No. _127067_

IN THE SUPREME COURT OF ILLINOIS

DONOVAN MUNOZ,	)	On Appeal from The Illinois
	)	Appellate Court, First District,
Plaintiff-Appellant	)	No. 1-20-0254
	)	
v.	)	There Heard on Appeal from the
	)	Circuit Court of the Cook Judicial
BULLEY & ANDREWS, LLC,	)	Circuit, Cook County, Illinois
	)	Case No. 2019 L 003878
	)	
Defendant-Appellee.	)	The Honorable Judge
	)	Daniel T. Gillespie
	)	*Judge Presiding*

BRIEF OF PLAINTIFF-APPELLANT

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NATURE OF CASE

This is a personal injury action brought by a construction worker against a general contractor to recover damages for a back injury suffered at a construction work site. Defendant moved to dismiss plaintiff's complaint pursuant to 735 ILC S5/2 619 (a) (9) on the ground that plaintiff's causes of action were barred by the exclusive remedy provisions of the Illinois Workers' Compensation Act (820 ILCS 305/5(a) and 11). The trial court granted defendant's motion. Plaintiff appealed from the trial court's dismissal. The Appellate Court affirmed. No questions are raised on the substance of plaintiff's pleadings.

ISSUES PRESENTED FOR REVIEW

Whether the trial court erred in granting defendant's 735 ILCS 5/2-619 (a) (9) motion to dismiss.

Whether the Appellate Court erred by finding that defendant Bulley & Andrews was entitled to immunity from civil actions under sections 5(a) and 11 of the Workers' Compensation Act even though it was not the plaintiff's immediate employer.

Whether the Appellate Court erred by finding that defendant Bulley & Andrews acquired immunity from civil actions under the Workers' Compensation Act by paying compensation benefits to plaintiff Munoz who was employed by a separate entity.

Whether defendant Bulley & Andrews, LLC had a preexisting legal obligation to pay workers' compensation benefits to plaintiff Munoz' on behalf of his immediate employer.

STATEMENT OF JURISDICTION

The Appellate Court had jurisdiction pursuant to Rules 301 and 304(a). The trial court, in its order granting defendant's Section 5/-2-619(a) (9) motion to dismiss on December 27, 2019, made a finding pursuant to Rule 304(a) that there was no just reason to delay enforcement or appeal. Plaintiff timely filed his initial Notice of Appeal on January 23, 2020. This notice had a typographical error in the cause number of the caption. Plaintiff moved the Appellate Court on February 11, 2020, to file an Amended Notice of Appeal *instanter* to correct the error and his motion was granted on February 20, 2020. The Appellate Court issued its Rule 23 Order on December 23, 2020. No petition for rehearing was filed. Defendant filed a Motion to Publish Pursuant to Supreme Court Rule 23(f) and its motion was granted on January 22, 2021. The Appellate Court filed its published opinion on February 10, 2021. Plaintiff filed a timely Petition for Leave to Appeal which was granted on May 26, 2021.

STATEMENT OF FACTS

A. The Project

RAR-222 South Riverside, LLC (hereinafter "RAR 222") hired defendant Bulley & Andrews, LLC (hereinafter "Bulley & Andrews"), to be general contractor for a construction project located at 222 South Riverside, Chicago, Illinois. (R. Sup. C89, 131). Article 11, ¶11.1 of the agreement between the parties required Bulley & Andrews, as contractor, to "purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor (Bulley & Andrews) from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable,

whether such operations by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage…." (R. Sup. C259, A093).

B. Plaintiff Munoz's employer

Plaintiff Munoz was employed by Bulley & Andrews Concrete Restoration, LLC (hereinafter "Concrete Restoration") on the day of his injury. (R. Sup. C183). Concrete Restoration is a wholly owned subsidiary of defendant Bulley & Andrews. Bulley & Andrews used Concrete Restoration to pour concrete for the 222 S. Riverside project. (R. C67-68). Concrete Restoration was previously known as Takao Nagai Concrete Restoration (hereinafter "Takao Nagai"). (R. Sup. C23). Bulley & Andrews bought Takao Nagai in 2010. (R. Sup. C23). Bulley & Andrews continued operating the company under the Takao Nagai name until approximately 2015. (R. Sup. C32).

Bulley & Andrews and Concrete Restoration are operated as separate corporations. Each company has its own distinct Federal tax identification numbers. (R. Sup. C26). The companies file separate Federal and state income tax returns. (R. Sup.

C26). The companies have different presidents. (R. Sup. C25). They also hire different workers. Concrete Restoration employs 100 laborers, caulkers, and concrete finishers. (R. Sup. C27). Bulley & Andrews employs 500 carpenters and laborers. (R. Sup. C27).

There is no dispute that Concrete Restoration, not Bulley & Andrews, employed plaintiff Munoz on December 4, 2016, when he was injured at the 222 South Riverside construction site. On that date, plaintiff Munoz signed in on a Concrete Restoration time sheet and Concrete Restoration paid his wages for that day. (R. Sup. C183). Moreover, during calendar year 2016, Concrete Restoration withheld and paid Illinois income taxes on behalf of plaintiff Munoz. (R. Sup. C193). Similarly, Concrete Restoration withheld and paid to the Federal government income, Medicare and Social Security taxes. (R. Sup. C193).

C. Plaintiff Munoz's injury

Prior to December 4, 2016, Concrete Restoration workers poured concrete at the 222 South Riverside construction site and covered the wet concrete with blankets to prevent it from freezing while it cured. (R. C68). The blankets were worn from over-use and riddled with holes which allowed water and snow to infiltrate and freeze. (R. C68-69). The frozen water and snow inside the blankets made them unnaturally heavy and unreasonably dangerous to be moved manually. (R. 69). On December 4, 2016, plaintiff Munoz was directed by his employer, Concrete Restoration, to go to the 222 South Riverside project to pull the blankets off the fresh concrete to permit workers from another subcontractor to perform additional work on the concrete. (R. 69). While attempting to pull the water-logged, unnaturally and unreasonably heavy blankets from the concrete, Munoz injured his back. (R. 69).

D. Procedural History

Munoz filed a claim in the Workers' Compensation Commission against his employer, Concrete Restoration, under claim number 2019 WC 009579. (A. 106-108). Munoz has incurred medical bills to treat his back injury in the amount of $76, 046.34. (R. Sup. C54). He has also been paid $2,157.71 in temporary disability benefits. (R. Sup. C54). At the time of occurrence, Munoz's employer, Concrete Restoration, was an insured under a workers' compensation policy issued by Arch Insurance Company. (R. Sup. C135, 137, 141). Bulley & Andrews and other subsidiaries and affiliates of the company were insured by the same policy. (R. Supp. C137, 141). Bulley & Andrews paid the premiums for the insurance. (R. Sup. C 26). The policy provided for a $250,000.00 deductible for every claim. (R. Sup. C32, 154).

Gregory Marquez, Bulley & Andrews' Safety and Risk Director testified that he was unaware of any written agreement which legally required Bulley & Andrews to purchase workers' compensation insurance on behalf of Concrete Restoration or pay a deductible of $250,000 for any Concrete Restoration employee making a claim for compensation. (R. Sup. C32-33) Nor has Bulley & Andrews produced any such written agreement between itself and Concrete Restoration.

Bulley & Andrews claims it has paid medical bills in the amount of $91,138.01 for Munoz's treatment. (R. Sup. C43). This is not accurate. The computer printout for plaintiff Munoz's account reflects medical payments of $76,046.34 and temporary disability payments of $2,157.71 for a total of $78,204.05. (R. Sup. C54). An additional $12,933.96 in administration fees have accrued to the claim. (R. Sup. C54). Bulley &

Andrews paid the medical bills and disability payment because that amount falls within the $250,000 deductible of Arch's policy. (R.Sup. C32, 43).

Munoz sued defendant Bulley & Andrews in the Circuit Court of Cook County seeking to recover damages under theories based on Sections 343 and 414 of the Restatement (Second) of Torts. (R. C67-71). Plaintiff alleges that Bulley & Andrews, in its capacity as general contractor, "retained control over the safety of the construction site, supervision of the work at the construction site, and control of the means and methods of the work on the construction site to ensure that all work was performed safely by all subcontractors, including Plaintiff's employer." (R. C67-68). Plaintiff further alleged that defendant Bulley & Andrews breached its duty of care by failing to use its retained control to stop plaintiff's employer, Concrete Restoration, from using unsafe equipment; by permitting an unsafe condition to be created through the use of worn, unfit and defective concrete blankets; and, by failing "to regulate and limit the hours worked by laborers, including the plaintiff, thus making him more susceptible to injuring himself through repetitive lifting of heavy objects and construction materials". (R. C69)

Defendant Bulley & Andrews moved to dismiss plaintiff's complaint pursuant to 735 IL CS 619 (a) (9) contending that his claims against Bulley & Andrews were barred by the exclusive remedy provisions of the Illinois Workers' Compensation Act. (R. C58-66). The parties briefed defendant's motion and on December 27, 2019, the trial judge in a written opinion and order, granted the motion. (A. 109-110). Plaintiff Munoz also sued Behringer Harvard South Riverside, LLC and RAR 2-222 S. Riverside, LLC which are the owners and developers of the property where plaintiff's injuries occurred. (R. C9-13). They did not move to dismiss plaintiff's complaint and the case continues as to those

defendants. In the trial court's December 27, 2019 Order, it made a finding pursuant to Rule 304 (a) that there was no just reason to delay the enforcement or appeal of its order. (A. 110)

Thereafter, plaintiff appealed to the First District Appellate Court. In an opinion released on February 10, 2021, it affirmed the trial court's dismissal. (A. 1-13)

STANDARD OF REVIEW

Dismissal of a complaint pursuant to 735 ILCS 5/2-619 is reviewed *de novo*. *Doe v. University of Chicago Medical Center,* 2015 IL App (1st) 133735, ¶35. A party moving to dismiss under this section admits the legal sufficiency of the complaint but asserts a defense that defeats it. *Id*. Therefore, all well-pleaded facts in the complaint, as well as any inferences that may reasonably be drawn from those facts, must be construed in favor of plaintiff. *Id.* A complaint should be dismissed under this section only if plaintiff is unable to prove any set of facts that would support a cause of action. *Id*.

ARGUMENT

I. THE IMMUNITIES PROVIDED BY SECTIONS 5(A) AND 11 OF THE ILLINOIS WORKERS' COMPENSATION ACT DO NOT BAR MUNOZ'S CAUSES OF ACTION AGAINST BULLEY & ANDREWS

A. The scope of immunity under the Act.

Under the plain language of section 5 (a) of the Act, immunity from common law or statutory causes of action only extends to an injured worker's employer and other specified entities. 820 ILCS 305/5(a). The other specified entities include agents of the employer, the employer's insurer and broker, "any service organization that is wholly owned by the employer, his insurer, or his broker that provides safety advice or recommendations for the employer or the agents or employees of any of them…." 820

ILCS 305/5(a). The only relevant inquiry is whether Bulley & Andrews can be deemed Munoz's employer because it does not contend that any of the other categories of immunity enumerated in section 5(a) apply. Specifically, Bulley & Andrews does not claim it was an agent of Concrete Restoration, Munoz's direct employer.

Section 11 similarly limits an employer's responsibility to the compensation provided by the Act "for accidental injuries sustained by any employee arising out of and in the course of the employment…." 820 ILCS 305/11. Thus, the issue is whether Bulley & Andrews is an "employer" as that term is used in sections 5(a) and 11.

B. Bulley & Andrews did not employ Munoz.

It is indisputable that Bulley & Andrews was not Munoz's employer on December 4, 2016, the day he was injured. On that date, Concrete Restoration employed Munoz. Munoz signed in on a Concrete Restoration time sheet and Concrete Restoration paid his wages for that day. (R. Sup. C183.) During the calendar year of Munoz's injury, Concrete Restoration withheld Illinois and federal taxes from his paychecks. (R. Sup. C193.)

C. Bulley & Andrews payment of workers' compensation benefits to Munoz does not give it the status of "employer" and entitle it to immunity under sections 5(a) and 11.

Although the Appellate Court acknowledged that Bulley & Andrews was not Munoz's direct employer, it nonetheless held that Bulley & Andrews was afforded immunity because it paid Munoz's workers' compensation benefits. 2021 IL App (1st) 200254 ¶ 22. The issue before this Court is whether payment of workers' compensation benefits by a non-employer entitles that entity to the protections of the exclusive remedy provisions of the Act. This Court addressed this very same question in *Laffoon v. Bell &*

Zoller Coal Co., 65 Ill. 2d 437, 447 (1976) in which it ruled unequivocally in the negative. The facts in this case are analogous and this Court should affirm *Laffoon's* continuing vitality by reversing the decision of the Appellate Court.

Laffoon involved three consolidated appeals by injured workers employed by companies that failed to purchase workers' compensation insurance. *Laffoon*, 65 Ill. 2d at 441-443. In each instance, the general contractor that hired the uninsured company was required to pay compensation benefits to the injured employee pursuant to section 1(a)(3) of the Act. *Id*. Subsequently, the injured workers sued the general contractors under the Structural Work Act. *Id*. The general contractors successfully moved to dismiss plaintiffs' causes of action in the trial court. They claimed that by paying the injured workers benefits under the Act, they were entitled to the same immunity conferred on employers by section 5(a). *Id.* The Court, however, rejected this argument to hold that only an injured worker's direct employer can claim immunity. It stated "we must interpret section 5(a) as conferring immunity upon employers only from common law or statutory actions for damages by their immediate employees. To hold otherwise in light of the present factual situations would be violative of the injured employee's right to due process and equal protection of the laws." *Id.* at 447.

The Appellate Court decision is irreconcilable with *Laffoon*. Defendant Bulley & Andrews, like the contractors claiming section 5(a) immunity in *Laffoon,* was not Munoz's immediate employer. Therefore, its payment of benefits did not trigger immunity. As this Court made clear in *Laffoon*, immunity does not hinge on the payment of benefits. Instead, under the plain language of section 5(a), immunity is conferred only on immediate employers of an injured worker. *Laffoon*, 65 Ill. 2d at 447. Here, there is

no dispute that Bulley & Andrews was not Munoz's immediate employer. Therefore, the Appellate Court should have followed *Laffoon* to hold that Munoz is not barred from suing Bulley & Andrews by sections 5(a) and 11.

The fact that Munoz's immediate employer, Concrete Restoration, was a subsidiary of Bulley & Andrews is of no importance. If a parent company and its subsidiary are operated as separate entities, only the entity that was the immediate employer of the injured worker is entitled to section 5(a) immunity. *Forsythe v. Clark USA, Inc.,* 224 Ill. 2d 274, 297-98 (2007). In this case there is no dispute that Bulley & Andrews and Concrete Restoration were operated as separate and distinct entities. Each had separate tax identification numbers, executives, project superintendents and workers. (R. Sup. C26-27). Accordingly, Concrete Restoration as Munoz's immediate employer is entitled to section 5(a) protection but not Bulley & Andrews.

II. THE APPELLATE COURT ERRED BY NOT FOLLOWING *LAFFOON*

Although the Appellate Court acknowledged that the case at bar is factually similar to *Laffoon* it declined to follow its holding. *Munoz*, 2021 IL App 200254, ¶23. It concluded that *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196 (2008) created a new litmus test for immunity based on whether an entity paid compensation benefits to an injured worker pursuant to a pre-existing legal obligation. *Munoz*, 2021 IL App 200254, ¶¶22, 23. The Appellate Court further found that Bulley & Andrews' contract with the developer of the project where Munoz was injured provided the prerequisite legal obligation. *Id.* The Appellate Court's conclusions are faulty on several levels. First, *Ioerger* did not abrogate *Laffoon* and it is factually distinguishable. *Ioerger* involved the

issue of whether a co-venturer and the joint venture itself were entitled to immunity because they were agents of the direct employer of plaintiffs. Second, the Appellate Court created a category of immunity that is not authorized by the plain language of sections 5(a) and 11, and, therefore is impermissible. Finally, Appellate Court's finding, that the contract between Bulley & Andrews and the developer obligated Bulley & Andrews to pay compensation benefits to Munoz is wrong.

A. *Ioerger* did not abrogate *Laffoon*.

In *Ioerger* two companies formed a joint venture to perform a bridge repair project. *Ioerger,* 232 Ill. 2d at 198. Pursuant to the joint venture agreement, one entity, Midwest Foundation Company (Midwest), was responsible for performing all labor on the project. The joint venture, however, was obligated to reimburse Midwest for all labor costs including premiums for workers' compensation insurance. *Id*. at 199-200. Three Midwest employees were injured and one was killed in an accident on the project. The injured workers and the estate of the decedent received compensation benefits from Midwest's workers' compensation insurer. *Id.* The surviving employees and the estate of the decedent filed a civil action in the circuit court against the joint venture itself and the other co-venturer, Halvorson Construction Co (Halverson). *Id*. 199-200. Halverson and the joint venture moved for summary judgment claiming immunity under sections 5(a) and 11 of the Act. *Id.* at 200-01. The trial court granted defendants' motions and the plaintiffs appealed. The appellate court reversed. *Id*. When the appeal reached this Court, it framed the issue as "whether immunity afforded to an employer by the exclusive remedy provisions of the Workers' Compensation Act extends to the employer's co-venturer in a joint venture and to the joint venture itself." *Ioerger*, 232 Ill. 2d at 198.

As a starting point for its analysis, the Court looked to the exclusive remedy provisions of the Act and noted that under their express terms, immunity extends to the employer and agents of the employer. *Id.* at 201. Therefore, if Halvorson and the joint venture were agents of Midwest, the direct employer, then they too would be entitled to immunity under section 5(a). To resolve this issue, the court looked to the principles of partnership because a joint venture is a partnership carried out for a single enterprise. *Id.* at 202. Under partnership law, each member of a joint venture is an agent of the other. *Id*. Therefore, the Court held that Halvorson, as co-venturer, was an agent of the employer Midwest and because Halverson was an agent of Midwest, "it was, in turn, entitled invoke the same immunity afforded to Midwest by the exclusive remedy provisions of the Workers' Compensation Act." *Id.* at 202. As to the joint venture itself, the Court found that while it was not a separate legal entity under partnership law, it was inseparable from its constituent entities. Therefore, it concluded that if each member of the joint venture was immunized it necessarily followed that the joint venture itself was shielded by the exclusive remedy provisions of the Act. *Id*. at 202-03.

The Court could have ended its analysis there, but it went on to provide a second rationale for granting the joint venture immunity. It found that there was an agreement between the joint venture and the direct employer of the injured workers that required the joint venture to reimburse the employer for all labor costs including workers' compensation insurance premiums. *Id*. at 204. Accordingly the Court concluded that granting the joint venture immunity was further required "[b]ecause the Joint Venture bore the expense of the workers' compensation premiums and was thus responsible for

making workers' compensation benefits available to plaintiffs, it was entitled to avail itself of the Act's exclusive remedy provisions." *Id.*

The *Ioerger* opinion did not criticize or specifically abrogate *Laffoon*. In fact, *Laffoon* is neither discussed nor even mentioned. There was no reason to because *Ioerger* concerned a totally different issue of whether a joint venture is an agent of its members for purposes of immunity under section 5(a) which specifically provides that agents of an employer are also entitled to immunity.

The issues in the case at bar are different from *Ioerger*. Bulley & Andrews does not claim that it was in a joint venture of Munoz's immediate employer, Concrete Restoration, and, therefore, an agent entitled to immunity. Bulley & Andrews does not make any argument at all that it was an agent of Concrete Restoration. Nor is there any basis in the record to make such a claim. Instead the evidence is that Bulley & Andrews and Concrete Restoration operated as separate and distinct entities at the project. (R. Sup. C26-27). Finally, this case differs from *Ioerger* in that there was no direct contract between Bulley & Andrews and Concrete Restoration that required it to provide workers' compensation insurance or benefits to Concrete Restoration employees.

To the extent that *Ioerger* suggests that a non-immediate employer might secure section 5(a) immunity by paying workers' compensation benefits or insurance premiums, it is discordant with this Court's holding in *Laffoon* and section 5(a) itself. This Court should clarify the scope of *Ioerger* by limiting it to joint ventures or similar circumstances involving issues of agency which do not exist here. Such a limitation is compelled by plain language of the Act's immunity provisions. Section 5(a) specifically provides immunity for agents of immediate employers. 820 ILCS 305/5(a). It does not,

however, make any provision for an entity to insulate itself against liability for its negligence by paying insurance premiums or compensation benefits on behalf of the immediate employer of an injured worker. *Burge v. Exelon Generation Company, LLC*, 2015 IL App 141090, ¶ 14. To recognize a means by which immunity can be purchased would be contrary to the intended purpose of the Act. *Id*.

B. The Appellate Court usurped the domain of the legislature by creating a basis for immunity not specified in sections 5(a) and 11 of the Act.

The court below acknowledged that the legislature passed the Workers' Compensation Act to create a no-fault system of liability on the part of employers "in exchange for the employee being statutorily limited in his recovery for injuries arising out of his employment." *Munoz*, 2021 IL App 200254, ¶ 14. To balance the competing interests of employers and employees, the legislature made the benefits provided by the Act the injured worker's exclusive remedy against his employer. *Id*. The scope of the exclusive remedy shield is spelled out in sections 5(a) and 11. *Id.* As discussed above, this Court in *Laffoon* held that immunity under the Act is limited to an injured worker's immediate employer. *Laffoon,* 65 Ill. 2d at 446-47. The Appellate Court, however, expressly rejected the constraints of *Laffoon*. 2021 IL App 200254, ¶23. Instead, it created a new category for immunity based on payment of benefits which is not specified in sections 5(a) and 11. While it may seem more equitable to grant a non-employer immunity because it paid benefits, it is not the function of the courts to "sit as a superlegislature to weigh the wisdom of legislation." *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 557 (2009). Instead, the role of courts is "to interpret the acts as written." *Folta v. Ferro Engineering*, 2015 IL 118070, ¶43. Moreover, "[t]he

cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent." *First American Bank Corp. v. Henry*, 239 Ill. 2d 511, 515 (2011). The most reliable indicator of legislative intent is the language of the statute which must be given its plain and ordinary meaning. *Taylor v. Pekin Insurance Co*., 231 Ill. 2d 390, 395 (2008). "It is well settled that courts cannot depart from the plain language of a statute by reading into it exceptions, limitation or conditions not expressed by the legislature." *In re Haley D.,* 2011 IL 110886, ¶73. Specific to the Workers' Compensation Act, this Court has already held that the plain language of the exclusive remedy provisions must be strictly construed even if doing so causes a harsh result. *Folta v. Ferro Engineering*, 2015 IL 118070, ¶¶41 and 43.

The legislature, in section 5(a), clearly and plainly lists the specific entities entitled to immunity. They include the employer of the injured worker, agents of the employer, the employer's insurer and broker, "any service organization that is wholly owned by the employer, his insurer, or his broker that provides safety advice or recommendations for the employer or the agents or employees of any of them…." 820 ILCS 305/5(a). There is no category granting non-employers the ability to acquire immunity by either paying workers' compensation insurance premiums on behalf of the injured worker's employer or compensation benefits directly as Bulley & Andrews did here. Whether a different balance should be struck to afford non-employers that bear the burden of paying compensation benefits the shield of immunity is a matter more appropriately addressed by the legislature. *Folta v. Ferro Engineering,* 2015 IL 118070, ¶43. It was not appropriate for the court below to create a new class of entities entitled to immunity not provided by the Act.

Morover, this Court's holding in *Laffoon* has stood for forty-five years. If the legislature disagreed with this Court's interpretation of the Act's immunity provisions, it has had ample opportunity to abrogate its holding. "[T]he legislature is presumed to know how courts have interpreted a statute and may amend a statute if it intended a different construction" *In re Estate of Rivera*, 2018 IL App (1st) 171214, ¶ 55. The legislature's choice not to amend is an indication that *Laffoon* construed the language of section 5(a) as it intended by limiting immunity to immediate employers of the injured worker. In this case, the Appellate Court deviated from *Laffoon* to create a category of immunity that does not exist in the plain language of sections 5(a) and 11. Therefore, the Appellate Court's decision should be reversed.

C. Bulley & Andrews had no legal obligation to pay Munoz's workers' compensation benefits.

Even if the *Ioerger* rationale applies, an entity cannot buy the immunity provided by sections 5(a) and 11 by voluntarily purchasing worker's compensation insurance premiums or benefits for an injured worker employed by a separate company. There must be some preexisting legal obligation that requires an entity to pay premiums or benefits before it can claim immunity under the Act. *Ioerger,* 232 Ill. 2d at 205; *Burge,* 2015 IL App 141090, ¶¶ 14-15. Unlike the defendants in *Ioerger*, there was no agreement between Bulley & Andrews and Concrete Restoration that imposed such a requirement. That is, the two entities were not operating pursuant to a joint venture and there was no other agreement running between them that obligated Bulley & Andrews to pay Munoz's compensation benefits. Gregory Marquez, Bulley & Andrews Risk Director, testified that he was unaware of any agreement that obligated secure workers' compensation insurance

for Concrete Restoration or pay the $250,000 deductible for any Concrete Restoration employee making a claim for compensation. Therefore, in the absence of a preexisting legal obligation between the two entities, Bulley & Andrews cannot claim immunity. *Id.*

The court below found that Bulley & Andrews' contract with the 222 South Riverside, the developer of the work site where Munoz was injured, supplied the requisite legal obligation. The Appellate Court's conclusion was erroneous. Contrary to its finding, the agreement did not legally obligate Bulley & Andrews to purchase insurance or pay Munoz's benefits on behalf of Concrete Restoration.

First, Concrete Restoration was not a party to the agreement. (R. Sup. C195-271), (A. 058-100). Therefore, Concrete Restoration had no right to enforce the alleged obligation of Bulley & Andrews. *Martis v. Grinnell Mutual Reinsurance Co.,* 388 Ill. App. 3d 1017, 1020 (3rd Dist. 2009). So any obligation, if any, was illusory. Second, by the express terms of the contract, Article 11.1.1, Bulley & Andrews did not promise to purchase workers' compensation insurance for Concrete Restoration or any subcontractor it used on the project. It only promised to buy insurance that would "protect [Bulley & Andrews] from claims…which may arise out of or result from [Bulley & Andrews] operations and completed operations under the Contract and for which [Bulley & Andrews] **may be legally liable** whether such operations be by [Bulley & Andrews] or by a Subcontractor" including workers' compensation claims (emphasis added). (R. Sup. C259), (A. 093). In this instance, Munoz was not employed by Bulley & Andrews and, therefore, he could not make a workers' compensation claim against it. His remedy under the Act was limited to his immediate employer and in fact, he filed his pending claim against

Concrete Restoration. (A. 106-108). Because Bulley & Andrews is not legally liable for Munoz's claim for workers' compensation, Article 11.1.1 is rendered inapplicable.

The absence of any contractual obligation to procure workers' compensation insurance is borne out by Bulley & Andrews' conduct. Bulley & Andrews used other subcontractors on the 222 South Riverside project. (R. Sup. C30-31). If Article 11.1.1 in fact imposed a legal obligation on Bulley & Andrews to purchase workers' compensation insurance for Concrete Restoration and its other subcontractors, it would be reasonable to infer that Bulley & Andrews would have insured them through the same Arch policy through which Concrete Restoration was covered. No non-Bulley & Andrews' company is insured under the Arch policy. (R. Sup. C137-41). Nor has Bulley & Andrews disclosed any other policy that insured its subcontractors for workers' compensation claims to comply with its alleged obligation to insure. The only reasonable inference from these facts is that Bulley & Andrew had no preexisting legal obligation to buy workers' compensation insurance for Concrete Restoration or anyone else. Without such an obligation, the legal foundation for the lower court's decision is gone and its holding cannot stand. *Burge v. Exelon Generation Co.,* 2015 IL App (2d) 141090 ¶¶ 15-18.

CONCLUSION

For all of the reasons stated above, the Court should reverse and vacate the judgment entered by the Appellate Court and the Circuit Court Order and Judgment that granted the Motion to Dismiss of Defendant-Appellee Bulley & Andrews, LLC made pursuant to 735 ILCS 5/2-619 and dismissed Plaintiff-Appellant's causes of action. Further, Plaintiff-

Appellant requests this Court to remand this cause to the circuit court for a trial on the merits.

By: /s/ Milo W. Lundblad
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CERTIFICATE OF COMPLIANCE WITH RULE 341(c)

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is nineteen pages.

By: /s/ *Milo W. Lundblad*
Milo W. Lundblad

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APPENDIX TO BRIEF OF PLAINTIFF-APPELLANT

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2021 IL App (1st) 200254

No. 1-20-0254

Filed February 10, 2021

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DONOVAN MUNOZ,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	
	)	
BULLEY & ANDREWS, LLC; BEHRINGER HARVARD SOUTH RIVERSIDE, LLC; and RAR2-222 SOUTH RIVERSIDE, LLC,	)	No. 19 L 3878
	)	
Defendants,	)	Honorable
	)	Daniel T. Gillespie,
(Bulley & Andrews, LLC, Defendant-Appellee).	)	Judge presiding

JUSTICE BURKE delivered the judgment of the court, with opinion.
Presiding Justice Howse and Justice McBride concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Bulley & Andrews, LLC (Bulley LLC) entered into a contract with building owner RAR2-222 South Riverside, LLC (South Riverside) to be the construction manager on a construction project at the building. As per the contract, Bulley LLC obtained a workers' compensation insurance policy for its employees as well as the employees of Bulley & Andrews Concrete Restoration, LLC (Bulley Concrete), its wholly owned subsidiary, which contained a

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$250,000 deductible. Plaintiff Donovan Munoz, an employee of Bulley Concrete, injured his back while working on the project. Because of his injury, Bulley LLC provided plaintiff with workers' compensation benefits, including paying over $76,000 worth of his medical bills. Later, plaintiff sued Bulley LLC for his injuries. On Bulley LLC's motion, the circuit court dismissed plaintiff's lawsuit, finding that Bulley LLC was immune from the lawsuit under the exclusive remedy provisions of the Workers' Compensation Act (Act) (820 ILCS 305/5(a), 11 (West 2018)).

¶ 2 Plaintiff now appeals the circuit court's dismissal order and contends that, because Bulley LLC was not his employer, it was not immune from a lawsuit under the exclusive remedy provisions of the Act. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 South Riverside owned a building located at 222 South Riverside in Chicago. In March 2015, South Riverside executed an agreement with Bulley LLC to be the construction manager on a project at the building. Under the agreement, Bulley LLC was required to

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

This included "[c]laims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work performed."

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¶ 5 Prior to beginning the work, Bulley LLC procured workers' compensation insurance for the project from Arch Insurance Group. The workers' compensation policy named both Bulley LLC and Bulley Concrete, among others, as insureds and had a $250,000 deductible. Although Bulley Concrete was a wholly owned subsidiary of Bulley LLC, the companies had different presidents, employed different people, and had different specialties. As part of the scope of work for the project, Bulley LLC agreed to perform much of the concrete work itself, but no language to this effect was included in the contract between it and South Riverside. For that concrete work, Bulley LLC used employees of Bulley Concrete, including plaintiff. Though Bulley LLC executed contracts with various subcontractors for work on the construction project, it did not execute one with Bulley Concrete.

¶ 6 In early December 2016, workers had placed blankets on top of freshly poured concrete to prevent it from freezing. Recent precipitation, however, had caused the blankets to become waterlogged and heavier than usual. On December 4, 2016, plaintiff was working at the building, went to pull off one of these blankets, and injured his back. Later that month, plaintiff filed a workers' compensation claim, and pursuant to its workers' compensation policy, Bulley LLC began paying out of pocket for plaintiff's medical bills, which it continued to do into 2019.

¶ 7 In April 2019, plaintiff sued Bulley LLC, South Riverside, and Behringer Harvard South Riverside, LLC, another company that allegedly owned, operated, and maintained the building. Plaintiff asserted that, at the time of his injury, he was an employee of Bulley Concrete, which he claimed was a subcontractor of Bulley LLC on the project. Plaintiff alleged that the blankets placed on top of the concrete were worn out and riddled with holes, which allowed the water penetration. This, according to plaintiff, caused the blankets to become unreasonably dangerous to be moved

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manually. Because of the alleged unreasonable danger, plaintiff raised two counts of negligence and sought damages in excess of $50,000.

¶ 8 Thereafter, Bulley LLC filed a motion to dismiss pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2018)), arguing that both counts were barred by the exclusive remedy provisions of the Act (820 ILCS 305/5(a), 11 (West 2018)) because it had a preexisting legal obligation to pay for plaintiff's workers' compensation benefits and it did so by paying more than $76,000 of his medical bills. Bulley LLC included with its motion an affidavit from Greg Marquez, its safety director, who averred to the supporting facts in its motion, as well as a list of medical payments from it to plaintiff's medical providers totaling over $76,000 from December 2016 until June 2019.

¶ 9 In response, plaintiff asserted that he made a workers' compensation claim against Bulley Concrete, his employer, and accordingly did not name it as a defendant in the lawsuit. Plaintiff noted that, although Bulley Concrete was a wholly owned subsidiary of Bulley LLC, they were nevertheless distinct entities. Plaintiff argued that a parent company was not shielded from a lawsuit by an injured employee of its subsidiary, and thus, the Act did not bar his lawsuit against Bulley LLC. For support, plaintiff attached a deposition of Marquez, which contained, as an exhibit, the Arch insurance policy. In Bulley LLC's reply, it attached the contract between it and South Riverside.

¶ 10 Following the parties' briefings, the circuit court entered a written order on Bulley LLC's motion to dismiss. The court observed that the contract between Bulley LLC and South Riverside obligated Bulley LLC to pay for the workers' compensation insurance and benefits for Bulley Concrete's employees. Because Bulley LLC was legally obligated to pay for the workers' compensation benefits that plaintiff received, and there was no evidence that Bulley Concrete was

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self-insured or that Bulley LLC had the option to reimburse Bulley Concrete for any payments that Bulley Concrete may have made, the court granted Bulley LLC's motion to dismiss with prejudice. The court added that there was no just reason to delay appeal (see Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)), and plaintiff timely appealed.

¶ 11 II. ANALYSIS

¶ 12 Plaintiff contends that—because Bulley Concrete was his employer, not Bulley LLC—the exclusive remedy provisions of the Act did not bar him from suing Bulley LLC. He therefore argues that the circuit court improperly granted Bulley LLC's motion to dismiss.

¶ 13 A motion to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2018)) admits the legal sufficiency of the complaint but asserts that certain defects, defenses, or other affirmative matters appearing outside the pleadings act to defeat the claims. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. In analyzing a section 2-619 motion, the circuit court is required to accept all well-pled facts in the complaint as true, as well as any reasonable inferences from those facts. *Id.* All pleadings and supporting documents must be construed in the light most favorable to the nonmoving party. *Id.* The critical inquiry is "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). We review a motion to dismiss *de novo*. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 115 (2008).

¶ 14 Our legislature enacted the Act to establish "a new framework for recovery to replace the common-law rights and liabilities that previously governed employee injuries." *Folta v. Ferro Engineering*, 2015 IL 118070, ¶ 11. The legislation created a no-fault system of liability upon the employer, in exchange for the employee being statutorily limited in his recovery for injuries arising

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out of his employment. *Id.* ¶ 12. To this end, the Act contains "an exclusive remedy provision as part of the *quid pro quo* which balances the sacrifices and gains of employees and employers." *Id.* The exclusive remedy provisions is provided for in two sections of the Act. First, in relevant part, section 5(a) of the Act states:

> "No common law or statutory right to recover damages from the employer *** for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act ***." 820 ILCS 305/5(a) (West 2018).

Additionally, section 11 of the Act states:

> "The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act ***." *Id.* § 11.

Because of these provisions, the Act generally provides the exclusive remedy for an employee to recover against his employer for injuries arising out of the course of his employment. *Folta*, 2015 IL 118070, ¶ 14.

¶ 15 Plaintiff does not dispute that, on December 4, 2016, he was considered an employee under the Act and that he sustained his injury while engaged in the line of duty as such an employee. In other words, he does not dispute that he was under the purview of the Act. Rather, he argues that,

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because Bulley LLC was not his direct employer, it does not enjoy the immunity afforded by the exclusive remedy provisions.

¶ 16 According to the Act, an employer is defined as:

> "Every person, firm, public or private corporation[ ] *** who has any person in service or under any contract for hire, express or implied, oral or written, and who is engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or who at or prior to the time of the accident to the employee for which compensation under this Act may be claimed, has in the manner provided in this Act elected to become subject to the provisions of this Act, and who has not, prior to such accident, effected a withdrawal of such election in the manner provided in this Act.
>
> *** Any one engaging in any business or enterprise referred to in subsections 1 and 2 of Section 3 of this Act who undertakes to do any work enumerated therein, is liable to pay compensation to his own immediate employees in accordance with the provisions of this Act, and in addition thereto if he directly or indirectly engages any contractor whether principal or sub-contractor to do any such work, he is liable to pay compensation to the employees of any such contractor or sub-contractor unless such contractor or sub-contractor has insured, in any company or association authorized under the laws of this State to insure the liability to pay compensation under this Act, or guaranteed his liability to pay such compensation." 820 ILCS 305/1(a)(2), (3) (West 2018).

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Subsections 1 and 2 of section 3 include such enterprises or businesses as "maintaining, removing, remodeling, altering or demolishing of any structure" and "[c]onstruction." *Id.* § 3(1), (2).

¶ 17 In arguing that Bulley LLC was not his employer, plaintiff highlights *Laffoon v. Bell & Zoller Coal Co.*, 65 Ill. 2d 437 (1976). In *Laffoon*, three employees of different subcontractors were injured, but the subcontractors did not provide them with workers' compensation insurance, which resulted in the general contractors being responsible for their workers' compensation claims. *Id.* at 441-43. Later, the workers sued the general contractors, but all three lawsuits were dismissed in favor of the general contractors. *Id.* The cases were consolidated before our supreme court, and the question presented was whether the exclusive remedy provisions of the Act provided the general contractors with immunity from litigation, given that they had become responsible for the workers' compensation claims. *Id.* at 443. The court held that it had to interpret the exclusive remedy provisions "as conferring immunity upon employers only from common law or statutory actions for damages by their immediate employees" and "[t]o hold otherwise in light of the present factual situations would be violative of the injured employee's right to due process and equal protection of the laws." *Id.* at 447. In other words, our supreme court found that a general contractor did not become an injured worker's employer for purposes of the Act merely because it paid workers' compensation benefits. *Statewide Insurance Co. v. Brendan Construction Co.*, 218 Ill. App. 3d 1055, 1060 (1991).

¶ 18 Approximately 30 years after *Laffoon*, in *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196 (2008), our supreme court heard a case involving a joint venture. Midwest Foundation Corporation (Midwest) and Halverson Construction Company (Halverson) agreed to form a joint venture for a construction project. *Id.* at 198-99. The agreement stipulated that Midwest would be

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initially responsible for obtaining workers' compensation insurance but it would be reimbursed by the joint venture itself at a later date. *Id.* at 199. Multiple workers were injured while working on the construction project, and while they obtained workers' compensation benefits through Midwest's insurer, they also sued Halverson and the joint venture itself for damages. *Id.* at 200. The case reached our supreme court, where the question presented was whether the exclusive remedy provisions of the Act barred lawsuits against Halverson and the joint venture itself. *Id.* at 198.

¶ 19 Initially, our supreme court found that the provisions barred litigation against Halverson under agency principles. *Id.* at 202. The court then turned to the joint venture and found the same for two different reasons—first, because the joint venture was legally inseparable from its constituent entities. *Id.* at 202-03. But the court also found that the provisions barred litigation against the joint venture because of the principles underlying the remedial scheme of the Act. *Id.* at 203. The court observed that "subjecting a party to tort liability for an employee's injuries notwithstanding the fact that the party has borne the costs of the injured employee's workers' compensation insurance would be the same as declaring that a party who has paid for the cake may neither keep it nor eat it." *Id.* As such, "the immunity afforded by the Act's exclusive remedy provisions is predicated on the simple proposition that one who bears the burden of furnishing workers' compensation benefits for an injured employee should not also have to answer to that employee for civil damages in court." *Id.* Because the joint venture was the entity ultimately responsible for paying the workers' compensation premiums and making benefits available to any injured workers, "it was entitled to avail itself of the Act's exclusive remedy provisions." *Id.* at 204.

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¶ 20 Following *Ioerger*, this court issued a decision in *Burge v. Exelon Generation Co.*, 2015 IL App (2d) 141090, ¶ 2, where the plaintiff worked for Exelon Nuclear Security, LLC (ENS), which was a wholly owned subsidiary of the defendant, Exelon Generation Company (Exelon). The plaintiff was injured while providing security services for ENS on Exelon's premises. *Id.* Following the injury, the plaintiff filed a claim for workers' compensation benefits against ENS, which was settled and paid for by Exelon. Then, he sued Exelon. *Id.* ¶¶ 2, 10. Exelon filed a motion to dismiss, arguing that it had engaged ENS as a contractor and it was the one who paid for the plaintiff's workers' compensation benefits. Thus, Exelon argued, it was immune from litigation under the exclusive remedy provisions of the Act. *Id.* ¶ 4. In support, Exelon provided an affidavit from its workers' compensation manager, who averred that Exelon used a third-party administrator/payor for workers' compensation benefits, and it had paid for all workers' compensation benefits for the plaintiff and other employees of ENS. *Id.* ¶ 5. In a supplemental affidavit, the workers' compensation manager stated that ENS was self-insured and that Exelon paid workers' compensation benefits, including to the plaintiff, on a reimbursement basis, in accordance with ENS's limited liability company agreement. *Id.* ¶ 6. The circuit court agreed with Exelon and granted its motion to dismiss. *Id.* ¶ 1.

¶ 21 On appeal, this court initially rejected Exelon's argument that it was immune under the Act's exclusive remedy provisions as an agent of ENS and then moved on to discuss the potential immunity based upon Exelon paying for the plaintiff's workers' compensation settlement. *Id.* ¶¶ 9-10. This court analyzed *Ioerger* and determined that the reasoning of *Ioerger* "depends on the existence of some preexisting legal obligation to pay, or reimburse another payor, for compensation due under the Act or for premiums for workers' compensation insurance." *Id.* ¶ 14. In other words, "immunity under [exclusive remedy provisions] cannot be predicated on [a]

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defendant's payment of workers' compensation unless [the] defendant was under some legal obligation to pay (such as the contractual obligation imposed by the joint-venture agreement in *Ioerger*)." *Id.* ¶ 15. With its discussion of *Ioerger* complete, the court turned to the facts of its case and found that Exelon's affidavits were insufficient proof that it had a legal obligation to pay for the workers' compensation benefits. *Id.* This was because the affidavits were conclusory about Exelon's actual payment of benefits to the plaintiff and the limited liability company agreement that Exelon relied on for proof said "nothing about the obligation to provide workers' compensation insurance for ENS's employees." *Id.* ¶ 17. Consequently, this court found that Exelon failed to establish a basis for immunity under the exclusive remedy provisions, and the circuit court erred in granting the motion to dismiss. *Id.* ¶ 18.

¶ 22 With these decisions in mind, we turn to the instant case, which we find factually similar to *Burge*, except that Bulley LLC has sufficiently proven it had a preexisting legal obligation to pay for workers' compensation benefits of Bulley Concrete's employees, including plaintiff. As discussed, South Riverside executed an agreement with Bulley LLC to be the construction manager on a project at the building. As part of that agreement, Bulley LLC was required to obtain various insurance policies—including workers' compensation insurance—to cover it, a subcontractor, or "anyone directly or indirectly employed by any of them." To this end, Bulley LLC obtained workers' compensation insurance that designated it and Bulley Concrete, among others, as named insureds. After plaintiff injured his back while working on the project, he filed a claim for workers' compensation, which resulted in Bulley LLC paying over $76,000 worth of his medical bills, as they were obligated to do under the contract with South Riverside and the Arch insurance policy. These facts were proven though the contract between it and South Riverside, the Arch insurance policy, as well as the list of medical payments from it to plaintiff's medical

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providers. "[T]he immunity afforded by the Act's exclusive remedy provisions is predicated on the simple proposition that one who bears the burden of furnishing workers' compensation benefits for an injured employee should not also have to answer to that employee for civil damages in court." *Ioerger*, 232 Ill. 2d at 203. Despite the fact that Bulley LLC was not the direct employer of plaintiff, as it bore the burden of furnishing workers' compensation benefits for plaintiff, it was entitled to avail itself to the exclusive remedy provisions of the Act. See *id.* at 204.

¶ 23 Although we agree that the instant case is also similar factually to *Laffoon*, our supreme court in that case did not have to consider a preexisting contractual obligation to provide workers' compensation benefits under the facts of the case because there was no evidence that the general contractors had preexisting legal obligations to pay for workers' compensation insurance. And, indeed, in *Laffoon*, 65 Ill. 2d at 447, our supreme court was concerned about the "factual situation[ ]" presented in the case. The situation from *Laffoon* is not present here because Bulley LLC had a preexisting legal obligation to pay for workers' compensation insurance and any benefits that may result by virtue of the contract it executed with South Riverside. Consequently, the circuit court correctly found that the exclusive remedy provisions of the Act barred the lawsuit by plaintiff against Bulley LLC and properly granted Bulley LLC's motion to dismiss.

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.

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No. 1-20-0254

Cite as:	*Munoz v. Bulley & Andrews, LLC*, 2021 IL App (1st) 200254
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 19-L-3878; the Hon. Daniel T. Gillespie, Judge, presiding.
Attorneys for Appellant:	Milo W. Lundblad, of Brustin & Lundblad, Ltd., of Chicago, for appellant.
Attorneys for Appellee:	Patricia J. Hogan, Henry Ortiz, and James F. Maruna, of Cassiday Schade LLP, of Chicago, for appellee.

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Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-20-0254

In The Appellate Court Of Illinois
First Judicial District

DONOVAN MUNOZ,
Plaintiff-Appellant,
vs.
BULLEY & ANDREWS, LLC.,
Defendant-Appellee,

ON APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

CASE NO.19-L-3878

HONORABLE DANIEL T. GILLESPIE, JUDGE PRESIDING

ILL. S. CT. R. RULE 23(F) MOTION TO PUBLISH BY DEFENDANT-APPELLEE, BULLEY & ANDREWS, LLC

NOW COMES the Defendant Appellee BULLEY AND ANDREWS, LLC ("Bulley LLC"), by and through its attorneys, CASSIDAY SCHADE LLP, and moves this Court for entry of an Order, pursuant to Supreme Court Rule 23(f), directing that its decision be published as a full opinion, and in support thereof, states as follows:

1. On December 23, 2020, this Court issued an Order in this appeal under Supreme Court Rule 23. *See* December 23, 2020 Rule 23 Order, attached as ***Exhibit A***.

2. The defendant-appellee, Bulley, LLC, requests that this Court publish its Rule 23 Order as an Opinion.

3. Supreme Court Rule 23(a)(1) provides that a case may be disposed of by a written opinion when the decision establishes a new rule of law, or modifies, explains, or criticizes an existing rule of law. Rule 23 also provides that a written opinion is warranted when the court's decision resolves, creates, or avoids an apparent conflict of authority.

4. This Court's decision satisfies the criteria for publication under Supreme Court Rule 23 because it explains the rule of law in a common fact pattern and issue present in many construction-negligence actions and resolves apparent conflicts with existing case law on this subject.

5. Specifically, this Court clarified and held that a general contractor qualifies as an "employer" under the Illinois Workers' Compensation Act by providing workers' compensation benefits, even if the injured plaintiff actually works for one of the general contractor's subsidiaries, so long as the record established a preexisting legal obligation to pay those benefits. (Ex. A at ¶ 24). Here, plaintiff worked for Bulley & Andrews Concrete Restoration, LLC ("Bulley Concrete"), a wholly owned subsidiary of Bulley LLC. (*Id.* at ¶ 2). Bulley LLC provided Plaintiff's workers' compensation benefits pursuant to a preexisting legal obligation to provide workers' compensation benefits to Bulley Concrete's employees. (*Id.*) At the Circuit Court, and on appeal, Plaintiff argued that because Bulley LLC was not his actual employer, Bulley LLC had no obligation to provide his workers' compensation benefits, and, therefore, was not immune from his negligence lawsuit under the Illinois Workers' Compensation Act's exclusive remedy provision (820 ILCs 305/5(a), 11 (West 2018), regardless of the fact that Bulley LLC actually provided his workers' compensation benefits. (*Id.*) This Court disagreed with Plaintiff and affirmed the Circuit Court's grant of dismissal in Bulley LLC's favor. (*Id.* at ¶¶ 26-27).

6. Publishing this Court's opinion so that practitioners can cite and reference this Court's well-reasoned explanation and analysis for why the facts of this case allow a non-employer to assert the exclusive remedy provision when many other Illinois cases on this subject held the opposite, benefits both lawyers and judges in the Circuit Court. The facts presented in this case are common in the construction industry, particularly on large construction projects and with increasing specialization and subcontracting on even mid-sized projects. Namely, a worker's legal employer on his paycheck often differs from the entity contractually providing his workers' compensation benefits. By publishing this opinion, this Court will solidify and provide a readily citable authority with key facts affirming that the party providing the workers' compensation benefit may secure the workers' compensation act's exclusive remedy provision regardless of the name on the employer's paycheck based on a preexisting legal obligation to provide those benefits. Because the application of the exclusive remedy provision is determined at a case's outset, through a Motion to Dismiss, like this case, publication of this matter may aid in timely resolving litigation at the Circuit Court.

7. Allowing attorneys to cite to this opinion, and this Court's explanation of why the facts in this case led to the Court's finding, is critical because the Court's lengthy opinion resolved apparent conflicts of authority on the question of the exclusive remedy's availability to entities that are not the injured party's legal employer. As this court noted, the facts of this case are very similar to a 1976 Illinois Supreme Court case, *Laffoon v. Bell & Zoller Coal Co.*, 65 Ill. 2d 437 (1976), and a 2015 Second District case, *Burge v. Exelon Generation Co.*, 2015 IL App (2d) 141090, ¶ 2. *See* (Ex. A at ¶ 23) ("Although we agree that the instant case is also similar factually to *Laffoon*…"); *see also* (Ex. A at ¶ 21) ("[w]ith

these decisions in mind, we turn to the instant case, which we find factually similar to *Burge* except that Bulley LLC has sufficiently proven it had a preexisting legal obligation to pay for workers' compensation benefits….")

8. This Court noted that the facts of this case are factually similar to two other cases, a 1976 Supreme Court decision, and a 2015 Second District decision, both holding that the non-employer could not assert the workers' compensation's exclusive remedy provision. This Court drew a distinction from those "factually similar" cases to the instant case based on the presence of certain material facts in the instant case establishing Bulley LLC's preexisting legal obligation to pay workers' compensation benefits for Bulley Concrete's employees.

9. Thus, by this Court's own wording, we have three cases - *Laffoon* and *Burge* on one hand, and now *Munoz* on the other hand, presenting "factually similar" circumstances but reaching opposite holdings. The determination of which one of those hands a future case falls into will likely depend on very specific, narrow facts in that future case's record. If this case remains a Rule 23 order, future attorneys cannot cite *Munoz*, and specifically the facts and reasoning present in *Munoz*, in order to explain why his, her, or their case is distinct from the *Laffoon* and *Burge* line of reasoning. Thus publication of *Munoz* clarifies and explains prior case law and in so doing benefits future litigants and the Court.

10. As noted, the fact pattern giving rise to the litigation is common in the construction industry where one entity agrees to provide workers' compensation benefits for a subsidiary or subcontractor's employees. Thus, it stands to reason that there will be more litigation in the future on this same issue, and adding additional, citable, authority with key

facts and explanation to the growing body of case law in this area will only aid future litigants and judges in the Circuit Court when this issue appears again in the future.

11. Finally, converting the existing Rule 23 order to a published opinion will not burden the Court. This Court's order already provides a comprehensive recitation of the facts in this case, an exhaustive application of the statutory and case law in this area, and detailed explanation of why the facts of this case prove distinct from prior factually similar Supreme Court and Appellate Authority. Because the Court already issued a detailed memorandum opinion and order, it can easily convert its Rule 23 order to published opinion without the need to expand or modify the opinion.

WHEREFORE, the Defendant-Appellee, BULLEY & ANDREWS, LLC, respectfully requests that this Court enter an Order pursuant to Supreme Court Rule 23 directing that this Court's decision be published as a full opinion.

Respectfully submitted,

CASSIDAY SCHADE LLP

By: /s/ James F. Maruna
One of the Attorneys for Defendant-Appellee, BULLEY & ANDREWS, LLC

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2020 IL App (1st) 200254-U

No. 1-20-0254

Order filed December 23, 2020

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DONOVAN MUNOZ, Plaintiff-Appellant, v. BULLEY & ANDREWS, LLC; BEHRINGER HARVARD SOUTH RIVERSIDE, LLC; and RAR2-222 SOUTH RIVERSIDE, LLC, Defendants, (Bulley & Andrews, LLC, Defendant-Appellee).	)	Appeal from the Circuit Court of Cook County No. 19 L 3878 Honorable Daniel T. Gillespie, Judge presiding

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Howse and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's grant of defendant's motion to dismiss where the exclusive remedy provisions of the Illinois Workers' Compensation Act (820 ILCS 305/5(a), 11 (West 2018)) barred the plaintiff's lawsuit against the defendant.

Exhibit A

¶ 2 Defendant Bulley & Andrews, LLC (Bulley LLC) entered into a contract with building owner RAR2-222 South Riverside, LLC (South Riverside) to be the construction manager on a construction project at the building. As per the contract, Bulley LLC obtained a workers' compensation insurance policy for its employees as well as the employees of Bulley & Andrews Concrete Restoration, LLC (Bulley Concrete), its wholly owned subsidiary, which contained a $250,000 deductible. Plaintiff Donovan Munoz, an employee of Bulley Concrete, injured his back while working on the project. Because of his injury, Bulley LLC provided plaintiff with workers' compensation benefits, including paying over $76,000 worth of his medical bills. Later, plaintiff sued Bulley LLC for his injuries. On Bulley LLC's motion, the circuit court dismissed plaintiff's lawsuit, finding that Bulley LLC was immune from the lawsuit under the exclusive remedy provisions of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/5(a), 11 (West 2018)).

¶ 3 Plaintiff now appeals the circuit court's dismissal order and contends that, because Bulley LLC was not his employer, it was not immune from a lawsuit under the exclusive remedy provisions of the Act. For the reasons that follow, we affirm.

¶ 4 I. BACKGROUND

¶ 5 South Riverside owned a building located at 222 South Riverside in Chicago. In March 2015, South Riverside executed an agreement with Bulley LLC to be the construction manager on a project at the building. Under the agreement, Bulley LLC was required to:

> "purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the

> Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable."

This included "[c]laims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work performed."

¶ 6 Prior to beginning the work, Bulley LLC procured workers' compensation insurance for the project from Arch Insurance Group. The workers' compensation policy named both Bulley LLC and Bulley Concrete, among others, as insureds and had a $250,000 deductible. Although Bulley Concrete was a wholly owned subsidiary of Bulley LLC, the companies had different presidents, employed different people and had different specialties. As part of the scope of work for the project, Bulley LLC agreed to perform much of the concrete work itself, but no language to this effect was included in the contract between it and South Riverside. For that concrete work, Bulley LLC used employees of Bulley Concrete, including plaintiff. Though Bulley LLC executed contracts with various subcontractors for work on the construction project, it did not execute one with Bulley Concrete.

¶ 7 In early December 2016, workers had placed blankets on top of freshly poured concrete to prevent it from freezing. Recent precipitation, however, had caused the blankets to become waterlogged and heavier than usual. On December 4, 2016, plaintiff was working at the building, went to pull off one of these blankets and injured his back. Later that month, plaintiff filed a workers' compensation claim, and pursuant to its workers' compensation policy, Bulley LLC began paying out of pocket for plaintiff's medical bills, which it continued to do into 2019.

¶ 8 In April 2019, plaintiff sued Bulley LLC, South Riverside and Behringer Harvard South Riverside, LLC, another company that allegedly owned, operated and maintained the building. Plaintiff asserted that, at the time of his injury, he was an employee of Bulley Concrete, who he

claimed was a subcontractor of Bulley LLC on the project. Plaintiff alleged that the blankets placed on top of the concrete were worn out and riddled with holes, which allowed the water penetration. This, according to plaintiff, caused the blankets to become unreasonably dangerous to be moved manually. Because of the alleged unreasonable danger, plaintiff raised two counts of negligence and sought damages in excess of $50,000.

¶ 9 Thereafter, Bulley LLC filed a motion to dismiss pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2018)), arguing that both counts were barred by the exclusive remedy provisions of the Act (820 ILCS 305/5(a), 11 (West 2018)) because it had a preexisting legal obligation to pay for plaintiff's workers' compensation benefits and it did so by paying more than $76,000 of his medical bills. Bulley LLC included with its motion an affidavit from Greg Marquez, its safety director, who averred to the supporting facts in its motion, as well as a list of medical payments from it to plaintiff's medical providers totaling over $76,000 from December 2016 until June 2019.

¶ 10 In response, plaintiff asserted that he made a workers' compensation claim against Bulley Concrete, his employer, and accordingly did not name it as a defendant in the lawsuit. Plaintiff noted that, although Bulley Concrete was a wholly owned subsidiary of Bulley LLC, they were nevertheless distinct entities. Plaintiff argued that a parent company was not shielded from a lawsuit by an injured employee of its subsidiary, and thus, the Act did not bar his lawsuit against Bulley LLC. For support, plaintiff attached a deposition of Marquez, which contained as an exhibit the Arch insurance policy. In Bulley LLC's reply, it attached the contract between it and South Riverside.

¶ 11 Following the parties' briefings, the circuit court entered a written order on Bulley LLC's motion to dismiss. The court observed that the contract between Bulley LLC and South Riverside

obligated Bulley LLC to pay for the workers' compensation insurance and benefits for Bulley Concrete's employees. Because Bulley LLC was legally obligated to pay for the workers' compensation benefits that plaintiff received and there was no evidence that Bulley Concrete was self-insured or that Bulley LLC had the option to reimburse Bulley Concrete for any payments that Bulley Concrete may have made, the court granted Bulley LLC's motion to dismiss with prejudice. The court added that there was no just reason to delay appeal (see Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)), and plaintiff timely appealed.

¶ 12 II. ANALYSIS

¶ 13 Plaintiff contends that, because Bulley Concrete was his employer, not Bulley LLC, the exclusive remedy provisions of the Act did not bar him from suing Bulley LLC. He therefore argues that the circuit court improperly granted Bulley LLC's motion to dismiss.

¶ 14 A motion to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2018)) admits the legal sufficiency of the complaint but asserts that certain defects, defenses, or other affirmative matters appearing outside the pleadings act to defeat the claims. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. In analyzing a section 2-619 motion, the circuit court is required to accept all well-pled facts in the complaint as true, as well as any reasonable inferences from those facts. *Id.* All pleadings and supporting documents must be construed in the light most favorable to the nonmoving party. *Id.* The critical inquiry is "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). We review a motion to dismiss *de novo*. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 115 (2008).

¶ 15 Our legislature enacted the Act to establish "a new framework for recovery to replace the common-law rights and liabilities that previously governed employee injuries." *Folta v. Ferro Engineering*, 2015 IL 118070, ¶ 11. The legislation created a no-fault system of liability upon the employer in exchange for the employee being statutorily limited in his recovery for injuries arising out of his employment. *Id.* ¶ 12. To this end, the Act contains "an exclusive remedy provision as part of the *quid pro quo* which balances the sacrifices and gains of employees and employers." *Id.* The exclusive remedy provisions is provided for in two sections of the Act. First, in relevant part, section 5(a) of the Act states:

> "No common law or statutory right to recover damages from the employer *** for injury or death sustained by an employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act."

820 ILCS 305/5(a) (West 2018). Additionally, section 11 of the Act states:

> "[T]he compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act."

820 ILCS 305/11 (West 2018). Because of these provisions, the Act generally provides the exclusive remedy for an employee to recover against his employer for injuries arising out of the course of his employment. *Folta*, 2015 IL 118070, ¶ 14.

¶ 16 Plaintiff does not dispute that, on December 4, 2016, he was considered an employee under the Act and that he sustained his injury while engaged in the line of duty as such an employee. In other words, he does not dispute that he was under the purview of the Act. Rather, he argues that, because Bulley LLC was not his direct employer, it does not enjoy the immunity afforded by the exclusive remedy provisions.

¶ 17 According to the Act, an employer is defined as:

> "Every person, firm, public or private corporation[] *** who has any person in service or under any contract for hire, express or implied, oral or written, and who is engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or who at or prior to the time of the accident to the employee for which compensation under this Act may be claimed, has in the manner provided in this Act elected to become subject to the provisions of this Act, and who has not, prior to such accident, effected a withdrawal of such election in the manner provided in this Act.
>
> Any one engaging in any business or enterprise referred to in subsections 1 and 2 of Section 3 of this Act who undertakes to do any work enumerated therein, is liable to pay compensation to his own immediate employees in accordance with the provisions of this Act, and in addition thereto if he directly or indirectly engages any contractor whether principal or sub-contractor to do any such work, he is liable to pay compensation to the employees of any such contractor or sub-contractor unless such contractor or sub-contractor has insured, in any company or association authorized under the laws of this State to insure the liability to pay compensation under this Act, or guaranteed his liability to pay such compensation."

820 ILCS 305/1(a)(2), (3) (West 2018). Subsections 1 and 2 of section 3 include such enterprises or businesses as "maintaining, removing, remodeling, altering or demolishing of any structure" and "[c]onstruction." 820 ILCS 305/3(1), (2) (West 2018).

¶ 18 In arguing that Bulley LLC was not his employer, plaintiff highlights *Laffoon v. Bell & Zoller Coal Co.*, 65 Ill. 2d 437 (1976). In *Laffoon*, three employees of different subcontractors were injured, but the subcontractors did not provide them with workers' compensation insurance, which resulted in the general contractors being responsible for their workers' compensation claims. *Id.* at 441-43. Later, the workers sued the general contractors, but all three lawsuits were dismissed in favor of the general contractors. *Id.* The cases were consolidated before our supreme court, and the question presented was whether the exclusive remedy provisions of the Act provided the general contractors with immunity from litigation given that they had become responsible for the workers' compensation claims. *Id.* at 443. The court held that it had to interpret the exclusive remedy provisions "as conferring immunity upon employers only from common law or statutory actions for damages by their immediate employees" and "[t]o hold otherwise in light of the present factual situations would be violative of the injured employee's right to due process and equal protection of the laws." *Id.* at 447. In other words, our supreme court found that a general contractor did not become an injured worker's employer for purposes of the Act merely because it paid workers' compensation benefits. *Statewide Insurance Co. v. Brendan Construction Co.*, 218 Ill. App. 3d 1055, 1060 (1991).

¶ 19 Approximately 30 years after *Laffoon*, in *Ioerger v. Halverson Const. Co.*, 232 Ill. 2d 196 (2008), our supreme court heard a case involving a joint venture. Midwest Foundation Corporation (Midwest) and Halverson Construction Company (Halverson) agreed to form a joint venture for a construction project. *Id.* at 198-99. The agreement stipulated that Midwest would be initially

responsible for obtaining workers' compensation insurance but it would be reimbursed by the joint venture itself at a later date. *Id.* at 199. Multiple workers were injured while working on the construction project, and while they obtained workers' compensation benefits through Midwest's insurer, they also sued Halverson and the joint venture itself for damages. *Id.* at 200. The case reached our supreme court, where the question presented was whether the exclusive remedy provisions of the Act barred lawsuits against Halverson and the joint venture itself. *Id.* at 198.

¶ 20 Initially, our supreme court found that the provisions barred litigation against Halverson under agency principles. *Id.* at 202. The court then turned to the joint venture and found the same for two different reasons, first because the joint venture was legally inseparable from its constituent entities. *Id.* at 202-03. But the court also found that the provisions barred litigation against the joint venture because of the principles underlying the remedial scheme of the Act. *Id.* at 203. The court observed that "subjecting a party to tort liability for an employee's injuries notwithstanding the fact that the party has borne the costs of the injured employee's workers' compensation insurance would be the same as declaring that a party who has paid for the cake may neither keep it nor eat it." *Id.* As such, "the immunity afforded by the Act's exclusive remedy provisions is predicated on the simple proposition that one who bears the burden of furnishing workers' compensation benefits for an injured employee should not also have to answer to that employee for civil damages in court." *Id.* Because the joint venture was the entity ultimately responsible for paying the workers' compensation premiums and making benefits available to any injured workers, "it was entitled to avail itself of the Act's exclusive remedy provisions." *Id.* at 204.

¶ 21 Following *Ioerger*, this court issued a decision in *Burge v. Exelon Generation Co.*, 2015 IL App (2d) 141090, ¶ 2, where the plaintiff worked for Exelon Nuclear Security, LLC (ENS), which was a wholly owned subsidiary of the defendant, Exelon Generation Company (Exelon).

The plaintiff was injured while providing security services for ENS on Exelon's premises. *Id.* Following the injury, the plaintiff filed a claim for workers' compensation benefits against ENS, which was settled and paid for by Exelon, and then, he sued Exelon. *Id.* ¶¶ 2, 10. Exelon filed a motion to dismiss, arguing that it had engaged ENS as a contractor and it was the one who paid for the plaintiff's workers' compensation benefits and thus, it was immune from litigation under the exclusive remedy provisions of the Act. *Id.* ¶ 4. In support, Exelon provided an affidavit from its workers' compensation manager, who averred that it used a third-party administrator/payor for workers' compensation benefits and it had paid for all workers' compensation benefits for the plaintiff and other employees of ENS. *Id.* ¶ 5. In a supplemental affidavit, the workers' compensation manager stated that ENS was self-insured and that Exelon paid workers' compensation benefits, including to the plaintiff, on a reimbursement basis, in accordance with ENS's limited liability company agreement. *Id.* ¶ 6. The circuit court agreed with Exelon and granted its motion to dismiss. *Id.* ¶ 1.

¶ 22 On appeal, this court initially rejected Exelon's argument that it was immune under the Act's exclusive remedy provisions as an agent of ENS and then moved on to discuss the potential immunity based upon Exelon paying for the plaintiff's workers' compensation settlement. *Id.* ¶¶ 9-10. This court analyzed *Ioerger* and determined that the reasoning of *Ioerger* "depends on the existence of some preexisting legal obligation to pay, or reimburse another payor, for compensation due under the Act or for premiums for workers' compensation insurance." *Id.* ¶ 14. In other words, "immunity under [exclusive remedy provisions] cannot be predicated on [a] defendant's payment of workers' compensation unless [the] defendant was under some legal obligation to pay (such as the contractual obligation imposed by the joint-venture agreement in *Ioerger*)." *Id.* ¶ 15. With its discussion of *Ioerger* complete, the court turned to the facts of its case

and found that Exelon's affidavits were insufficient proof that it had a legal obligation to pay for the workers' compensation benefits. *Id.* This was because the affidavits were conclusory about Exelon's actual payment of benefits to the plaintiff and the limited liability company agreement that Exelon relied on for proof said "nothing about the obligation to provide workers' compensation insurance for ENS's employees." *Id.* ¶ 17. Consequently, this court found that Exelon failed to establish a basis for immunity under the exclusive remedy provisions, and the circuit court erred in granting the motion to dismiss. *Id.* ¶ 18.

¶ 23 With these decisions in mind, we turn to the instant case, which we find factually similar to *Burge* except that Bulley LLC has sufficiently proven it had a preexisting legal obligation to pay for workers' compensation benefits of Bulley Concrete's employees, including plaintiff. As discussed, South Riverside executed an agreement with Bulley LLC to be the construction manager on a project at the building. As part of that agreement, Bulley LLC was required to obtain various insurance policies, including workers' compensation insurance, to cover it, a subcontractor or "anyone directly or indirectly employed by any of them." To this end, Bulley LLC obtained workers' compensation insurance that designated it and Bulley Concrete, among others, as named insureds. After plaintiff injured his back while working on the project, he filed a claim for workers' compensation, which resulted in Bulley LLC paying over $76,000 worth of his medical bills, as they were obligated to do under the contract with South Riverside and the Arch insurance policy. These facts were proven though the contract between it and South Riverside, the Arch insurance policy as well as the list of medical payments from it to plaintiff's medical providers. "[T]he immunity afforded by the Act's exclusive remedy provisions is predicated on the simple proposition that one who bears the burden of furnishing workers' compensation benefits for an injured employee should not also have to answer to that employee for civil damages in court."

Ioerger, 232 Ill. 2d at 203. Despite the fact that Bulley LLC was not the direct employer of plaintiff, as it bore the burden of furnishing workers' compensation benefits for plaintiff, it was entitled to avail itself to the exclusive remedy provisions of the Act. See *id.* at 204.

¶ 24 Although we agree that the instant case is also similar factually to *Laffoon*, our supreme court in that case did not have to consider a preexisting contractual obligation to provide workers' compensation benefits under the facts of the case because there was no evidence that the general contractors had preexisting legal obligations to pay for workers' compensation insurance. And, indeed, in *Laffoon*, 65 Ill. 2d at 447, our supreme court was concerned about the "factual situation" presented in the case. The situation from *Laffoon* is not present here because Bulley LLC had a preexisting legal obligation to pay for workers' compensation insurance and any benefits that may result by virtue of the contract it executed with South Riverside. Consequently, the circuit court correctly found that the exclusive remedy provisions of the Act barred the lawsuit by plaintiff against Bulley LLC and properly granted Bulley LLC's motion to dismiss.

¶ 25 III. CONCLUSION

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.

No. 1-20-0254

In The Appellate Court Of Illinois
First Judicial District

DONOVAN MUNOZ,

Plaintiff-Appellant,

vs.

BULLEY & ANDREWS, LLC.,

Defendant-Appellee,

ON APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

CASE NO.19-L-3878

HONORABLE DANIEL T. GILLESPIE, JUDGE PRESIDING

ORDER

This cause coming to be heard on the Motion of Defendant-Appellee, Bulley & Andrews, LLC, to Publish this Court's Supreme Court Rule 23 Order of December 23, 2020, due notice having been given and the Court being fully advised in the premises, it is hereby ordered:

The Motion to Publish this Court's Supreme Court Rule 23 Order of December 23, 2020 is

( ) GRANTED / ( ) DENIED

Justice

Justice

Justice

No. 1-20-0254

In The Appellate Court Of Illinois
First Judicial District

DONOVAN MUNOZ,
Plaintiff-Appellant,
vs.
BULLEY & ANDREWS, LLC.,
Defendant-Appellee,

ON APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

CASE NO.19-L-3878

HONORABLE DANIEL T. GILLESPIE, JUDGE PRESIDING

NOTICE OF FILING AND PROOF OF SERVICE

To: See Attached Service List

PLEASE TAKE NOTICE THAT ON **January 13, 2021,** the undersigned attorney caused to be electronically filed and served, utilizing the electronic filing service provider Odyssey, the **Motion to Publish Pursuant to Supreme Court Rule 23(f)** with the Clerk of the Appellate Court of Illinois, First District. The undersigned further certifies that the parties listed on the attached service list were served with a copy of this notice and the Motion to Publish Pursuant to Supreme Court Rule 23(f) at their respective email addresses by emailing the same before the hour of 5:00 p.m. on January 13, 2021. Under Penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

Respectfully submitted,

CASSIDAY SCHADE LLP

By: /s/ James F. Maruna
One of the Attorneys for
BULLEY & ANDREWS, LLC

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9697597 JMARUNA;JMARUNA

AIA® Document A133™ – 2009

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

AGREEMENT made as of the 20 day of March in the year 2015
(In words, indicate day, month and year.)

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

RAR2 – 222 South Riverside, LLC
222 S. Riverside Plaza
Chicago, IL 60606

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

Bulley & Andrews, LLC
1755 W. Armitage Ave
Chicago, IL 60622

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

222 S. Riverside Redevelopment
222 S. Riverside Plaza
Chicago, IL 60606

The Architect:
(Name, legal status and address)

Wright Heerema Architects
140 S. Dearborn
Suite 200
Chicago, IL 60603

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

The Owner has engaged JLL as its development manager for this project. For purposes of the project, Michael D. Parlato is designated as the Owner's Representative.

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

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

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

Init.

EXHIBIT 1 tabbies

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

David Linden – Vice President
Don Redar – Division Leader
Patrick O'Brien – Project Manager

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

Stephen T. Wright – President
Hannah Cho – Project Manager

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents - Intentionally Omitted -

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, whether performed during the preconstruction phase or not, the general conditions of the contract shall be as set forth in A201–2007 as modified and attached as Exhibit B shall apply in all cases. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager shall furnish only skilled and properly trained and qualified staff for the performance of the Work. Any persons performing any work or other activities directly or indirectly on behalf of the Construction Manager in connection with the project shall comply with reasonable rules and requirements of the Owner, and the Owner may require that the Construction Manager remove and replace any such person reasonably unacceptable to the Owner, whether such person is an employee of the Construction Manager, a Subcontractor, supplier or any other entity affiliated with this scope of work. The Construction Manager is only being awarded the

Pre-Construction services scope of work as identified in Section 2.1 and Exhibit A and the Owner has no obligation to continue services beyond that phase.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. Preconstruction services will be carried through the end of the Design Development phase and include a pricing exercise on the design development drawings and specs for all projects.

§ 2.1.2 Consultation

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

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

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

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

§ 2.1.6 Subcontractors and Suppliers

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

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

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

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time – Intentionally Omitted
§ 2.2.1 Intentionally Omitted

§ 2.2.2 Intentionally Omitted

§ 2.2.3
(Paragraphs deleted)
Intentionally Omitted

§ 2.2.4 Intentionally Omitted

§ 2.2.5 Intentionally Omitted

§ 2.2.6 Intentionally Omitted

§ 2.2.7 Intentionally Omitted

§ 2.2.8 Intentionally Omitted

§ 2.2.9 Intentionally Omitted

§ 2.3 Construction Phase - Intentionally Omitted
§ 2.3.1 General - Intentionally Omitted
§ 2.3.1.1 Intentionally Omitted

§ 2.3.1.2 Intentionally Omitted

§ 2.3.2 Administration - Intentionally Omitted
§ 2.3.2.1 Intentionally Omitted

§ 2.3.2.2 Intentionally Omitted

§ 2.3.2.3 Intentionally Omitted

§ 2.3.2.4 Intentionally Omitted.

§ 2.3.2.5 Intentionally Omitted

§ 2.3.2.6 Intentionally Omitted

§ 2.3.2.7 Intentionally Omitted

§ 2.3.2.8 Intentionally Omitted

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to the Preconstruction Phase.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to the Preconstruction Phase.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Refer to section 2.2.1 of the General Conditions

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

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

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

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

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

§ 3.1.4.4 Intentionally Omitted

§ 3.2 Owner's Designated Representative

to the Owner has engaged JLL as its development manager for the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** Intentionally Omitted

§ 3.3 **Architect - Intentionally Omitted**

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

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

Preconstruction Services – Lump Sum Fee: $30,000

§ 4.1.3 Intentionally Omitted

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

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice and will be paid within 45 days of receipt of approved invoice.
(Paragraph deleted)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES - Intentionally Omitted

§ 5.1 Intentionally Omitted

§ 5.1.1
(Paragraphs deleted)
Intentionally Omitted

§ 5.1.2 Intentionally Omitted

§ 5.1.3 Intentionally Omitted

§ 5.1.4 Intentionally Omitted

§ 5.1.5
(Paragraphs deleted)
Intentionally Omitted
(Table deleted)

§ 5.2 Guaranteed Maximum Price - Intentionally Omitted

§ 5.2.1
(Paragraphs deleted)
Intentionally Omitted

§ 5.2.2 Intentionally Omitted

§ 5.3 Changes in the Work - Intentionally Omitted

§ 5.3.1 Intentionally Omitted

§ 5.3.2 Intentionally Omitted

§ 5.3.3 Intentionally Omitted

§ 5.3.4 Intentionally Omitted

§ 5.3.5 Intentionally Omitted

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE - Intentionally Omitted

§ 6.1 Costs to Be Reimbursed - Intentionally Omitted

§ 6.1.1 Intentionally Omitted

§ 6.1.2 Intentionally Omitted

§ 6.2 Labor Costs - Intentionally Omitted

§ 6.2.1 Intentionally Omitted

§ 6.2.2 Intentionally Omitted

§ 6.2.3 Intentionally Omitted

§ 6.2.4 Intentionally Omitted

§ 6.2.5 Intentionally Omitted

§ 6.3 Subcontract Costs - Intentionally Omitted

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction - Intentionally Omitted

§ 6.4.1 Intentionally Omitted

§ 6.4.2 Intentionally Omitted

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items - Intentionally Omitted

§ 6.5.1 Intentionally Omitted

§ 6.5.2 Intentionally Omitted

§ 6.5.3 Intentionally Omitted

§ 6.5.4 Intentionally Omitted

§ 6.5.5 Intentionally Omitted

§ 6.5.6 Intentionally Omitted

§ 6.6 Miscellaneous Costs - Intentionally Omitted

§ 6.6.1 Intentionally Omitted

§ 6.6.2 Intentionally Omitted

§ 6.6.3 Intentionally Omitted

§ 6.6.4 Intentionally Omitted

§ 6.6.5 Intentionally Omitted

§ 6.6.6 Intentionally Omitted

§ 6.6.7 Intentionally Omitted

§ 6.6.8 Intentionally Omitted

§ 6.6.9 Intentionally Omitted

§ 6.7 Other Costs and Emergencies - Intentionally Omitted

§ 6.7.1 Intentionally Omitted

§ 6.7.2 Intentionally Omitted

§ 6.7.3 Intentionally Omitted

§ 6.7.4 Intentionally Omitted

§ 6.8 Costs Not To Be Reimbursed - Intentionally Omitted

§ 6.8.1
(Paragraphs deleted)
Intentionally Omitted

§ 6.9 Discounts, Rebates and Refunds - Intentionally Omitted

§ 6.9.1 Intentionally Omitted

§ 6.9.2 Intentionally Omitted

§ 6.10 Related Party Transactions - Intentionally Omitted

§ 6.10.1 Intentionally Omitted

§ 6.10.2 Intentionally Omitted

§ 6.11 Accounting Records - Intentionally Omitted

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES - Intentionally Omitted

§ 7.1 Progress Payments - Intentionally Omitted

§ 7.1.1 Intentionally Omitted

§ 7.1.2 Intentionally Omitted

§ 7.1.3 Intentionally Omitted

§ 7.1.4 Intentionally Omitted

§ 7.1.5 Intentionally Omitted

§ 7.1.6 Intentionally Omitted

§ 7.1.7
(Paragraphs deleted)
Intentionally Omitted

§ 7.1.8 Intentionally Omitted

§ 7.1.9 Intentionally Omitted

§ 7.1.10 Intentionally Omitted

§ 7.2 Final Payment - Intentionally Omitted

§ 7.2.1
(Paragraphs deleted)
Intentionally Omitted

§ 7.2.2 Intentionally Omitted

§ 7.2.3 Intentionally Omitted

§ 7.2.4 Intentionally Omitted

ARTICLE 8 INSURANCE AND BONDS
(Paragraphs deleted)
– Refer to Exhibit B
(Table deleted)

ARTICLE 9 DISPUTE RESOLUTION

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

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

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

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 9.3 Initial Decision Maker
(Paragraphs deleted)
- Intentionally Omitted

ARTICLE 10 TERMINATION OR SUSPENSION – Intentionally Omitted

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price - Intentionally Omitted

§ 10.1.1 Intentionally Omitted

§ 10.1.2 Intentionally Omitted

§ 10.1.3
(Paragraphs deleted)
Intentionally Omitted

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price - Intentionally Omitted

§ 10.2.1 Intentionally Omitted

§ 10.2.2 Intentionally Omitted

§ 10.3 Suspension - Intentionally Omitted

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents
Section 1.5 of A201–2007 shall apply to the Preconstruction Phase.

§ 11.3 Governing Law
Section 13.1 of A201–2007 shall apply to the Preconstruction Phase.

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

§ 11.5 Intentionally Omitted

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

.1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A201–2007, General Conditions of the Contract for Construction

.3
(Paragraphs deleted)

.4

.5 Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Jeffrey R. Ripley	Paul Hellermann, President
(Printed name and title) Vice President	*(Printed name and title)*

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:32:01 on 04/24/2015.

PAGE 1

AGREEMENT made as of the 20 day of March in the year 2015

...

RAR2 – 222 South Riverside, LLC
222 S. Riverside Plaza
Chicago, IL 60606

...

Bulley & Andrews, LLC
1755 W. Armitage Ave
Chicago, IL 60622

...

222 S. Riverside Redevelopment
222 S. Riverside Plaza
Chicago, IL 60606

...

Wright Heerema Architects
140 S. Dearborn
Suite 200
Chicago, IL 60603

...

The Owner has engaged JLL as its development manager for this project. For purposes of the project, Michael D. Parlato is designated as the Owner's Representative.

PAGE 2

(Name, address and other information)

David Linden – Vice President
Don Redar – Division Leader
Patrick O'Brien – Project Manager

...

Stephen T. Wright – President
Hannah Cho – Project Manager

PAGE 3

12 SCOPE OF THE AGREEMENT

~~**EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**~~

...

§ 1.1 The Contract Documents

~~**The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.~~ - Intentionally Omitted -

...

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, whether performed during the preconstruction phase or not, the general conditions of the contract shall be as set forth in ~~A201–2007, which document is incorporated herein by reference.~~ A201–2007 as modified and attached as Exhibit B shall apply in all cases. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager shall furnish only skilled and properly trained and qualified staff for the performance of the Work. Any persons performing any work or other activities directly or indirectly on behalf of the Construction Manager in connection with the project shall comply with reasonable rules and requirements of the Owner, and the Owner may require that the Construction Manager remove and replace any such person reasonably unacceptable to the Owner, whether such person is an employee of the Construction Manager, a Subcontractor, supplier or any other entity affiliated with this scope of work. The Construction Manager is only being awarded the Pre-Construction services scope of work as identified in Section 2.1 and Exhibit A and the Owner has no obligation to continue services beyond that phase.

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§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. Preconstruction services will be carried through the end of the Design Development phase and include a pricing exercise on the design development drawings and specs for all projects.

...

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

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§ 2.2 Guaranteed Maximum Price Proposal and Contract Time – Intentionally Omitted

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

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

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

~~.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;~~

~~.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;~~

~~.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;~~

~~.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and~~

~~.5 A date by which the Owner must accept the Guaranteed Maximum Price.~~ Intentionally Omitted

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

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

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

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

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

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

§ 2.3 Construction Phase - Intentionally Omitted

§ 2.3.1 General - Intentionally Omitted

§ 2.3.1.1 ~~For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.~~ Intentionally Omitted

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

§ 2.3.2 Administration - Intentionally Omitted

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

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

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

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

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

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

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

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

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Section 3.12.10 of A201–2007 shall apply to ~~both~~ the Preconstruction ~~and Construction Phases.~~ Phase.

...

Section 10.3 of A201–2007 shall apply to ~~both~~ the Preconstruction ~~and Construction Phases.~~ Phase.

...

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

§ 3.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.~~ Refer to section 2.2.1 of the General Conditions

...

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

...

~~The Owner shall identify a representative authorized to act on behalf of the Owner with respect to~~ to the Owner has engaged JLL as its development manager for the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the

Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect
~~**The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™ 2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.~~ Intentionally Omitted

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Preconstruction Services – Lump Sum Fee: $30,000

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

...

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's ~~invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~ invoice and will be paid within 45 days of receipt of approved invoice.
~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~%~~

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES - Intentionally Omitted

§ 5.1 ~~For the Construction Manager's performance of the Work as described in Section 2.2, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.~~ Intentionally Omitted

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

Intentionally Omitted

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

Intentionally Omitted

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

Intentionally Omitted

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

§ 5.1.5 ~~Unit prices, if any:~~

~~*(Identify and state the unit price, state the quantity limitations, if any, to which the unit price will be applicable.)*~~
Intentionally Omitted

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

§ 5.2 Guaranteed Maximum Price - Intentionally Omitted

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

Intentionally Omitted

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

§ 5.3 Changes in the Work - Intentionally Omitted

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

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

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

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

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE - Intentionally Omitted

§ 6.1 Costs to Be Reimbursed - Intentionally Omitted

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

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

§ 6.2 Labor Costs - Intentionally Omitted

§ 6.2.1 ~~Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~ Intentionally Omitted

§ 6.2.2 ~~Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.~~

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

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

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

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

§ 6.3 Subcontract Costs

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

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction - Intentionally Omitted

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

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

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items - Intentionally Omitted

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

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

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

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

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

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

§ 6.6 Miscellaneous Costs - Intentionally Omitted

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

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

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

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

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

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

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

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

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

§ 6.7 Other Costs and Emergencies - Intentionally Omitted

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

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

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

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

§ 6.8 Costs Not To Be Reimbursed - Intentionally Omitted

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

~~.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;~~

~~.2 Expenses of the Construction Manager's principal office and offices other than the site office;~~

~~.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;~~

~~.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;~~

~~.5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~

~~.6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;~~

~~.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and~~

~~.8 Costs for services incurred during the Preconstruction Phase.~~Intentionally Omitted

§ 6.9 Discounts, Rebates and Refunds - Intentionally Omitted

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

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

§ 6.10 Related Party Transactions - Intentionally Omitted

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

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

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

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES - Intentionally Omitted

§ 7.1 Progress Payments - Intentionally Omitted

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

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

Intentionally Omitted

§ 7.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the ___ day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the ___ day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ___ (___) days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)~~Intentionally Omitted

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

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

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

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

~~.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;~~

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

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

~~.4 Subtract retainage of percent (%) from that portion of the Work that the Construction Manager self-performs;~~

~~.5 Subtract the aggregate of previous payments made by the Owner;~~

~~.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~

~~.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.~~ Intentionally Omitted

§ 7.1.8 ~~The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.~~ Intentionally Omitted

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

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

§ 7.2 Final Payment - Intentionally Omitted

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

~~.1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;~~

~~.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and~~

~~.3 a final Certificate for Payment has been issued by the Architect.~~

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

Intentionally Omitted

§ 7.2.2 ~~The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such~~

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

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

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

ARTICLE 8 INSURANCE AND BONDS

~~For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.~~
~~*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*~~

– Refer to Exhibit B

~~Type of Insurance or Bond~~ ~~Limit of Liability or Bond Amount ($0.00)~~

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

...

§ 9.3 Initial Decision Maker

~~The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

- Intentionally Omitted

ARTICLE 10 TERMINATION OR SUSPENSION – Intentionally Omitted

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price - Intentionally Omitted

§ 10.1.1 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.~~Intentionally Omitted

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

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

~~.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;~~

~~.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~

~~.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.~~

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

§ 10.2.2 ~~If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.~~

~~except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.~~Intentionally Omitted

§ 10.3 Suspension

~~**The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.5 of this Agreement.**~~ Intentionally Omitted

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

...

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

...

§ 11.5 ~~Other provisions:~~

Intentionally Omitted

...

.3 ~~AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:~~

.4 ~~AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Michael Parlato, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:32:01 on 04/24/2015 under Order No. 1879941105_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Paul Hellermann, President

(Title)

(Dated)

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
222 S. Riverside
Chicago, IL 60606

THE OWNER:
(Name, legal status and address)
RAR2 – 222 South Riverside, LLC
222 S. Riverside Plaza
Chicago, IL 60606

THE ARCHITECT:
(Name, legal status and address)
Wright Heerema Architects
140 S. Dearborn
Suite 200
Chicago, IL 60603

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the 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 give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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

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

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

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

.3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

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

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

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

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

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

§ 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 subcontractors of a separate contractor.

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

.4 As provided in Section 7.3.7.

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

.1 defective Work not remedied;

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

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

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

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

§ 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

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' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be

extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

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

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

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

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

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

Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

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

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

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

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

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

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

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. 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.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 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.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Additions and Deletions Report for
AIA® Document A201™ – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:33:08 on 04/24/2015.

PAGE 1

222 S. Riverside
Chicago, IL 60606

...

RAR2 – 222 South Riverside, LLC
222 S. Riverside Plaza
Chicago, IL 60606

...

Wright Heerema Architects
140 S. Dearborn
Suite 200
Chicago, IL 60603

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Michael Parlato, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:33:08 on 04/24/2015 under Order No. 1879941105_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Paul Hellermann, President

(Title)

(Dated)

ILLINOIS WORKERS' COMPENSATION COMMISSION
APPLICATION FOR ADJUSTMENT OF CLAIM (APPLICATION FOR BENEFITS)

19IWC009579

ATTENTION. Please type or print. Answer all questions. File three copies of this form.

Workers' Compensation Act ☒ Occupational Diseases Act ☐ Fatal case? No ☒ Yes ☐ Date of death ____

2019 MAR 28 PM 4:00

Donavan Munoz
Employee/Petitioner

Case #
(Office use only)

v.

Bulley & Andrews Concrete Restoration, LLC
Employer/Respondent

Location of accident or last exposure **Chicago, Illinois**
City, State

Donavan Munoz
Injured employee's name [1]

1333 Edgewood Ave.; Chicago Heights, Il. 60411
Street address, City, State, Zip code

Bulley & Andrews Concrete Restoration, LLC
Employer's name

1755 W. Armitage Ave.; Chicago, Il. 60622
Street address, City, State, Zip code

Employee information: State employee? Yes ☐ No ☒ Male ☒ Female ☐ Married ☒ Single ☐

#Dependents under age 18 **2** Birthdate **Nov. 16, 1982** Average weekly wage **$2,100.00**

Date of accident[2] **Dec. 4, 2016** The employer was notified of the accident orally ☒ in writing ☒

How did the accident occur? **moving heavy construction materials**

What part of the body was affected? **low back**

What is the nature of the injury? **to be shown** Return-to-work date [3] ____

Is a *Petition for an Immediate Hearing* attached? Yes ☐ No ☒

Is the injured employee currently receiving temporary total disability benefits? Yes ☐ No ☒

If a prior application was ever filed for this employee, list the case number and its status ____

ATTENTION, PETITIONER. This is a legal document. Be sure all blanks are completed correctly and you understand the statements before you sign this. Refer to the Commission's *Handbook on Workers' Compensation and Occupational Diseases* [4] for more information.

(X) Donavan Munoz
Signature of petitioner

3-25-2019
Date

APPEARANCE OF PETITIONER'S ATTORNEY

Please attach a copy of the *Attorney Representation Agreement.*

Signature of attorney

10 N. Dearborn, 7th Floor
Street address

786
Attorney's name and IC code # [5] (please print)

Chicago, Il 60602
City, State, Zip code

Brustin & Lundblad, Ltd.
Firm name

(312)263-1250 Telephone number **mlundblad@mablawltd.com** E-mail address

PROOF OF SERVICE

If the person who signed the *Proof of Service* is not an attorney, this form must be notarized.
If you prefer, you may submit the front of this application form with the *Proof of Service* on a separate page.

I, **Delores Stalter**, affirm that I delivered ☐ mailed with proper postage ☒

in the city of **Chicago** a copy of this form

at **5:00** PM on **March 28, 2019** to the respondent listed on this application and to each

additional party, if any, at the address listed below.

Bulley & Andrews Concrete Restoration, LLC
1755 W. Armitage Ave.
Chicago, Il. 60622

Delores Stalter
Signature of person completing *Proof of Service*

Signed and sworn to before me on 3-28-19

Notary Public

OFFICIAL SEAL
IESHA GILMORE SMITH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/01/20

[1] In most cases, the injured employee files this application and is referred to as the petitioner. If the injury was fatal, or if the worker is a minor or incapacitated, another person (as allowed by law) may file. In those cases, the person filing the application is the petitioner, and the worker is referred to as the injured employee. Please complete information related to age, etc., for the injured employee.

[2] This may be the date of the accident, last exposure, disability, or death.

[3] If the employee has not returned to work, leave this space blank.

[4] The Commission publishes a handbook that explains the workers' compensation system. If you would like a copy, please call any Commission office.

[5] The Commission assigns code numbers to attorneys who regularly practice before it. To obtain or look up a code number, contact the Information Unit in Chicago or any of the downstate offices at the telephone numbers listed on this form.

DATE: 3-24-19

ATTORNEY REPRESENTATIATION AGREEMENT
WORKER'S COMPENSATION/OCCUPATIONAL DISEASE

The undersigned D. VAN MUNT "client" retains **BRUSTIN & LUNDBLAD, LTD.,** "attorney" to prosecute and/or settle claims for benefits under the Illinois Worker's Compensation Act or Occupational Disease against Bolly & Andrews, "employer" on account of injuries arising out of and in the course of employment of D. MUNOZ on 12-23-16.

2019 MAR 28 PM 4:01

Client has given attorney a written offer, if any, from the employer or its agent to pay client a specific amount of compensation permanent disability caused by the injuries above. Client and attorney each have a copy of that written agreement if any, and each copy is signed by both client and attorney on this date. Client agrees to pay attorney for representation before the Illinois Industrial Commission.

(A) A sum of money equal to:

1. N/A of any amount received in excess of the written offer, if any or 20% of the total amount received for compensation for permanent disability caused by the accident, whichever compensation sum of money is less provided, however, if the amount received for compensation for permanent disability does not exceed the written offer, if any, attorney shall receive no fee for compensation for permanent disability; or

2. N/A (not to exceed $100.00) if the Respondent and his agent does not dispute its liability, the proper amount of compensation is timely paid, the client does not receive an amount able that specified by law and the accident result in death of the employee amputation of one or more of a finger, tow or member, removal of a testicle, enucleation of or 100% loss of vision of an eye, fracture of one or more vertebra, fracture of a skull, fracture of one or more spinous or transverse process, fracture of one or more facial bones, removal of a kidney, spleen or lung;

(B) and a sum of money equal to 20% of any payments for compensation for temporary and disability which the employer or his agent refused to pay in a timely manner or in the proper amount;

(C) and a sum of money equal to 20% of all disputed medical bills;

(D) and in addition to the above, all costs and expenses of prosecuting or settling the above claims;

It is agreed that no settlement shall be made without the consent of the client.

It is further agreed that there will be no charge for services of any kind unless a recovery is made.

It is further agreed that if client terminates this agreement prior to a recovery, client will pay attorneys from any subsequent recovery a reasonable fee as determined by the Industrial Commission (not to exceed the amount set forth in A through C) above plus any unpaid costs and expenses related to prosecuting or settling the claim up to the ate of termination of this agreement.

It is further agreed that this agreement is subject to and governed by the Illinois Worker's Compensation Act section including in particular the limitation of attorney's fees in death cases, total permanent disability cases and partial disability cases.

Client states that this claim has not been solicited by the attorney or his agent.
Attorney states that he has reviewed each provision of this agreement with the client.
Client states that he has read and understood this Attorney Representation Agreement.
Client acknowledges that on this date attorney furnished to client and client has received a copy of this Attorney Representation Agreement.

X D. Munoz
Client

312-263-1250
Attorney

Brustin & Lundblad, Ltd.

10 N. Dearborn, 7th Floor

Chicago, Illinois 60602

A108

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Donovan Munoz, Plaintiff, v. Bulley & Andrews LLC, et. al., Defendants.	No. 19 L 3878 Calendar B Judge Daniel T. Gillespie

ORDER

This matter is before the court on Defendant Bulley & Andrews LLC's motion to dismiss pursuant to § 2-619(a)(9). The court must grant the motion because Bulley & Andrews LLC was legally obligated to pay for the workers' compensation benefits that Plaintiff Donovan Munoz received.

I.

The court must grant Bulley & Andrews LLC's motion to dismiss.

Immunity under § 5(a) of the Workers' Compensation Act cannot be predicated on a defendant's payment of a plaintiff's workers' compensation benefits or premiums unless the defendant is under some legal obligation to do so. *Burge v. Exelon Generation Co., LLC*, 2015 IL App (2d) 141090, ¶ 15.

Here, the March 20, 2015 contract between RAR2 – 222 South Riverside, LLC (property owner) and Bulley & Andrews LLC is evidence of Bulley & Andrews LLC's pre-existing contractual obligation to pay for Bulley & Andrews Concrete Restoration, LLC's workers' compensation insurance benefits and premiums. § 11.1.1.1 of the RAR/Bulley Andrews contract states:

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

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

The above language is evidence that the contract imposed a duty on Bulley & Andrews LLC to provide agents of Bulley & Andrews Concrete Restoration, LLC's with workers' compensation insurance. Moreover, there is no evidence that Bulley & Andrews Concrete Restoration, LLC was self-insured or that Bulley & Andrews LLC had the option to reimburse Bulley & Andrews Concrete Restoration, LLC for any payments the latter may have made because there is no contract between Bulley & Andrews LLC and Bulley & Andrews Concrete Restoration, LLC.

The court must grant Bulley & Andrews LLC's motion to dismiss for the foregoing reasons.

II.

It is hereby ORDERED:

(1) Defendant Bulley & Andrews LLC's motion to dismiss is granted with prejudice.

(2) There is no just reason to delay enforcement or appeal of this order pursuant to Illinois Supreme Court Rule 304(a).

ENTERED

Judge Daniel T. Gillespie No. 1507

Associate Judge Daniel T. Gillespie

DEC 27 2019

Circuit Court-1507

APPEAL TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT LAW DIVISION

Donovan Munoz,	)	
	)	
Plaintiff,	)	No. 2019 L 3378
	)	
v.	)	Calendar B
	)	
Bulley & Andrews LLC, et. al.,	)	Judge Daniel T. Gillespie
	)	
Defendants.	)	

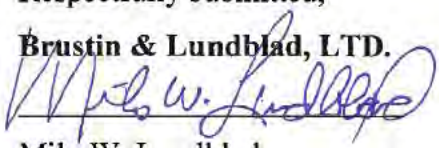
NOTICE OF APPEAL

Plaintiff-Appellant DONOVAN MUNOZ by and through his undersigned attorneys, BRUSTIN & LUNDBLAD, LTD, and pursuant to Supreme Court Rules 301 and 304 (a), hereby appeals to the Appellate Court of Illinois, First District, from the order entered by the Circuit Court of Cook County, Illinois, County Department, Law Division on December 27, 2019, granting the motion to dismiss of defendant BULLEY & ANDREWS, LLC made pursuant to 735 ILCS Section 2 – 619 (a) (9). Exhibit A. In its order, the trial court made a finding that: "There is no just reason to delay the enforcement or appeal of this order pursuant to Illinois Supreme Court Rule 304 (a)." *Id.*

Plaintiff-Appellant requests that the dismissal order entered against him be reversed and vacated by the Appellate Court and that the case be remanded to the Circuit Court for trial and all other relief which the Appellate Court of Illinois deems just and reasonable.

Respectfully submitted,

Brustin & Lundblad, LTD.



Milo W. Lundblad

Milo W. Lundblad
BRUSTIN & LUNDBLAD, LTD.
10 N. Dearborn St., 7th Floor
Chicago, IL 60602
(312) 263-1250
mlundblad@mablawltd.com

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Donovan Munoz, Plaintiff, v. Bulley & Andrews LLC, et. al., Defendants.	No. 19 L 3878 Calendar B Judge Daniel T. Gillespie

ORDER

This matter is before the court on Defendant Bulley & Andrews LLC's motion to dismiss pursuant to § 2-619(a)(9). The court must grant the motion because Bulley & Andrews LLC was legally obligated to pay for the workers' compensation benefits that Plaintiff Donovan Munoz received.

I.

The court must grant Bulley & Andrews LLC's motion to dismiss.

Immunity under § 5(a) of the Workers' Compensation Act cannot be predicated on a defendant's payment of a plaintiff's workers' compensation benefits or premiums unless the defendant is under some legal obligation to do so. *Burge v. Exelon Generation Co., LLC*, 2015 IL App (2d) 141090, ¶ 15.

Here, the March 20, 2015 contract between RAR2 – 222 South Riverside, LLC (property owner) and Bulley & Andrews LLC is evidence of Bulley & Andrews LLC's pre-existing contractual obligation to pay for Bulley & Andrews Concrete Restoration, LLC's workers' compensation insurance benefits and premiums. § 11.1.1.1 of the RAR/Bulley Andrews contract states:

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

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

The above language is evidence that the contract imposed a duty on Bulley & Andrews LLC to provide agents of Bulley & Andrews Concrete Restoration, LLC's with workers' compensation insurance. Moreover, there is no evidence that Bulley & Andrews Concrete Restoration, LLC was self-insured or that Bulley & Andrews LLC had the option to reimburse Bulley & Andrews Concrete Restoration, LLC for any payments the latter may have made because there is no contract between Bulley & Andrews LLC and Bulley & Andrews Concrete Restoration, LLC.

The court must grant Bulley & Andrews LLC's motion to dismiss for the foregoing reasons.

II.

It is hereby ORDERED:

(1) Defendant Bulley & Andrews LLC's motion to dismiss is granted with prejudice.

(2) There is no just reason to delay enforcement or appeal of this order pursuant to Illinois Supreme Court Rule 304(a).

ENTERED

Judge Daniel T. Gillespie No. 1507

Associate Judge Daniel T. Gillespie

DEC 27 2019

Circuit Court-1507

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

May 26, 2021

In re: Donovan Munoz, Appellant, v. Bulley & Andrews, LLC, Appellee.
Appeal, Appellate Court, First District.
127067

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

127067

APPEAL TO THE SUPREME COURT OF ILLINOIS

FROM THE APPELLATE COURT OF ILLINOIS

JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT

COOK COUNTY, ILLINOIS

DONOVAN MUNOZ

Plaintiff- Appellant

v.

BULLEY & ANDREWS, ET. AL.

Reviewing Court No: 127067

Appellate Court No: 1-20-0254

Circuit Court No: 2019L003878

Trial Judge: DANIEL T. GILLESPIE

COMMON LAW RECORD – TABLE OF CONTENTS

127067

APPEAL TO THE SUPREME COURT OF ILLINOIS

FROM THE APPELLATE COURT OF ILLINOIS

JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT

COOK COUNTY, ILLINOIS

DONOVAN MUNOZ

Plaintiff- Appellant

v.

BULLEY & ANDREWS, ET. AL.

Defendant-Appellee

Reviewing Court No: 127067

Appellate Court No: 1-20-0254

Circuit Court No: 2019L003878

Trial Judge: DANIEL T. GILLESPIE

SUPPLEMENT TO THE RECORD – TABLE OF CONTENTS

No. _127067_

IN THE SUPREME COURT OF ILLINOIS

DONOVAN MUNOZ,	)	On Appeal from The Illinois
	)	Appellate Court, First District,
Plaintiff-Appellant	)	No. 1-20-0254
	)	
v.	)	There Heard on Appeal from the
	)	Circuit Court of the Cook Judicial
BULLEY & ANDREWS, LLC,	)	Circuit, Cook County, Illinois
	)	Case No. 2019 L 003878
	)	
Defendant-Appellee.	)	The Honorable Judge
	)	Daniel T. Gillespie
	)	*Judge Presiding*

PLAINTIFF- APPELLANT NOTICE OF FILING

To: Patricia Hogan
Henry Ortiz
Jack Vitanovec
Cassiday Schade LLP
222 W. Adams Street, Suite 2900
Chicago, IL 60606
phogan@cassiday.com
hortiz@cassiday.com
jvitanovec@cassiday.com

On June 30, 2021, I caused to be filed with the Supreme Court of Illinois by electronic means, **Plaintiff-Appellant's Brief**. A copy of which is attached hereto and served upon you.

Dated: 06-28-2021

_/s/ *Milo W. Lundblad*_____
Milo W. Lundblad

Milo W. Lundblad
Brustin & Lundblad, Ltd.
10 N. Dearborn, 7th Floor
Chicago, IL 60602
mlundblad@mablawltd.com
Counsel for Plaintiff-Appellant
Donovan Munoz

CERTIFICATE OF SERVICE

I, a non-attorney, hereby certify that on June 30, 2021, I served this notice on the above addressed parties at their respective e-mail addresses and by via the Court's Electronic Filing System. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Victoria Nieto
Victoria Nieto