceptable to the Owner or otherwise) at no cost to the Owner or the Tenant. The Owner shall have the right to withhold 150% of the Lien amount until the Lien is discharged. In the event the Contractor fails to cause the Lien to be discharged within the fifteen-day period as set forth in this Section 9.3.4.3, the Owner may either (a) apply amounts so withheld to discharging such Lien and/or (b) retain such amounts until such Lien is discharged or released by the Contractor or the lienor, and shall thereafter credit to the Contractor any amounts remaining after payment of the fees and expenses (including, without limitation, reasonable attorneys' fees) the Owner incurs in connection with such Lien. The Contractor agrees to indemnify, defend, and hold harmless the Owner and Tenant from all claims and all costs and expenses incurred by the Owner and Tenant in connection with such Liens, except to the extent that any such Lien is attributable to Owner's failure to pay undisputed amounts as and when due pursuant to the Contract Documents.

§ 9.3.4.4 Notwithstanding the foregoing, the Owner reserves the right (but not the obligation) to settle any Lien claim by payments to the Lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application for Payment, 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

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subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner, the Tenant, or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents or any other default by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts the Contractor may be liable to comply with any provisions of, the Contract Documents;
- .8 failure of the Contractor to comply with the most current approved Project Schedule; or
- .9 any Lien or attachment not discharged as required by the Contract Documents.

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

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. If the Contractor disputes any determination by the Architect or the Owner with regard to any payment, the Contractor shall nevertheless expeditiously continue to prosecute the Work. So long as the Owner continues to make payment on undisputed portions of any payment, the Owner shall not be deemed to be in breach of this Agreement by reason of the withholding of the portion of the payment in dispute pursuant to Section 9.5.1.

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

§ 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall pay each Subcontractor and other person or entity providing services or work for the Contractor no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner, the amount to which the Subcontractor or other person or entity providing services or work for the Contractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the portion of the Work performed by the Subcontractor or other person or entity. The Contractor shall, by appropriate agreement with each Subcontractor and other person or entity providing services or work for the Contractor, require each Subcontractor or other person or entity to make payments to Sub-subcontractors in a similar manner.

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§ 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, suppliers, and other persons or entities providing services or work for the Contractor amounts paid by the Owner to the Contractor for the Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors, suppliers, and any other persons or entities to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any Lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a Lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the Lien or other claim for payment has been asserted. Nothing in this Section 9.6.8 shall limit the application of Section 9.3.4, including, but not limited to, the parties' respective rights and obligations set forth therein.

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work, as reflected in a Certificate of Substantial Completion issued by the Architect, when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner and/or the Tenant 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 notify the Architect and the Owner (the "Contractor's Notice of Substantial Completion") and the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment ("Punch List"). The Punch List of items to be completed or corrected shall contain only minor punchlist items, which term shall mean details of construction adjustments that are minor in character and do not materially interfere with the intended use of the Project. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor shall proceed expeditiously and without delay upon submission of the Notice of Substantial Completion to complete, correct and provide all items included on the preliminary Punch List, along with any additional punch list

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items required by the Architect and/or the Owner, that are in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's Notice of Substantial Completion, the Owner and the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Punch 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 the Architect issues the Certificate of Substantial Completion, complete or correct such item(s) upon notification by the Owner or the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and the Architect to determine Substantial Completion.

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the 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 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.6, the Owner and the Contractor shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

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

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§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 The Contractor will be deemed to have achieved "Final Completion" on the date that (i) all items on the Punch List shall have been performed or caused to be performed by the Contractor and approved in writing by the Owner, (ii) the Contractor shall have delivered to the Owner or caused to be delivered to the Owner all "as-built" plans, warranties, instruction and operation manuals required by the Contract Documents, final conditional waivers of Lien (in form and substance satisfactory to the Owner from the Contractor, all Subcontractors, consultants, material suppliers, and all other parties that provided labor or material for the Project) and all excess Project materials, and (iii) all performance criteria set forth in Exhibit C to the Agreement have been achieved to Owner's satisfaction (the "Final Completion Date"). 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 Owner and the Architect will promptly make such inspection.

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When ~~the Owner and~~ the Architect find the Work acceptable under the Contract Documents and ~~that Final Completion has occurred~~, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. ~~Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work.~~

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§ 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, ~~the Tenant, or the Property of the Owner or the Tenant,~~ 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 reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) ~~as-constructed record copy of all Construction Documents and plans marked to indicate field changes and selections made during construction,~~ (6) ~~manufacturer's warranties and assignments thereof from the Contractor, Subcontractors and suppliers;~~ (7) ~~all manufacturer's product data, and maintenance and operations manuals,~~ (8) ~~final unconditional Lien waivers and releases from the Contractor, and all Subcontractors, consultants, material suppliers, and all other parties that provided any labor, materials, or Work for the Project,~~ (9) ~~if required by the Owner, close out documentation or other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of Liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner,~~ (10) ~~a complete list of Subcontractors, principal vendors, consultants, material suppliers, and all other parties that provided any labor, materials, or Work for the Project, along with their addresses and telephone numbers,~~ (11) ~~an electronic compilation of complete installation, operation, and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work,~~ (12) ~~an electronic compilation containing all inspection reports, permits, and temporary and final certificates of occupancy and licenses necessary for the occupancy of the Project,~~ (13) ~~all warranties and guarantees and assignments of all guaranties and warranties from Subcontractors, vendors, suppliers, or manufacturers,~~ (14) ~~record drawings, and~~ (15) ~~any and all other items required pursuant to the Contract Documents.~~ If a Subcontractor, consultant, material supplier, or any other party that provided any labor, materials, or Work for the Project refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a ~~Lien, claim, security interest, or encumbrance~~ remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be ~~pay in discharging the Lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~

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§ 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, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

final Application for Payment.

§ 9.10.6 Amounts withheld from the final payment to cover any incomplete or defective Work shall not be considered retainage and shall not be paid to the Contractor until the incomplete or defective Work is actually completed or corrected and accepted by the Owner. Such withholdings shall be one hundred fifty percent (150%) of the estimated cost to complete or correct the incomplete or defective Work. As items of incomplete or defective Work are finished by the Contractor, Owner will release the amount withheld for that Work to the Contractor.

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

The Contractor shall ensure that all materials and equipment are safely and securely stored on the Project site at all times. In the event any materials or equipment are stolen, and the stolen materials and equipment were not safely and securely stored on the Project site, the Contractor shall be responsible for such loss. Owner shall not be required to make a claim related to such loss against Owner's insurance company, and the Contractor shall, at its sole cost and expense, replace all of the stolen materials and equipment. The foregoing sentence shall control in the event of any inconsistencies between it and any other provision of the Contract Documents.

§ 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 implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the 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

The Contractor shall promptly report in writing to the Owner all accidents whatsoever arising out of or in connection with the performance of the Work, whether on or off the Project site, which caused death, personal injury or property damage, giving full details and statements of witnesses if available, if the Contractor reasonably believes there may be a claim made against the Owner or the Tenant. In addition, if death or serious injury or damages are caused, the accident shall be reported immediately to the Owner by telephone or messenger. If the Owner or the Contractor 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 the 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. If there is an injury or damage to person or property on a day in which an Event takes place, the Contractor shall provide prompt notice to the Tenant of any such injury.

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§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor or any of its Subcontractors 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 any of its Subcontractors, the Contractor or any of its Subcontractors shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's 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 the material or substance or who are to perform the task of removal or safe containment of the 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 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 causes bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss, or expense is not due in any way to the fault or negligence of a party seeking indemnity.

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§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor or any of its Subcontractors brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the fault or negligence of the Contractor or any of its Subcontractors in the use, handling, storage, transportation, or installation of such materials or substances.

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§ 10.3.5 The Contractor shall reimburse, indemnify, defend, and hold the Owner harmless for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor or any of its Subcontractors brings to the site and negligently handles, or (2) where the Contractor or any of its Subcontractors 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.

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§ 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 reimburse the Contractor for all cost and expense thereby incurred except to the extent such cost or expense is caused by the negligence of the Contractor or anyone for whom the Contractor is responsible.

§ 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 Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain, at its expense, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Exhibit B to the Agreement. Each policy maintained by the Contractor pursuant to this Section 11.1 shall comply with the requirements in Exhibit B to the Agreement and provide that it will not be canceled or materially altered without thirty (30) days advance written notice by mail to the Owner, mailed to the address indicated herein, and the policies or certificates of insurance shall so state.

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§ 11.1.3 If any bond is required under the Contract Documents or by Owner, 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.

§ 11.1.4 If any bond is required under the Contract Documents or by Owner, the Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and (iv) any other item required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety. The Owner may, in the Owner's sole discretion, inform the surety of the progress of the Work and obtain consents as necessary to protect the Owner's or the Tenant's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

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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.

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. The Contractor further agrees to replace, repair, or restore any parts of the Work, the Owner's work or materials, or other items or property located in the Project that are damaged as a consequence of defective or nonconforming Work or corrective action taken pursuant thereto. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 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 Upon completion of any corrective Work or repairs of defective Work under or pursuant to this Article 12, the one-year correction period shall be renewed and recommence only as to the specific Work which was corrected. The obligations under this Article 12 shall cover any repairs and replacement to any part of the Work caused by the defective Work.

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

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

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

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. 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, excluding that jurisdiction's choice of law rules. 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 other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment. Any assignment of the Contract Documents by Owner as provided herein shall not diminish, impair or otherwise affect the Contractor's obligations or rights under the Contract Documents, including the Contractor's warranty obligations, which shall be fully enforceable by the Owner's assignee.

§ 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, 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 or in equity.

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

§ 13.3.3 Notwithstanding anything to the contrary, neither the Owner nor any of the Owner's partners, members, managers, tenants, beneficiaries, shareholders, ventures, partners, officers, directors, employees or other representatives shall have any personal liability under the Contract Documents or otherwise with respect to the Project.

§ 13.4 Tests and Inspections

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

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§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense, including, but not limited to, the cost of retesting for verification of compliance if necessary until the Work in question complies with the requirements of the Contract Documents.

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

§ 13.6 All rights with respect to any and all Contractor Documents, or other property of any nature produced, created, or suggested by the Contractor or any of its Subcontractor or other person or entity on behalf of the Contractor in connection with this Agreement or resulting from the Work shall be deemed to be work made for hire and shall be the sole and exclusive property of Owner or, where applicable, the Tenant. Without limiting the generality of the foregoing, title to all the Contractor Documents, including plans, drawings, specifications, ideas, concepts, models, designs, characters, audio or videotapes, photographs, motion pictures, language, information stored on a computer hard drive, or other tangible work product produced by the Contractor or any Subcontractor or other person or entity on behalf of the Contractor pursuant to the Agreement (the "Work For Hire") shall become the property of Owner or, where applicable, the Tenant when produced. In this connection, the Contractor hereby assigns to Owner and/or the Tenant all now known or hereafter existing rights of every kind throughout the universe, in perpetuity and in all languages, pertaining to the Work For Hire (including, without limitation, the copyright, trademark and patent rights thereto). The Contractor agrees to execute and deliver to Owner or the Tenant, at any time upon Owner's request, such further documents or to do such other acts as may be required to evidence and/or confirm Owner's and/or the Tenant's ownership of any or all of the aforesaid.

§ 13.7 Written Notice

Where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly given or served if delivered, as the case may be (i) when hand delivered to the addressee; (ii) one (1) business day after having been deposited, properly addressed and prepaid for guaranteed next business day delivery, with a nationally recognized overnight courier service (e.g., UPS or FedEx), or (iii) upon delivery by e-mail to the designated representatives identified in the Agreement.

§ 13.8 Notwithstanding anything to the contrary contained in this Agreement, the review and approval of any and all documents or other matters required herein by the Owner or Architect shall be for the limited purpose of providing the Contractor with information as to Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of the Contract Documents, and any such review and approval shall not alter the responsibility of Owner, Contractor, Architect, or Subcontractors with respect to such documents.

§ 13.9 Subcontracts.

§ 13.9.1 Any part of the Work performed for the Contractor by Subcontractors shall be pursuant to written subcontracts between the Contractor and the applicable Subcontractor. Each such contract and subcontract shall be in writing and shall:

- .1 require that such Work be performed in accordance with the requirements of the Contract Documents;
- .2 waive all rights the contracting parties may have against one another or that the Subcontractors may have against the Owner for damages caused by fire or other perils covered by the property insurance described in the Contract Documents;
- .3 provide that each Subcontractor, to the extent of the Work to be provided by it, shall be bound by the terms of this Agreement and shall assume toward the Contractor all the obligations and responsibilities which the Contractor by the terms of this Agreement assumes toward the Owner;
- .4 provide that Owner shall have the benefit of all rights, remedies and redress against each Subcontractor that the Contractor, under the consultant or subcontract agreement has against the Subcontractor;
- .5 require the Subcontractors to carry and maintain liability insurance in the amounts required in Exhibit B to the Agreement, unless otherwise approved by Owner in writing.
- .6 require the Subcontractors to furnish such certificates and waivers as Owner may reasonably request;

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- .7 provide that Owner and Tenant shall be third party beneficiaries and that Owner and Tenant may enforce all warranties directly against the Subcontractors; and
- .8 contain an indemnification in favor of the Indemnitees, which indemnification shall offer no less protection to the Indemnitees than Section 3.18 (which shall be deemed incorporated by reference into any such contract to the extent necessary to achieve this result).

§ 13.9.2 The Owner may at any time and for any reason, within the Owner's sole discretion, require the assignment of any subcontract or other agreement with a Subcontractor, and upon the Owner's request, the Contractor shall immediately assign any such agreement(s) to Owner. All assignments shall provide that the Owner shall only be responsible for payment for (i) Work furnished by the Subcontractor after the date of Owner's acceptance of assignment, and (ii) Work furnished by the Subcontractor prior to Owner's acceptance of assignment for which the Subcontractor has not been paid, but only to the extent that Owner has not previously made payments therefor to the Contractor. Provided, nothing contained herein shall require Owner to pay Contractor or a Subcontractor where there is a good faith dispute as to whether Work have been performed or performed in accordance with this Agreement.

§ 13.9.3 The Owner shall not have nor be deemed to have any direct contractual relationship with the Subcontractors and shall not be obligated to pay, nor be liable for the nonpayment of, the fees, costs and expenses of the Subcontractors, such fees, costs and expenses being the sole obligation of the Contractor. To the extent the Contractor retains a Subcontractor to perform portions of the Work hereunder, the Contractor shall be responsible for their Work as though it had been performed directly by the Contractor. The provisions of this Section 13.9.3 do not apply to any work performed by a Subcontractor after the date such agreement has been assigned to the Owner pursuant to Sections 5.4 or 13.9.2.

§ 13.10 Access to and/or use of the playing field, which includes both fair and foul territory, at AFF (the "Playing Field") shall be limited. The Contractor and its Subcontractors shall not be permitted to access or use the Playing Field except upon prior written approval of the Owner and the Tenant's Senior Vice President – Stadium Operations, or his or her designee, and, if approved, access and/or use by Contractor and/or its Subcontractors shall be accompanied by a member of Tenant's ground crew staff. Contractor acknowledges and agrees that it shall be solely responsible for, and shall compensate the Tenant for, any damage caused by the Contractor's, or its Subcontractors', access to and/or use of the Playing Field, and Contractor further agrees that if the Tenant determines in its sole and absolute discretion that such access or use will cause, or is likely to cause, any such damage to the Playing Field, then Contractor shall propose measures that Contractor will take, at its sole cost and expense, to prevent any such damage to the Playing Field for the Tenant's consideration and prior written approval.

§ 13.11 The Contractor acknowledges and agrees that the Owner and Tenant shall have authority and control over the position of AFF's roof, and the Tenant shall have sole discretion regarding whether AFF's roof is closed or opened, in whole or in part. If Contractor wishes to request a change in the position of AFF's roof, it must obtain prior approval from the Owner and Tenant's Senior Vice President – Stadium Operations, or his or her designee.

§ 13.12 No Marketing. Contractor specifically understands and agrees that the Contractor, the Subcontractors, suppliers and others providing materials or services for the Project, and the directors, owners, agents, employees, or representatives of any of them must not use any names, logos or trademarks of Owner or the Tenant, and must not mention Owner or the Tenant in any promotional or marketing materials, customer lists or other contexts without receiving written permission from Owner and the Tenant. The Contractor understands that the foregoing assurance is of immeasurable value to Owner and any failure by the Contractor to comply with it would cause substantial harm to the business of the Owner and the Tenant and would deprive the Owner and the Tenant of the significant benefit they hope to obtain from this Agreement. The Contractor specifically understands that no right or license to use any of the name, logos, trade names, marks or similar rights of Owner, Tenant, Major League Baseball or their respective affiliates is granted by this Agreement, and the Contractor covenants not to make any unauthorized use of any of the foregoing. The provisions of this Section shall survive the expiration or sooner termination of this Agreement.

§ 13.13 Third Party Beneficiaries.

§ 13.13.1 The Owner and the Tenant are intended third-party beneficiaries of all subcontracts and material supply contracts of whatever tier, with the right, but not the obligation, to directly enforce both during and after the construction period, subcontractor obligations to meet prevailing standards or workmanship and to comply with the Contract Documents including but not limited to all applicable express and implied warranties.

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§ 13.13.2 The parties hereby designate the Tenant as a third-party beneficiary of the Contract, entitled to enforce its rights as if it were a party hereto. The Tenant's rights as a third-party beneficiary include, but are not limited to: (i) the correction of any defects in the Work; (ii) any warranty set forth in this Agreement; and (iii) any and all damages, liquidated damages, costs, losses, and expenses (including, without limitation, lost ticket sales, concessions, food and beverage revenue, sponsorship and other business interruption losses, whether direct, consequential or otherwise) arising from the Contractor's contractual breaches, delays, and/or failures to meet contractual deadlines (collectively, the "Third Party Terms"). Tenant shall be entitled to enforce the Third Party Terms against the Contractor as if Tenant was the Owner. Notwithstanding anything herein to the contrary, the Tenant shall not have the ability to terminate this Agreement without Owner's written consent, which consent may be withheld in Owner's sole discretion.

§ 13.14 If either the Owner or the Contractor retain an attorney to enforce the terms of or obtain a declaration of rights under this Agreement, to resolve a Claim or to collect any payment or other sum of money due under the Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs (including the allocated cost of in-house legal services, calculated at market rates). For purposes of this Section, the term "prevailing party" shall include, without limitation, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment.

§ 13.15 For the purpose of interpreting this Agreement, neither party shall be deemed to be the drafter thereof.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, and subject to the Contractor's compliance with Section 14.1.6, terminate the Contract and recover from the Owner payment for Work properly executed, and actual and direct costs incurred by reason of such termination, including demobilization and costs attributable to the termination of subcontracts.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract, which termination shall be deemed a termination by Owner for convenience, and recover from the Owner as provided in Section 14.4.3.

§ 14.1.5 Notwithstanding anything to the contrary contained herein or in the other Contract Documents, the Owner shall not be responsible for damages to the Contractor, Subcontractors or suppliers for loss of anticipated profits on Work not performed on account of any termination pursuant to Section 14.1.

§ 14.1.6 As a prerequisite to any termination by the Contractor pursuant to Section 14.1, the Contractor must deliver to Owner a seven-day written notice to cure and Owner must, within the seven-day period, have failed to commence diligent efforts to cure the condition upon which the Contractor's right to terminate is based.

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.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

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§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails after commencement of the Work to proceed continuously with the construction and completion of the Work, except as permitted under the Contract Documents;
- .6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents; or
- .7 becomes insolvent, is in bankruptcy, or is in receivership.

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§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum is less than all 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 the Tenant, and not expressly waived, the Owner may retain all unpaid balances and the Contractor shall pay the difference between such unpaid balances and all costs of finishing the Work to the Owner. If, however, the unpaid balance of the Contract Sum is greater than all costs of finishing the Work, the Contractor shall receive payment for Work properly performed for which payment was not made previously; and any excess amounts shall be retained by 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.

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§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. 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.

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§ 14.4 Termination by the Owner for Convenience

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and

purchase orders.

§ 14.4.3 Upon such termination of this Agreement, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract Documents, at law, or in equity, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement.

§ 14.4.4 Upon such termination of this Agreement, the Contractor shall immediately stop the Work hereunder except such as shall be essential to preserve and safeguard existing Work and immediately advise the Owner of the status of all outstanding subcontracts and purchase orders. Such outstanding purchase orders and subcontracts shall be canceled or assigned to the Owner, as the Owner may direct in its sole discretion. In the event of any such termination, the Contractor shall deliver all of the Work completed and in process to the date thereof to the Owner and shall deliver to the Owner all documents of title, reports, estimates, schedules, and other documents and data as the Owner shall require.

§ 14.4.5 Upon any termination by the Owner as set forth in Article 14, the provisions of the Contract Documents, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to the extent provided in such provisions.

Deleted: In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the 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 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.3.1. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

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

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§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 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.

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

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary; provided, however, that within three (3) business days after the cessation of the cause of the continuing delay, the Contractor shall notify Owner in writing that the delay has ceased. The Contractor shall provide to the Owner a supplement to the Project Schedule showing the effect on the Project's critical path in support of its Claim for an increase in the Contract time. The Contractor shall only be entitled to an increase in the Contract Time where the Contractor can demonstrate the cause of the Claim has actually extended the critical path of the Project.

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

§ 15.1.7 Intentionally omitted.

§ 15.1.8 Force Majeure. If the Contractor claims a Force Majeure as the cause of a delay or hindrance, then it shall give Owner written notice of the event of Force Majeure within five (5) business days after the occurrence of such Force Majeure event and the Contractor shall resume performance of its obligations immediately following cessation of the Force Majeure event. Notwithstanding anything to the contrary herein, (1) an extension in the Contract Time shall not be permitted for any delay to the extent such delay (i) is caused by or could reasonably have been anticipated by the Contractor, or (ii) could have been avoided or mitigated. As used herein, "Force Majeure" shall mean one of the following acts or events that prevents or delays the affected party to this Agreement from performing its obligations under this Agreement or complying with any conditions required by the other party under this Agreement if such act or event is beyond the reasonable control of and not the fault of the affected party and such party has been unable by the exercise of reasonable efforts to overcome or mitigate the effects of such act or event: Acts of God (e.g., earthquakes, flood, lightning, tornado); acts of a public enemy; acts of terrorism; civil or military conflicts or commotions and compliance with an order of a governmental authority and a pandemic or similar health emergency or crisis. The following acts or events are explicitly excluded from Force Majeure and are the sole responsibility of the Contractor: Strikes or labor disturbances limited in scope primarily to employees of the Contractor or employees of Subcontractors, or others providing services regarding the Work, delays in deliveries, and shortages or price fluctuations (including, but not limited to, taxes and tariffs) with respect to materials, supplies or components of equipment or other Work.

§ 15.2 Initial Decision

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

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.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.
This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner and/or the Tenant.

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

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

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

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

§ 15.2.6 Either party may request mediation of an initial decision at any time.

§ 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 Lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the Lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, and 9.10.5, may be subject to mediation upon the mutual agreement of the parties.

§ 15.3.2 If mutually agreed by the parties, 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. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. 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.

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§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally, if applicable. The mediation shall be held

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in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Litigation

The method of binding dispute resolution shall be litigation in a court of competent jurisdiction. Exclusive jurisdiction and venue for any action concerning any matter arising out of or related to this Agreement or the Work shall be in the state and federal courts and authorities located in Milwaukee, County, Wisconsin. Owner and Contractor irrevocably consent to service, jurisdiction and venue of such courts for any such litigation and waive any other venue to which they may be entitled by virtue of domicile, residence or otherwise.

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§ 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.

§ 15.4.2 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.

Deleted: § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

... [8]

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[☐] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[☐] The Sustainability Plan:

Title	Date	Pages
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[☐] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

OWNER (Signature)

(Printed name and title)

39063429.4

CONTRACTOR (Signature)

(Printed name and title)

EXHIBIT B

INSURANCE REQUIREMENTS

A. Commercial General Liability – Occurrence Basis (including equipment overload):

	Limits
General Aggregate (per project)	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The policy shall not contain exclusions relating to: contractual liability, independent contractors, or explosion, collapse or underground exclusions.

B. Business Auto Liability – All Autos including Hired, leased, and Non-Owned Autos:

Bodily Injury & Property Damage-Combined Single Limit	\$1,000,000
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C. Worker's Compensation and Employers Liability:

Workers Compensation	Statutory
Employers Liability	
Bodily Injury by Accident (each accident)	\$1,000,000
Bodily Injury by Disease (policy limit)	\$1,000,000
Bodily Injury by Disease (each employee)	\$1,000,000

D. Excess or Umbrella Liability:

Each Occurrence	\$10,000,000
Aggregate	\$10,000,000

E. Professional Liability Limits: This requirement applies if the Contract involves professional design services or your Work has an element of design services.

Each Claim	\$5,000,000
Aggregate	\$5,000,000

F. Pollution Liability – Applicable if your work involves the use, disposal or transportation of pollutants or other hazardous materials:

Each Occurrence	\$2,000,000
Aggregate	\$2,000,000

G. Contractor's Equipment – Contractor shall be responsible for insuring their own equipment. The Owner and the Tenant will bear no responsibility for equipment used, rented or leased by the Contractor, or any of Contractor's Subcontractors, on or off-site. If cranes are used, the Contractor should be certain to obtain special endorsements for loss by exceeding lifting capacity (i.e., overload). The Contractor shall procure All Risk Property Insurance upon all equipment, material, inventory and business personal property owned, borrowed or leased by the Contractor for the full replacement cost value thereof. Such policy shall include a waiver of subrogation provision and the Contractor agrees to waive its carrier's right of subrogation against the Additional Insureds.

H. Rigger's & Erector's Liability – If the Contractor's work involves rigging or erecting, special liability limits are required:

Each Occurrence	\$20,000,000
Aggregate	\$20,000,000

- I. Additional Insured/Waiver of Subrogation:** The Wisconsin Professional Baseball Park District (and its officers and directors) and the Milwaukee Brewers Baseball Club, Limited Partnership shall be named as an Additional Insured on Commercial General Liability, Business Auto Liability, and Excess or Umbrella Liability Insurance policies. Contractors shall also require that each of its subcontractors name the Additional Insureds as additional insureds on the subcontractors' Commercial General Liability, Commercial Automobile and Umbrella Liability policies. Additional insured coverage shall be extended to include products-completed operations coverage. All liability insurance policies must provide Cross Liability coverage (separation of insureds or severability of interest provisions). The Commercial General Liability policy shall include no third-party-over action exclusions or similar endorsements or limitations.

To the fullest extent permitted by law, the Contractor waives, and shall require its insurers, Subcontractors, and Subcontractors' insurers to waive, all rights of recovery and subrogation against the Wisconsin Professional Baseball Park District, Milwaukee Brewers Baseball Club, LP, and their respective officers, directors, owners, employees, agents, representatives, successors, and assigns, for any loss, claim, damage, injury, liability, cost, or expense arising out of or related to the Work or the Project. This waiver shall apply to all insurance required under this Contract, including Commercial General Liability, Business Auto Liability, Workers' Compensation and Employers Liability, Excess or Umbrella Liability, Contractor's Equipment, property, pollution liability, professional liability, and any other applicable insurance, where permitted by law.

- J. Certificate of Insurance:** The Owner shall receive a Certificate of Insurance evidencing compliance with these insurance requirements prior to commencing any Work, and a renewal Certificate of Insurance prior to the expiration or cancellation of any policy. However, the Owner permitting the Contractor to commence Work prior to the Owner's receipt of the required certificate of insurance shall not be a waiver of the Contractor's obligation to provide all of the above insurance. Acceptance by the Owner of insurance submitted by the Contractor shall not relieve or decrease in any manner the liability of the Contractor under this Contract.
- K. Coverage Term:** All insurance must remain in force for the duration of the project and three years following project completion.
- L. A.M. Best Rating:** All insurers must be rated A- or better by A.M. Best & Company.