

<b>HTFC DEMOLITION AGREEMENT</b>
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**INSTRUCTIONS FOR AWARDED AND COMPLETING  
DEMOLITION AGREEMENT, SCHEDULES, GENERAL CONDITIONS & EXHIBITS**

**REQUIREMENTS PRIOR TO AWARD OF CONTRACT**

Before this Demolition Agreement can be executed, the following conditions must be complied with:

- (1) Owner shall have approved the Contractor.
- (2) Contractor shall have delivered to Owner the Performance Bond and the Payment Bond, if any, required by Section 7.1 of the Demolition Agreement.
- (4) Contractor shall have delivered to Owner certificates of insurance evidencing compliance with the Required Insurance and Insurance Limits set forth in Schedule B to the Demolition Agreement.
- (5) Contractor shall have confirmed and accepted all Demolition Specifications, addenda, and any Project Addendum to be executed simultaneously with this Demolition Agreement.

**COMPLETION OF CONTRACT DOCUMENTS**

The following information needs to be inserted in order to complete the Demolition Agreement:

**Demolition Agreement**

Cover Page: Insert Contractor name and date of Agreement.

Preliminary Statement: Insert date of Agreement and Contractor name, state of formation, type of entity and address.

Signature Page: Insert Contractor name.

**Schedule B**

B: Verify Insurance Limits or insert other coverage amounts provided by insurance consultant.

**Schedule C**

Verify/insert name and contact information for Owner, Contractor, GOSR Referee and Owner's Representative, as applicable.

**General Conditions**

Cover Page: Insert Contractor name and date of Agreement.

**GOSR Supplementary Conditions for Contracts**

Instructions for completing the Supplementary Conditions for each Subcontract and lower-tiered Subcontract are included at the front of the Supplementary Conditions.

**PROTOCOL FOR FINAL DEMOLITION AGREEMENT**

Please prepare four execution copies of the complete Demolition Agreement, including Schedules, General Conditions, Exhibits and all other attachments – each set must be bound as one document.

**COMPLETION OF EACH PROJECT ADDENDUM (IN THE FORM OF SCHEDULE D TO THE DEMOLITION AGREEMENT)**

### **Introductory Statement**

Insert Project Address.

Insert date of Demolition Agreement.

Insert Contractor Name.

Insert date of Project Addendum.

### **Project Addendum Terms and Conditions**

A: Insert address of the Project

B: Insert Starting Date and Substantial Completion Date for the Work.

C: Insert the Gross Price, the Salvage Credit, and the Contract Price.

D: Insert list of other reference documents – if any – (such as consultant reports) which impact the Contractor's scope of Work.

### **PROTOCOL FOR EACH FINAL PROJECT ADDENDUM**

Please prepare four execution copies of the applicable complete Project Addendum and any attachments – each set must be bound as one document.

**HTFC DEMOLITION AGREEMENT**

OWNER: HOUSING TRUST FUND CORPORATION  
25 Beaver Street  
New York, New York 10004

CONTRACTOR:

DATED:

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GOSR SUPPLEMENTARY CONDITIONS FOR CONTRACTS

DEMOLITION AGREEMENT (this "Demolition Agreement" or this "Agreement") dated as of \_\_\_\_\_, 2014 between HOUSING TRUST FUND CORPORATION, a \_\_\_\_\_, having an office at 25 Beaver Street, New York, New York 10004, Attention: \_\_\_\_\_ ("Owner") and \_\_\_\_\_, a \_\_\_\_\_, with an office at \_\_\_\_\_, Attention: \_\_\_\_\_ ("Contractor").

#### Introductory Statement

Owner, through the Governor's Office of Story Recovery ("GOSR"), is undertaking programs in support of recovery, blight removal, disposition and redevelopment for those properties impacted by Superstorm Sandy, Hurricane Irene or Tropical Storm Lee, in connection with GOSR's administration of U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant Disaster Recovery ("CBCG-DR") funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2). Demolition is required for those properties acquired by GOSR through the Acquisition and Buyout Programs outlined in the New York State Action Plan for CDBG-DR. Contractor has been selected to demolish certain property or properties as identified in a project addendum or project addenda, each in the form of Schedule D attached hereto, executed simultaneously with or subsequent to the execution of this Demolition Agreement (each, a "Project Addendum"). Contractor has advised Owner that Contractor is experienced and properly qualified and desires to perform and finish certain services for Owner in connection with the same.

For the purpose of assessing the cost and risks of the obligations which Contractor is assuming under this Agreement, Contractor acknowledges that Contractor has had a full and complete opportunity, before signing this Agreement and any Project Addendum hereunder, to conduct a thorough physical inspection of the applicable Project Site to be covered by the respective Project Addendum (defined below). Among those costs and risks are the cost and work of removing any in-ground or underground tanks and associated spillage, asbestos-containing materials, and lead-based paint, all of which are within the Contract Price (defined below) and for which Contractor will NOT receive Extra Payment or Change Orders (defined below). Supplementing the foregoing, Contractor acknowledges, further, that Contractor is taking the entire and exclusive risk of all site conditions, disclosed or undisclosed, foreseen or unforeseen, and will not seek Change Orders or Extra Payment (each as defined below) of any kind from Owner except for Discretionary Owner Changes and Extraordinary Conditions (as defined below).

Contractor acknowledges that performance of this Demolition Agreement requires compliance with certain federal and state requirements, including the Davis-Bacon Act, as set forth in Section 9.1 below and the GOSR Supplementary Conditions for Contracts attached hereto.

NOW, THEREFORE, in consideration of their mutual promises, and intending to be legally bound hereby, Owner and Contractor agree as follows:

#### ARTICLE 1. General Conditions; Contract Documents

1.1 "General Conditions" means the General Conditions for the Contract attached hereto which are incorporated by reference herein.

1.2 The Contract Documents consist of the Contract Documents as defined under the General Conditions. This Demolition Agreement and each Project Addendum form part of the Contract Documents. All words and phrases defined in the Contract Documents have the same meaning in this Demolition Agreement.

#### ARTICLE 2. The Work

2.1 Contractor shall perform the Work in accordance with the Contract Documents.

#### ARTICLE 3. Contract Price; Salvage Credit

3.1 The Contract Price for each Project shall be the amount specified as the "Contract Price" in the applicable Project Addendum, reflecting the Salvage Credit, and otherwise as increased or decreased pursuant to specific provisions of the Contract Documents.

#### ARTICLE 4. Starting Date; Substantial Completion Date

4.1 The "Starting Date" for the Work on each Project shall be as specified in the applicable Project Addendum.

4.2 The "Substantial Completion Date" for all the Work of this Contractor on each Project shall be as specified in the applicable Project Addendum, subject to extension if and to the extent permitted under Article 18 of the General Conditions.

ARTICLE 5. Authorized Representatives of Owner and Contractor; GOSR Referee; Owner's Representative

5.1 The authorized representatives of the Contractor are identified in Schedule C to the Demolition Agreement.

5.2 The authorized representatives of Owner are identified in Schedule C to the Demolition Agreement, as well as Owner's project manager (if any).

5.3 The "GOSR Referee" is identified in Schedule C to the Demolition Agreement and shall include any successor designated by Owner.

5.4 The "Owner's Representative" is identified in Schedule C to the Demolition Agreement and shall include any successor designated by Owner.

ARTICLE 6. Miscellaneous

6.1 Schedules A through D hereto and each Project Addendum executed by Owner and Contractor pursuant to this Demolition Agreement are and shall be deemed part of (and incorporated in) this Demolition Agreement as though fully set forth in this Demolition Agreement.

6.2 In the event of any question as to whether a particular provision of this Contract complies with the Construction Contracts Act, N.Y. Gen. Bus. Law § 756-758 (the "Act"), the particular provision shall be construed in a manner which results in compliance with the Act.

6.3 This Demolition Agreement may be executed (a) in counterparts, a complete set of which shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Demolition Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

ARTICLE 7. Bonds

7.1 Before commencing the Work on any Project, Contractor shall give Owner a performance bond (the "Performance Bond"), and a labor and materials payment bond (the "Payment Bond"), in forms approved by Owner, each with a penal sum equal to the Contract Price. (The Performance Bond and the Payment Bond are referred to collectively as the "Bonds".)

7.2 The Bonds shall be issued by a reputable and well-established surety company or companies (collectively, the "Surety") satisfactory to Owner, approved in writing by Owner, and licensed to do business in the State of New York.

7.3 Owner's payment (or prepayment) to Contractor or any other Person of all or any portion of the Contract Price, or Owner's failure to retain any portion of the Contract Price (whether or not specifically permitted under this Contract), or any change in or variation in the time, method or condition of payment of the Contract Price by Owner, or any extension of Contractor's time for performance or the issuance of any Change Order or other modification of the Contract Documents, shall not discharge or modify to any extent whatsoever the obligation of the Surety upon the Bonds.

ARTICLE 8. Required Insurance

8.1 Schedule B sets forth the insurance coverages required of Contractor under this Contract (and, for the avoidance of doubt, whether Contract executes only one, or more than one, Project Addendum).

ARTICLE 9. GOSR Supplementary Conditions for Contracts

9.1 Contractor shall (a) comply with the GOSR Supplementary Conditions for Contracts attached hereto (the "Supplementary Conditions"), (b) include such Supplementary Conditions in any Subcontract entered into under this

Demolition Agreement, and (c) require all Subcontractors to flow-down such terms to all lower-tiered Subcontractors. These Supplementary Conditions include required terms for project contracts, HUD General Provisions, Participation by Minority Group Members and Women Requirements and Procedures for Contracts with HTFC, Standard Clauses for Contracts with HTFC and required diversity forms.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, Owner and Contractor have duly executed this Demolition Agreement (including the Schedules, General Conditions and Exhibits) as of the date first above written.

OWNER:

HOUSING TRUST FUND CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

CONTRACTOR:

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULES

SCHEDULE A	Demolition Specifications
SCHEDULE B	Required Insurance
SCHEDULE C	Authorized Representatives of Owner and Contractor; GOSR Referee; Owner's Representative
SCHEDULE D	Form of Project Addendum

## SCHEDULE A

### Demolition Specifications

These Demolition Specifications shall apply to each and every Project for which Owner and Contractor enter into a Project Addendum. In each such case Contractor shall comply with these Demolition Specifications, at Contractor's expense, in completing the Work for each applicable Project under this Demolition Agreement. All words and phrases defined in the Contract Documents have the same meaning in this Demolition Agreement and in these Demolition Specifications.

#### A. Preliminary Work

1. Confirm property line dimensions of the Project Site from survey. No work shall be performed outside the property line. Install a fence complying with Laws around the exterior of the site.
2. All utilities (including electricity, gas, water, and sewer, and fire hydrants) shall be disconnected before any removal and/or demolition activity is commenced. Removal of utilities shall be conducted by licensed persons and in all cases in compliance with, and as required by, Law.
3. Provide protection for any neighboring structures or improvements within ten (10) feet of the property line on any side or as otherwise required by Law. Protection of adjacent properties shall include protection from debris, dust, and excessive noise. All work shall be wet down periodically as necessary to minimize dust.
4. If asbestos is present, comply with Section C below.
5. If an in-ground or underground tank is present or if there are propane tanks on the site, comply with Section D below.
6. Obtain, at Contractor's expense, all permits and approvals required by Code and Environmental Laws (if applicable) for the demolition of the Project.
7. Prepare and send to Owner a written implementation plan (a "Demo Plan") describing briefly but in sufficient detail the proposed means and methods for proceeding with the demolition in accordance with these Demolition Specifications. Include in the Demo Plan any features of the existing structure requiring special means and methods which would not be covered in the conventional demolition of a one or two story residence. Include in the Demo Plan a list of all permits and approvals obtained pursuant to paragraph 6 above. State in the Demo Plan whether (a) there is asbestos which must be remediated (and, if so, how Contractor will comply with Section C below) and (b) whether there is an underground tank (or tanks) on the Project Site (and, if so, how Contractor will comply with Section D below).
8. If, within fifteen (15) days after Owner receives the Demo Plan, Owner does not give notice to Contractor requiring a modification of the Demo Plan, or requiring actions to be taken with respect to the Demo Plan, Contractor may give notice to Owner of its intent to proceed under the Demo Plan. If, within five (5) days after Owner receives such notice, Owner does not give notice to Contractor requiring a modification of the Demo Plan, or requiring actions to be taken with respect to the Demo Plan, Contractor shall proceed with demolition in accordance with the Demolition Specification in compliance with this Demolition Agreement and in accordance with the Demo Plan.
9. If, within the timeframe specified in paragraph 8 above, Owner gives notice to Contractor requiring a modification of the Demo Plan, or requiring actions to be taken with respect to the Demo Plan, Contractor shall modify the Demo Plan and/or take the required actions, and resubmit the Demo Plan to Owner. The resubmitted Demo Plan shall then be treated as if it were an initial submission of the Demo Plan under these paragraphs 8 and 9.
10. Contractor shall provide the services of a licensed engineer, at Contractor's expense, to review and accept these

Demolition Specifications, to sign and seal (if applicable) all necessary filings; and to perform all tests, reviews, inspections, sign-offs, and other matters under this Demolition Specification or otherwise in the performance of the Work which by Law require action or signature of a licensed engineer.

B. Demolition Activities

1. The scope of demolition includes the complete demolition and removal of all buildings and other improvements on the site in compliance with Laws, whether or not specific items or details of demolition (or means or methods of demolition) are described or specified in this Demolition Specification. Perform all demolition. Provide all labor and equipment necessary for this purpose, whether or not originally foreseeable as necessary.
2. Remove all sidewalks, paving, and other improvements on the site external to the building(s) being demolished.
3. Remove all underground piping and conduit.
4. Completely demolish all buildings on the site.
5. Remove all demolished materials, rubble, and demolition waste from the site in accordance with Law.
6. Remove all wiring, conduit, metering equipment, switches, panels, risers, cables, etc.
7. Remove concrete slab, foundations, and/or other foundation items and then grade the site so that it is generally leveled. If foundations have been removed, fill or backfill the site so it is generally leveled.
8. If necessary, provide any necessary shoring, bracing, or other supports if applicable to the Project.

C. Asbestos Removal

1. If and as applicable to the Project, comply with all requirements of Law regarding the removal and disposition of asbestos from the Project Site, including all responsibility for asbestos components of the Project, such as:
  - a. Examine each property and perform any required testing to confirm the presence, or absence of, asbestos containing materials (ACM).
  - b. File with the appropriate jurisdiction the required paperwork to identify the presence or absence of ACM.
  - c. Remove all ACM materials found in accordance with all regulatory requirements.
  - d. Perform all testing and air monitoring required to support the successful removal of any identified ACM and file all paperwork (for example, air clearance reports, etc.) to satisfy regulatory requirements and to obtain final regulatory approvals.

D. Underground Tanks

1. If and as applicable to the Project, comply with all requirements of Law regarding the removal and disposition of underground tanks existing on the Project Site.

E. Miscellaneous

1. Contractor is responsible for having a New York State business license.
2. Contractor shall not display any signs, posters, or other advertising on/or about the premises without the prior written consent of the Owner.

3. Contractor shall be responsible to close up and secure each property after each time it performs the Work at the property address.
4. Contractor is responsible to provide a report for each property that it performs Work. Such report shall indicate the address and time when the required Work was performed. This report shall be required for verification of Work and approval of invoices.
5. Contractor shall be responsible for and promptly repair and make good at its own expense, all damage to streets, sidewalks, curbs, utility lines, adjoining premises or any other public or private property, resulting from, or in connection with the performance of the Work.
6. Contractor shall include all costs associated with “special permitting” requirements due to location of property (i.e.: federal and/ or state roadway) lane closures and or street closings required to complete the work described.
7. All NYC and other jurisdictional DOT permits for street and sidewalk closings, opening, crossings, material storage, equipment, etc., to execute the work will be obtained by Contractor. The cost for any and all such permits shall be included in the Contract Price.
8. Contractor shall clean and maintain its work site, street and sidewalks upon completion of Work at each location. All debris and dirt resulting from its operation will be cleaned immediately upon completion of Work. Contractor shall include all snow removal and maintain sidewalks free of ice and snow during the course of the contract. Daily cleaning of sidewalk, streets and debris in and around the site, including sidewalks for the duration of the Work.
9. Contractor shall be required to attend meetings as required by Owner’s Representative.
10. It is mandatory that all personnel wear the appropriate safety equipment as required by OSHA standards.
11. Contractor shall comply with all Federal and Local laws regarding noise control.
12. Contractor shall furnish for its, personnel proper drinking water and first aid kits.
13. Contractor shall provide all engineering, surveying, field measuring, lines, elevations, and lay-out required for execution of this scope of work.
14. Provide all temporary work required to protect and make safe all work areas in accordance with OSHA and project safety plan requirements.
15. Contractor is responsible to secure all areas at the end of each Work Day. All required repair work and clean-up work shall be the responsibility of Contractor.
16. Contractor shall protect all adjacent work not scheduled to be removed. If damage occurs resulting from the Contractor’s operation, Contractor will be held responsible for the restoration, and all costs associated with the restoration.
17. Contractor shall coordinate all demolition material/dumpster staging/ storage area(s) with Owner’s Representative.
18. For projects within New York City, all private carting firms employed directly or by Subcontract must comply with the City of New York Business Integrity Commission. Copies of such registration must be submitted to Owner’s Representative prior to the rendering of any private carting services at the Project Site.
19. Contractor shall obtain all permits and inspections required for the performance of this work and shall include all costs for permits, fees, bonds, assessments and municipal inspections applicable to the Work as levied or required by all public authorities having jurisdiction. Provide all required licenses, OSHA, FDNY and DOB

certifications and requirements.

20. Contractor will be responsible for all sweeping, pickup and removal of all dirt and debris resulting from the performance of his operations and suitable disposal (recycling) of the debris. Daily and final cleanup shall be performed by Contractor. Cleanup may also be required at any time as directed by Owner's Representative to ensure compliance with the project safety plan. Should mold be encountered during the demolition, Contractor shall remove and dispose of in a legal and proper manner.
21. Contractor is to supply and pay the cost for all cranes, hoists, lifts, staging, scaffolding and rigging needed to complete the Work. Contractor is responsible for the erection, dismantling, and maintenance of any scaffolding, ladders, swing stages, etc. required to perform the Work. All scaffolds, ladders, staging, etc., shall be constructed and used in strict accordance with OSHA regulations and the project safety plan. Provide PE designs and approvals per DOB requirements.
22. Contractor shall provide all temporary signage, warning devices flagmen or other means of traffic control Work areas in accordance with all Federal, County, State and Local laws, codes or ordinances as required to perform this scope of work. Contractor shall also provide all necessary means to control traffic disrupted by the Work.
23. Contractor shall provide a full time on-site superintendent during the work.
24. Every effort shall be made by Contractor to reduce noise, disruption, and/or inconvenience to the surrounding community.
25. Site Requirements:
  - a. Demolish and remove designated properties
  - b. Regrade demolished site to match adjacent sidewalk elevation
  - c. Cart and remove all debris from demolition activities
  - d. Provide site fencing as required by Laws
  - e. Remove and reinstall fence as required

## SCHEDULE B

### Required Insurance

#### A. Contractor Insurance

1. The "Required Insurance" under this Contract consists of all coverages described in, and required under this Section A. The cost of all Required Insurance is included in the Contract Price and shall be borne by Contractor at Contractor's sole expense.
2. Contractor shall secure and maintain the following coverages (with the Insurance Limits as specified under Section B below):
  - (a) workers' compensation insurance and New York State statutory disability insurance as required by Laws for all persons employed in connection with the demolition (including those by Subcontractors or independent contractors engaged by Contractor);
  - (b) commercial general liability insurance covering liability for bodily and/or personal injury and death and for property damage covering the Project Site and all streets, alleys and sidewalks adjoining or appurtenant to the Project Site, and including:
    - (i) operations-premises liability;
    - (ii) contractor's protective liability on the operations of all Subcontractors;
    - (iii) products/completed operations coverage (with completed operations maintained within Contractor's ongoing general liability insurance program for not less than six years after completion of the Work (or such shorter period which Owner may approve);
    - (iv) broad form property damage coverage;
    - (v) broad form contractual liability (designating Article 6 of the General Conditions);
    - (vi) a broad form comprehensive general liability endorsement (including explosion, subsidence, collapse, and underground damage, libel, slander, and false arrest, and products liability);
    - (vii) no exclusions relating to (a) gravity related injuries, and (b) injuries sustained by the employee of an insured or any insured rather than "the insured";
    - (viii) fire damage and water damage legal liability;
    - (ix) protective liability insurance in Owner's name for the operations of Contractor and all Subcontractors; and
    - (x) deletion of the Contractual Liability Exclusion as applicable to construction or demolition to be performed within 50 feet of railroad track; and
  - (c) comprehensive business automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles insuring against liability for bodily and/or personal injury and death and for property damage;
  - (d) contractors' pollution liability insurance which shall include among other things, coverage for asbestos, lead paint, and mold, with limits as set forth below, and any Subcontractor or other Person performing environmental testing shall also procure pollution liability coverage of the same type with limits as set forth below; and

- (e) any Subcontractor or other Person providing engineering or other professional services shall procure professional liability insurance with limits as set forth below.
3. The commercial general liability and business automobile liability coverage shall designate Owner and all other Indemnitees (but excluding any licensed engineers with respect to liability for professional malpractice or negligence), as additional insureds. The commercial general liability additional insureds coverage shall be issued on ISO Forms CG 20 10 07 04 and 20 37 07 04 or their equivalent. Coverage provided to the additional insureds shall be on a primary and non-contributory basis.
  4. Except as specified for completed operations coverage under paragraph 2(b)(iii) above, Contractor shall maintain all coverages of Required Insurance from the date of this Contract through Final Completion and thereafter during any period while Contractor and/or any Subcontractor is performing any Work (including any warranty or corrective work) or furnishing any services pursuant to the Contract Documents.
  5. Contractor shall require that all Subcontractors carry liability and property damage insurance of the same types and coverages as specified in paragraphs 2 and 3 (except for the coverage under (b)(viii)); and Contractor shall require each Subcontractor to furnish the same documentation of such coverage as required of Contractor hereunder, unless and except as Owner agrees otherwise in writing.
  6. Contractor is advised that Owner does not maintain, and will not maintain, insurance which would cover Contractor's temporary plant and equipment. Contractor shall secure and maintain insurance for temporary plant and equipment ("Plant and Equipment Insurance"). This requirement for Plant and Equipment Insurance is solely for the benefit of Contractor, and the failure of Contractor to secure such insurance or to maintain adequate levels of coverage shall not subject Owner to liability for losses of owned or rented equipment. Such Plant and Equipment Insurance shall contain an endorsement stating that "permission is granted to complete and occupy"; and, if any off-site storage location is used for plant and equipment, such insurance shall cover, for full insurable value, all such items on or about any such off-site storage location or in transit to the Project Site. Contractor shall be fully responsible for, and shall carry "all risk" insurance on, materials and equipment to become part of the Work until same are delivered to, and accepted at, the Project Site.
  7. Each policy of Required Insurance shall contain the following (whether or not requiring additional premium):
    - (a) an agreement by the insurer that such policy shall not be cancelled or amended, or any coverages reduced, without at least 30 days prior written notice by registered mail to Owner at the address specified in this Contract;
    - (b) deductibles of not more than the amounts allowed in Section B below;
    - (c) an endorsement that:
      - (i) no unintentional act or omission of Owner, Contractor or any other named or additional insured; and
      - (ii) no violation of warranties, declarations or conditions of the policy or any application therefor by any of the aforementioned,shall affect or limit the insurer's obligation with respect to Owner and any other named or additional insured;
    - (d) a waiver of subrogation by the insurer with respect to Owner and any other named insured and additional insured with respect to professional malpractice or negligence; and
    - (e) a waiver by the insurer of any claim for insurance premiums against Owner.

Contractor and each Subcontractor shall deliver to Owner certificates (and copies of the applicable policy if requested by Owner) evidencing the Required Insurance, BEFORE bringing any Employees, materials, or equipment to a Project Site, or otherwise commencing the Work, whether on a Project Site, or elsewhere. Not later than five days before any renewal premiums become due, Contractor shall deliver endorsements or other evidence of the renewal of all insurance. As a condition to Final Completion, Contractor shall deliver to Owner evidence of continuing completed operations coverage as required under paragraph 2(b) above.

8. All Required Insurance shall be provided through valid and enforceable policies issued by a company or companies which are licensed to issue insurance in the State of New York and having A.M. Best's Ratings of "A-" and "VII" or better (or which are otherwise reasonably acceptable to Owner). All liability insurance of every kind required under this Schedule B shall be written on the "occurrence" basis.
9. Any additional insurance policies necessary to obtain required permits or otherwise comply with Laws, including any changed circumstances regarding the performance of the Work shall be at the risk of the Contractor.

B. Insurance Limits

For purposes of this Demolition Agreement, "Insurance Limits" shall mean the following:

1. for workers' compensation insurance and statutory disability insurance, employer's liability limits at a minimum of \$1,000,000 each accident/\$1,000,000 each employee for bodily injury or by disease/\$500,000 policy limit, with coverage (except for disease) to be included in the underlying schedule of any excess policy;
2. for commercial general liability insurance, an amount not less than \$10,000,000 combined single limit (including primary and umbrella coverages);
3. for fire damage and water damage legal liability, a minimum limit of \$500,000;
4. for comprehensive business automobile liability insurance, a minimum combined single limit of \$2,000,000 (including primary and umbrella coverages);
5. for Subcontractors' liability and property damage insurance, the maximum required coverage shall be \$1,000,000, unless and except as Owner agrees otherwise in writing;
6. for pollution liability insurance (i) for Contractor \$3,000,000 each claim and \$3,000,000 aggregate' and (ii) for Subcontractors and others, \$1,000,000 each claim and \$1,000,000 aggregate;
7. for professional liability insurance, \$1,000,000 each claim and \$1,000,000 annual aggregate (with a deductible or self-insured retention of not more than \$100,000).
8. deductibles or self-insured retentions as follows (unless otherwise specified above):
  - (i) for Plant and Equipment Insurance, not to exceed \$10,000; and
  - (ii) for all other coverage, not to exceed \$15,000.

SCHEDULE C

Authorized Representatives of Owner and Contractor; GOSR Referee; Owner's Representative

Owner's authorized representatives

Owner's authorized representative is:

[name, address, phone, e-mail]

Notices to Owner shall also include a copy to:

[name, address, phone, e-mail]

Contractor's authorized representatives

Contractor's authorized representative is:

[name, address, phone, e-mail]

Notices to Contractor shall also include a copy to:

[name, address, phone, e-mail]

GOSR Referee

The "GOSR Referee" for this Contract is:

[name, address, phone, e-mail]

Owner's Representatives

The "Owner's Representative" or "O/R" for this Contract is:

McKissack & McKissack  
1001 Avenue of the Americas  
New York, NY 10018  
Attention: Russell Imbrenda, Project Executive.  
(646) 408-5507  
RImbrenda@mckissack.com

SCHEDULE D

Form of Project Addendum for Each Project

PROJECT ADDENDUM

[INSERT PROJECT ADDRESS]

**Introductory Statement**

HOUSING TRUST FUND CORPORATION (“Owner”) has entered into a Demolition Agreement dated as of \_\_\_\_\_ (including all Schedules, General Conditions and Exhibits, and Supplementary Conditions thereto, the “Demolition Agreement” or the “Agreement”) with \_\_\_\_\_ (“Contractor”) for the purpose of demolition of one or more properties. The Demolition Agreement contemplates that for each Project to be demolished by Contractor, Owner and Contractor will enter into a Project Addendum in this form setting forth the terms and conditions for the specific Project. Owner desires to engage Contractor to undertake the Project described in this Project Addendum pursuant to the terms of the Demolition Agreement; and Contractor desires to undertake and perform the Work of this Project. Accordingly, upon execution by the parties below, this Project Addendum becomes part of, and is incorporated into, the Demolition Agreement.

IN WITNESS WHEREOF, Owner and Contractor have duly executed this Project Addendum (including the Terms and Conditions attached hereto) as of \_\_\_\_\_, \_\_ 2014.

OWNER:

HOUSING TRUST FUND CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

CONTRACTOR:

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**Project Addendum Terms and Conditions**

[INSERT PROJECT ADDRESS]

A. PROJECT AND PROJECT SITE

The "Project" is demolition of all buildings and structures in accordance with this Demolition Agreement on the property located at and on the Project Site.

The "Project Site" is [street address], [city], NY [zip code].

B. STARTING DATE AND SUBSTANTIAL COMPLETION DATE

The "Starting Date" for the Work is \_\_\_\_\_, 20\_\_.

The "Substantial Completion Date" for all the Work of Contractor shall be \_\_\_\_\_, 20\_\_, subject to extension if and to the extent provided under Article 18 of the General Conditions.

C. GROSS PRICE, SALVAGE CREDIT; CONTRACT PRICE

The "Gross Price" is \$\_\_\_\_\_.

The "Salvage Credit" is \$\_\_\_\_\_.

The "Contract Price" is \$\_\_\_\_\_.

The "Salvage Credit" reflects the bargained for allowance by Contractor to Owner for the value of all salvageable materials which Contractor expects to salvage, and sell or otherwise realize value, from the demolition of the Project, whether or not Contractor achieves and in fact realizes such value or does not. Contractor assumes the risk of achieving or not achieving such salvage value.

D. OTHER REFERENCE DOCUMENTS

[LIST OTHER REFERENCE DOCUMENTS APPLICABLE TO THIS PROJECT - CONSULTANTS' REPORTS, ETC. – IF ANY]

**GENERAL CONDITIONS**

Owner: HOUSING TRUST FUND CORPORATION  
25 Beaver Street  
New York, New York 10004

CONTRACTOR:

DATED:

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EXHIBITS

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## GENERAL CONDITIONS

### ARTICLE 1.

### Definitions

1.1 The following definitions shall apply in all Contract Documents (unless specifically provided to the contrary):

"Base Contract Work" for each Project means all work required under the Demolition Specifications, as in effect on the Project Addendum Date. Any Extra Work that was added to the Project by Discretionary Owner Change shall also be deemed "Base Contract Work" after the effective date of such Discretionary Owner Change.

"Bond(s)" is defined in Section 7.1 of the Demolition Agreement.

"Books and Records" is defined in Section 11.1.

"Cancellation Payment" is defined in Section 20.2.

"Change Order" means a written order issued by Owner to Contractor after execution of the applicable Project Addendum, in a form approved by Owner, authorizing or requiring: (a) Extra Work for a Discretionary Owner Change pursuant to Article 21; (b) an extension of time under Article 18; or (c) Deleted Work pursuant to Article 21.

Change Order Mark-Up" is defined in Section 21.8.

"City" means the city, town, village, or other jurisdiction in the State of New York in which the Project is located.

"Close-Out Requirements" means Contractor's obligations for closing out the Work and completing and furnishing to Owner documentation of the Work as required under the Contract Documents.

"Code" means the building code and all other municipal or other local laws applicable to the Project, the Project Site, the Contract Documents, and/or the Work.

"Completion Expense" is defined in Section 12.3.

"Contract" means the legal agreement between Contractor and Owner set forth in the Contract Documents.

"Contract Date" means the date of the Demolition Agreement.

"Contract Documents" means the following: (a) the Demolition Agreement; (b) all Schedules to the Demolition Agreement; (c) the applicable Project Addendum signed by Owner and Contractor for the particular Project; (d) the General Conditions; (e) the Supplementary Conditions; (f) all other addenda; (h) any Change Orders; and (i) any other modifications to any of the foregoing signed by Owner and Contractor.

"Contract Price" for each Project means the Contract Price as defined in the applicable Project Addendum, as increased or decreased pursuant to specific provisions of the Contract Documents.

"Contractor" is defined in the preliminary statement of the Demolition Agreement.

"Damage" is defined in Section 8.1.

"Default" is defined in Section 12.2.

"Delay Notice" is defined in Section 18.1.

"Deleted Work" means any portion or aspect of the Work deleted or omitted from the Base Contract Work by Owner.

"Demolition Agreement" (or "Agreement") means the Demolition Agreement between Owner and Contractor that precedes these General Conditions.

"Demolition Specifications" means the Demolition Specifications attached as in Schedule A to the Demolition Agreement.

"Discretionary Owner Change" is defined in Article 21.

"Employee" means an officer, director, official, trustee, manager, member, partner, employee, agent, servant, or representative.

“Environmental Law” means every federal, state, or local law, rule, or regulation governing the removal and remediation of Hazardous Materials.

"Event of Default" is defined in Section 12.1.

"Excusable Delay" means any delay in the Work resulting from any cause (during the Project) after the Contract Date and before Substantial Completion if such cause is beyond Contractor's reasonable control and was not caused by the fault of Contractor or any Subcontractor. Subject to the foregoing, Excusable Delay shall include delay caused by: (a) acts of God; (b) fire, earthquake, explosion, landslide, lightning or flood; (c) epidemic; (d) strikes (other than a strike caused by, or within the control of, Contractor); (e) lockouts by Persons other than Contractor; (f) riots, civil disturbance, insurrection, enemy action, terrorist acts, or war; (g) embargoes or blockades; (h) Unforeseen Conditions; (i) acts or omissions of Owner; (j) the delay of any Government Entity in issuing any permits necessary to perform the Work (including delay due to incompleteness or other inadequacies in the Demolition Specifications); (k) injunctions, or orders of any Government Entity; and (l) temporary or permanent interruption of, or failure of any company to provide utilities to the Project or necessary in connection with the Work.

"Exhibits" means the Exhibits to these General Conditions.

"Extra Payment" means any payment due Contractor for Extra Work, computed in accordance with Article 21.

"Extra Work" means any Work in addition to the Base Contract Work which is required by a Discretionary Owner Change. For the avoidance of doubt, "Extra Work" does not, in any case, include (a) development of details reasonably inferable from or implied by, but not explicit in, the Demolition Specifications; (b) the inclusion or exclusion of any item which should be included or excluded in accordance with good construction practice, whether or not shown or set forth in a drawing or specification; and (c) any matters resulting from, or attributable to, fault of Contractor or any Subcontractor.

“Extraordinary Conditions” means the existence of Hazardous Materials on the Project Site which were not disclosed in any reports or other documents furnished by Owner to Contractor and which are NOT: (a) asbestos-containing materials; (b) fuel tanks of any kind and/or any petroleum, or other gasoline, propane, or other fluids or substances within (or discharging or discharged from) any such fuel tanks; and/or (c) lead or lead-based paints.

"Fees-And-Costs" means the reasonable fees and expenses of attorneys, architects, engineers, investigators, expert witnesses, contractors, consultants, and other Persons, and costs of investigating claims, obtaining transcripts, printing of briefs and records on appeal, copying, and other reimbursable costs and expenses charged by any of the foregoing, and all other reasonable expenses of any actual or potential Legal Proceeding.

"Final Completion" is defined in Section 26.1.

"Final Completion Notice" is defined in Section 26.2.

"Final Holdback" means fifteen percent (15%) of the Contract Price.

"Final Payment" is defined in Section 26.3.

"Five Day Notice" is defined in Section 12.2.

"Funding Source" is defined in Section 32.1.

"General Conditions" means these General Conditions and the Exhibits hereto and the Supplementary Conditions.

"GOSR" is defined in the preliminary statement of the Demolition Agreement.

“GOSR Referee” is defined in Schedule C to the Demolition Agreement and includes any successor designated by Owner.

"Government Entity" means the United States, the State of New York (and any other state in which the Work will take place), the City of New York, and any and every other agency, authority, department, board, bureau, court, commission, or instrumentality or political subdivision of any of the foregoing.

“Gross Price” is defined in the applicable Project Addendum.

"Guarantee Period" is defined in Section 15.1.

“Hazardous Materials” means all toxic and hazardous materials, pollutants, chemicals, hydrocarbons, carcinogens, and other materials of every kind whatsoever which pose risk to human health or safety and as to which the presence,

exposure, excavation, handling, demolition, removal, remediation, transportation, and/or disposition are subject to or governed by federal, state, and/or local prescription, prohibition, and/or regulation.

"Included Items" means fees, overhead, profit, general conditions, and administrative and/or indirect of every kind. References to Included Items in the Contract Documents mean that the relevant Work will be furnished without markup or other separate compensation for any of the Included Items.

"Indemnitee(s)" for each Project means Owner, GOSR, GOSR Referee, Owner's Representative, New York State and U.S. Department of Housing and Urban Development ("HUD"); and the Employees of each of the foregoing.

"Insurance Limits" is defined in Schedule B to the Demolition Agreement.

"Law" (or "Laws") means each and every law, rule, regulation, requirement, order, judgment, decree, or ordinance of every kind issued by any Government Entity applicable to or affecting the Project, the Project Site, the Contract Documents, and/or the Work, including Code and Environmental Law.

"Legal Proceeding" means an action, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding of any kind.

"Lien" means any lien or claim (including those filed with any surety holding a Performance Bond or Payment Bond) of any kind against Owner, the Project, the Project Site, the Work, any monies due or to become due from Owner to Contractor, and/or any other property of Owner, for or on account of the Work.

"Line Item Breakdown" means a detailed written estimate or schedule of values in the form set forth in AIA Form G702 (Application for Payment) and AIA Form G703 (Continuation Sheet), showing the various operations comprising the Work and allocating percentages and dollar amounts of the Contract Price to the labor, materials, and other elements of each such operation, prepared and submitted by Contractor and approved by Owner before the submission of Contractor's first Requisition, to be submitted thereafter by Contractor with all Requisitions.

"Loss-And-Expense" means loss, liability, obligation, damage, delay, penalty, judgment, cost, fee, claim, charge, tax, or expense of every kind (including related Fees-And-Costs).

"Owner" is defined in the preliminary statement of the Demolition Agreement.

"Owner's Representative" or "O/R" is defined in Schedule C to the Demolition Agreement and includes any successor designated by Owner.

"Discretionary Owner Change" is defined in Section 21.2

"Payment Bond" is defined in Section 7.1 of the Demolition Agreement.

"Performance Bond" is defined in Section 7.1 of the Demolition Agreement.

"Person" means an individual person, a corporation, partnership, limited liability company, trust, joint venture, proprietorship, estate, Government Entity, or other incorporated or unincorporated enterprise, entity or organization of any kind whatsoever.

"Project" means the particular "Project" described in the applicable Project Addendum.

"Project Addendum" is defined in the Introductory Statement to the Demolition Agreement.

"Project Addendum Date" for each Project means the date of the applicable Project Addendum.

"Project Site" (or "site") for each Project is defined in the applicable Project Addendum.

"Punch List" is defined in Section 25.2.

"Required Insurance" is defined in Schedule B to the Demolition Agreement.

"Requisition" means a written submission by Contractor, on a form approved by Owner, requesting payment for the Work or a portion thereof (including any Extra Payment to which Contractor is entitled).

"Salvage Credit" is defined in the applicable Project Addendum.

"Schedules" means the schedule(s) to the Demolition Agreement.

"Starting Date" for each Project is defined in the applicable Project Addendum.

"Subcontract" means an agreement between Contractor and a Subcontractor, or between two Subcontractors, as applicable.

"Subcontractor" means every Person (other than Employees of Contractor) employed by Contractor, or by any Person directly or indirectly in privity with Contractor (including every sub-subcontractor of whatsoever tier), for any portion of the Work, whether for the furnishing of labor, materials, equipment, services, or otherwise.

"Supplementary Conditions" is defined in Section 9.1 of the Demolition Agreement.

"Substantial Completion" is defined in Section 25.1.

"Substantial Completion Date" for each Project is defined in the applicable Project Addendum.

"Substantial Completion Notice" is defined in Section 25.2.

"Surety" is defined in Section 7.2 of the Demolition Agreement.

"Termination Date" is defined in Section 20.1.

"Termination Notice" is defined in Section 20.1.

"Unforeseen Conditions" means any and all covered or otherwise latent or hidden and materially adverse conditions of every kind whatsoever existing on or in the Project Site or on or in any building or structure on the Project Site which were not known to Contractor and were not disclosed in any Demolition Specifications, or other documents previously furnished to Contractor by Owner or any other Person. "Unforeseen Conditions" includes Hazardous Materials, dust, debris, fire damage, in-ground or underground tanks, asbestos, pre-existing illegalities, and any other condition which will or might impact Contractor's performance of the Work. For the avoidance of doubt, and supplementing other provisions of the Contract Documents which make similar reference, Contractor has agreed to assume, and does assume, the risk of all Unforeseen Conditions within the Contract Price except for Extraordinary Conditions.

"Waiver of Lien" means, with respect to Requisitions prior to and upon Substantial Completion, a partial waiver and general release of Lien in the form set forth in Exhibit "A" and, with respect to Requisitions upon Final Completion, a final waiver and general release of Lien in the form set forth in Exhibit "B".

"Work" means: (i) the Base Contract Work and (ii) everything required to be furnished and done by Contractor pursuant to the Contract Documents, including the employment and/or furnishing of all necessary labor, materials, equipment, supplies, tools, plant, scaffolding, transportation, insurance, temporary facilities, and other things and services of every kind necessary for the full performance and completion of Contractor's obligations (and including, also, all administrative, accounting, record-keeping, notification and similar obligations).

"Work Day" (or "Business Day") means any day other than Saturday, Sunday, any federal legal holiday, or any day designated as a holiday under the collective bargaining agreement of a particular trade union.

1.2 Wherever used in the Contract Documents:

(a) "approve" or any of its derivatives or "consent" requires such approval or consent to be in writing or email, unless the particular provision specifically requires it to be in writing;

(b) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation";

(c) "day" means a calendar day unless the text specifies a Work Day;

(d) "delay" means any and every delay, obstruction, hindrance, interference, inefficiency, or loss of efficiency or productivity, of any kind;

(e) "fault" means fault, mistake, error, omission, inaccuracy, delay, mismanagement or negligence;  
and

(f) "at Contractor's expense" means at the sole and exclusive expense of Contractor.

1.3 Certain other words and phrases are defined elsewhere in the Contract Documents and have the same meaning in these General Conditions.

1.4 Wherever the Contract Documents impose any obligation on Contractor, or provide that Contractor shall be responsible for any action or matter, the Contract Documents shall be construed to mean, unless specifically provided to the contrary, Contractor shall perform or undertake the particular action or matter at Contractor's expense.

## ARTICLE 2.

## Work in Accordance with Contract Documents

---

2.1 Contractor hereby agrees to furnish, perform, and complete the Work required under this Contract in accordance with all provisions and requirements of the Contract Documents. Contractor agrees that the Work shall satisfy the requirements of the Contract Documents and shall (without limitation): (a) conform to the Demolition Specifications; (b) be of the quality required under the Demolition Specifications; (c) be free of Liens caused or created by Contractor or any Subcontractor; and (d) be constructed by means and methods complying with Laws.

2.2 Contractor agrees that the Contract Price shall be Contractor's entire compensation and/or reimbursement for the performance of the Work and for all Included Items which will, might, or could be earned or incurred by Contractor and all Subcontractors under or by reason of the Contract Documents. Contractor agrees that amounts received by Contractor from Owner shall be held in trust by Contractor pursuant to the Lien Law of New York State and shall be used first to pay for: (a) labor, materials, services, or equipment furnished in connection with the Work or any portion thereof (including materials or equipment stored offsite); (b) utilities furnished and taxes imposed; and (c) premiums on the Bonds and the Required Insurance.

2.3 Contractor shall secure (or cause to be secured), as part of the Contract Price, all permits, licenses, certificates and approvals, if any, required under the Demolition Specifications or otherwise customary for Contractor's trade.

2.4 Contractor shall perform the Work in a good and skillful manner in accordance with current good standards of practice. Contractor shall be responsible for all demolition applications, means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Work as required by the Contract Documents; subject, however, to Owner's right to reject means and methods proposed by Contractor which (a) will constitute or create a hazard to the Work or to persons or property, or (b) will not produce finished Work in accordance with the requirements of the Contract Documents. Approval of (or failure to reject) any of Contractor's means and methods of demolition shall not relieve Contractor of any obligations under the Contract Documents.

2.5 Subject to Owner's prior written approval (not to be unreasonably withheld), Contractor may use the Project Site for storage of materials and for temporary facilities, provided that Contractor makes all necessary arrangements for protecting, insuring, and securing such items within the Contract Price.

## ARTICLE 3.

## Familiarity with Documents and Conditions; No Warranties as to Contract Documents

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3.1 Contractor represents that Contractor has reviewed carefully the Demolition Specifications and all other Contract Documents, as existing on the Contract Date. Execution of each Project Addendum shall be deemed representation by Contractor that Contractor had carefully reviewed all such documents existing on the applicable Project Addendum Date. Contractor agrees that Owner has not made, and shall not be deemed to have made, any representations or warranties with respect to the Demolition Specifications, whether as to the design or other adequacy or sufficiency thereof, or otherwise.

3.2 Execution of each Project Addendum shall be deemed representation by Contractor that Contractor represents that, before the applicable Project Addendum Contract Date: (a) Contractor has inspected (and has had a full opportunity to inspect) and is familiar with the nature and location of the Project Site, other physical conditions relevant to the Work, and the jurisdiction and work rules of labor unions involved or to be involved in the Project; and (b) Contractor has become familiar with other applicable general and local conditions which may be material to Contractor's performance of the Work and the observable condition of and all existing buildings and structures (if any) on or adjacent to the Project Site.

3.3 Contractor shall not receive Extra Payment (or other additional compensation) with respect to any conditions or circumstances of any kind relating to or affecting the Project Site, including Unforeseen Conditions except for Extraordinary Conditions. Except for Extraordinary Conditions, Contractor assumes the entire risk of all conditions or circumstances relating to or affecting the Project Site, including Unforeseen Conditions.

3.4 Changes in Law after the Contract Date which require a change in design of the Work, or in Contractor's means and methods, shall NOT be deemed Extra Work, and Contractor shall not receive any adjustment of the Contract Price for any changes in Law. For the avoidance of doubt, a change in Law shall mean and include, also, a change in the

interpretation or administration of any Law (including any changes or interpretations in rules, regulations, or administrative protocols or procedures of any kind).

#### ARTICLE 4.

#### Meaning of Documents

4.1 The Demolition Specifications and all other Contract Documents are intended to complement and supplement each other and to include or imply all items required for the proper execution and completion of the Work. The Demolition Specifications and other Contract Documents do not necessarily indicate or describe all items required for full performance of the Work. Contractor agrees to furnish without additional compensation all Work indicated on, or implied from, any one such Contract Document as if required by all. Contractor shall perform and complete the Work in accordance with the requirements of the Contract Documents (with all labor, materials, services, and other things included thereto, or usually performed in connection therewith, or reasonably inferable therefrom). In the event of any inconsistency among any of the Contract Documents, the Demolition Agreement shall govern, followed by the remaining Contract Documents in the order of precedence determined by the order in which they appear in the definition of "Contract Documents" in Article 1. Any issues of inconsistency shall be resolved by the GOSR Referee.

4.2 Contractor represents that Contractor is fully familiar with the technical standards specified in the Contract Documents or otherwise applicable to Contractor's performance of the Work. References in the Contract Documents to technical standards shall be construed to mean the most recent published technical standards of the institute, organization, association, authority, or society specified. Unless otherwise specified to the contrary in the Contract Documents: (a) all references to technical standards shall include all revisions prior to the Contract Date; (b) such technical standards shall apply as if incorporated in the Contract Documents; and (c) if any revision of such technical standards occurs after the Contract Date and prior to completion of the applicable Work, Contractor shall notify Owner and, if directed to do so by Owner, shall perform the Work in accordance with the revised requirement. Where the Contract Documents require materials or apparatus to conform to specified technical standards, Contractor shall furnish Owner, upon request, the manufacturer's written certification that such materials or apparatus conform to such technical standards. Failure of Owner to request or reject any certification shall not release Contractor from full responsibility for the accurate and complete performance of the Work in accordance with the Contract Documents.

4.3 All indications, notations, schedules, or details in the Contract Documents specifically applicable to one or a number of similar situations, materials or processes, or shown as typical or representative, shall apply to all similar situations, materials, or processes, wherever appearing in the Work, unless the Contract Documents clearly require a contrary result. A typical or representative detail indicated on the Contract Documents shall be the standard of demolition and material in all corresponding parts of the Work. Where necessary, and where inferable from the Demolition Specifications, Contractor shall apply such representative detail for all corresponding parts of the Work.

4.4 Contractor shall be responsible for all measurements required for execution of the Work. Before executing any Work, Contractor shall verify all measurements by inspection and examination at the Project Site.

#### ARTICLE 5.

#### Subcontractors

5.1 Each Subcontractor to be engaged by Contractor shall be subject to Owner's prior written approval. Contractor shall have full responsibility for every portion of the Work furnished by any Subcontractor and for every act and omission (whether willful, negligent, or otherwise) of every Subcontractor and such Subcontractor's Employees. All Work, acts or omissions of every Subcontractor and such Subcontractor's Employees shall be deemed those of Contractor for all purposes of the Contract Documents.

5.2 If Owner disapproves any proposed Subcontractor, Contractor shall promptly propose a substitute Subcontractor for the applicable Work at no additional cost or give written notice to Owner that Contractor itself will perform the same Work. Failure to disapprove any Subcontractor shall not: (a) excuse Contractor from complying in all respects with the Contract Documents; or (b) imply that Owner approves Contractor's or any Subcontractor's proposed staffing or scheduling of the Work or agrees that Contractor or any Subcontractor has the capacity or ability to complete the Work.

5.3 Nothing contained in the Contract Documents shall create any relationship of contract or agency between Owner and any Subcontractor, notwithstanding Owner's consent to any Subcontractor. Contractor acknowledges and agrees that Owner shall have no obligation to supervise or deal with any Subcontractor or its Employees or to pay any Subcontractor or its Employees. No dealings of any kind whatsoever between Owner and any Subcontractor shall be deemed a waiver of the foregoing by Owner unless Owner (at Owner's election) specifically agrees otherwise in writing.

5.4 Contractor shall require all Subcontracts to be in writing and to comply with the requirements of this Article 5. Each Subcontract shall include a provision under which the Subcontractor agrees that the Subcontract shall be assigned to Owner, at Owner's written election, upon a termination of Contractor's rights to perform the Work under Article 12 or Article 20 (such assignment to become effective upon Owner's giving written notice to the Subcontractor). Each Subcontract shall contain the same terms and conditions as to method of payment for Work and as to retained percentages as are set forth in this Contract, unless Owner agrees otherwise in writing. Each Subcontract shall incorporate these General Conditions (and all other Contract Documents which apply generally to all Work or specifically to the Work covered by such Subcontract, and specifically the Supplementary Conditions) and shall provide that the Subcontractor shall be obligated to Contractor thereunder to the same extent as Contractor is obligated to Owner for the Work of such Subcontractor. Upon Owner's written request, Contractor shall deliver to Owner a true and complete copy (or counterpart original) of the signed Subcontract between Contractor and each Subcontractor (and any modifications thereof). If Contractor desires to make a substitution for any Subcontractor, the proposed substitution shall be subject to all other requirements of this Article.

5.5 No Subcontractor shall be permitted on the Project Site unless Contractor has complied with Sections 5.2 and 5.4 of these General Conditions. Contractor shall bear all risk of delay resulting from Contractor's failure to submit required information, or obtain Owner's decision concerning acceptability, within sufficient time to enable the applicable Subcontractor to commence Work when scheduled.

## ARTICLE 6.

## Indemnification; Release of Liability

6.1 Contractor hereby agrees to indemnify and hold harmless each and every Indemnitee from and against (and to pay the full amount of) all Loss-And-Expense, whenever asserted or occurring, which any Indemnitee may suffer, incur or pay out, or which may be asserted against any Indemnitee in whole or in part, by reason of, or in connection with, the following:

- (a) any bodily injury, sickness, disease or death of or to any person or persons occurring in connection with (or arising out of, or resulting from) the Work and/or any willful or negligent acts or omissions of Contractor or any Subcontractor, and whether occurring on the Project Site or elsewhere;
- (b) any damage to or destruction or loss of any property, including any third party property and any property of Owner, arising out of, or resulting from the Work and/or any willful or negligent acts or omissions of Contractor or its Employees, and whether occurring on the Project Site or elsewhere;
- (c) any materially untrue or incorrect statement or representation of Contractor in any Requisition, or in any other document submitted by Contractor with respect to the Work, the Project, or the Contract Documents (or for purposes of securing the Demolition Agreement);
- (d) any failure of Contractor to comply with Laws;
- (e) any failure of Contractor to secure and maintain Required Insurance, or any Indemnitee's loss of coverage under any Required Insurance by reason of acts or omissions of Contractor;
- (f) any amounts payable under worker's compensation or similar Laws not otherwise covered under (a) or (b) above in connection with (or arising out of, or resulting from) Contractor's performance or failure to perform the Work, or any other willful or negligent acts or omissions of Contractor or any Subcontractor attributable or relating thereto; and/or
- (g) any claim in the nature of patent, copyright, or trade secret infringement or unfair competition, arising out of Contractor's unauthorized use of any intellectual property or other similar protected material.

6.2 Contractor shall defend any Legal Proceedings commenced against any Indemnitee concerning any matter covered by any indemnity under Section 6.1. If Contractor fails to defend diligently any such Legal Proceeding, Owner shall have the right (but no obligation) to defend the same at Contractor's expense. Contractor shall not settle any such Legal Proceeding without Owner's prior written consent. Contractor shall give Owner copies of documents served in any such Legal Proceeding and, whenever requested by Owner, shall advise promptly as to the status of such Legal Proceeding. Contractor shall notify Owner promptly of every Legal Proceeding or claim of which Contractor has knowledge which may be covered by any indemnity under this Article 6 and/or which may be covered by any Required Insurance. Contractor shall also give timely notice of such Legal Proceedings and claims to each insurer which has issued an applicable policy of Required Insurance, identifying all Indemnitees involved.

6.3 Contractor's indemnities and obligations under Sections 6.1 and 6.2 shall cover and include the Fees-And-Costs paid or incurred by Owner in connection with any matter and amount referred to in Sections 6.1 and 6.2, together with the Fees-And-Costs paid or incurred by any Indemnitee to enforce this Article and Contractor's obligations hereunder (and Contractor agrees specifically that Contractor shall pay Owner the Fees-And-Costs paid or incurred by Owner to enforce this Article and Contractor's indemnities and obligations hereunder). Contractor shall pay such Fees-And-Costs upon demand from time to time.

6.4 Contractor's indemnities and obligations under the Contract Documents shall not be limited or defined by the amount of Required Insurance or by any limitations or restrictions on the amount or type of damages, compensation or benefits payable to, by or for Contractor under workers' compensation acts, disability benefit acts or any other Laws relating to employee benefits. No Indemnitee's right to indemnity under the Contract Documents shall be diminished, waived, or discharged by the exercise of any other remedy allowed under the Contract Documents or by Law.

6.5 This Article 6 and the obligations of Contractor hereunder shall survive Substantial Completion, Final Completion, all payments to Contractor, and any termination of Contractor's right to perform the Contract.

6.6 Contractor assumes the risk of, and hereby releases all Indemnitees from and with respect to, any and all matters and things covered by Contractor's obligations under this Article 6; provided, however, that Contractor shall not be required to indemnify against Loss-And-Expense as to any Indemnitee to the extent that such Loss-And-Expense is the result of the negligence or willful misconduct of such Indemnitee.

6.7 If any Subcontractor or any other Person claiming to have been employed directly or indirectly by or through Contractor or any Subcontractor files a Lien (unless as a result of Owner's failure to pay an undisputed amount properly due to Contractor under this Contract), Contractor shall satisfy, remove or discharge such Lien at Contractor's expense by bonding, payment or otherwise within 30 days after notice to Contractor of the filing thereof. If Contractor fails to do so, Owner may satisfy, remove or discharge such Lien; and, at Owner's election: (a) Owner may deduct the cost thereof (including all applicable Fees-And-Costs) from Contractor's next succeeding Requisitions (or may invalidate any previously-approved but unpaid Requisitions) until Owner recoups the total thereof; or (b) Contractor shall pay the same to Owner upon demand.

ARTICLE 7.

Access to Work; Inspections; Testing; Uncovering of Work

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7.1 During the progress of the Work through Substantial Completion, Contractor shall at all times afford Owner and other Persons designated by Owner, access to the Work and every reasonable, safe, and proper facility for inspecting or examining all Work at the Project Site or, if elsewhere, at the place of preparation. Contractor shall secure and deliver to Owner promptly all certificates of inspection, test reports, work logs, or approvals with respect to the Work as and when required by the Contract Documents (or by Laws which place responsibility for the same on Contractor).

7.2 All tests or inspections required by Law ("Controlled Inspections") shall be at Contractor's expense within the Contract Price (and Contractor shall engage, or provide the services of, a licensed engineer, at Contractor's expense, for such purpose.). Contractor shall arrange and coordinate any Controlled Inspections and notify Owner sufficiently in advance of the need and time for such Controlled Inspections. Additionally, Contractor shall arrange, coordinate and conduct all tests or inspections specifically required of Contractor or any Subcontractor under the Contract Documents (or which are otherwise required by any Laws which place the responsibility for conducting such test or inspection on Contractor) which are not Controlled Inspections. Contractor shall give three Work Days advance notice of the scheduled time for a test or inspection to Owner and any consultants or other Persons who will be affected by (or who should necessarily or properly be present for) such test or inspection. Contractor shall give Owner copies of all inspection certificates from Controlled Inspections or other tests and inspections within five days after Contractor receives the same.

7.3 Owner may at any time conduct (or cause to be conducted) such on-site inspections and such other tests as Owner deems necessary or desirable to ascertain whether the Work complies with the Contract Documents. Owner will pay for a test or inspection requested by Owner (and not required under Section 7.2) as Extra Work under Article 21, unless such test or inspection reveals a failure of the Work to comply with the Contract Documents or Laws, in which event Contractor shall bear all expenses of such inspection or test. Should Contractor fail to adequately coordinate with the applicable inspector or testing entity, Contractor shall be back-charged for any additional Fees-And-Costs incurred by Owner for re-inspection or re-testing.

7.4 Contractor shall secure and deliver to Owner promptly all certificates of inspection, test reports, work logs, or approvals with respect to the Work as and when required by the Contract Documents (or by Laws which place responsibility for the same on Contractor).

ARTICLE 8.

Casualty and Other Damage to the Work

8.1 In the Contract Documents, "Damage" (or "Damaged") means and includes damage, destruction, or loss resulting from fire, weather, other casualty, vandalism, theft, and/or any other cause whatsoever. From the Contract Date until Final Completion, Contractor shall use care and diligence, and shall take precautions, to protect the Work and other property of Owner and/or other Persons from Damage. Contractor acknowledges that Owner shall NOT carry any builder's risk or other insurance that would cover any such Damage. Contractor assumes the risk of all Damage to the Work or the Project and agrees that any restoration, remediation, additional protection, and/or any change in Contractor's logistics or means and methods of conducting the Work required by reason of Damage shall be at Contractor's expense.

8.2 Contractor shall notify Owner of any Damage to the Work, or any accidents on the Project Site, as promptly as reasonably possible after Contractor learns of the same; and, within ten days after learning of any occurrence, Contractor shall submit a full and complete written report to Owner. Contractor shall also submit to Owner copies of all accident and other reports filed with (or given to Contractor by) any insurance company, adjuster, or Government Entity.

ARTICLE 9.

Ownership of Drawings and Other Protected Material

9.1 The Demolition Specifications, and all drawings, notes and other documents of any kind issued by Owner in connection with the Contract or the Work, and all samples, Shop Drawings, and other submittals prepared by Contractor or any Subcontractor in connection with the Work or the Project, together with all other Books and Records, and all rights in the foregoing (including rights of use, copyright, and trademark), shall be and remain the sole and confidential property of Owner (whether or not Owner undertakes, terminates, or completes the Work, or this Demolition Agreement is terminated for any reason whatsoever) and, for the avoidance of doubt, Contractor hereby assigns all rights it may have in the foregoing to Owner.

9.2 Notwithstanding anything to the contrary in Section 9.1, Owner shall not own but shall have a royalty-free perpetual license to use (or permit use of) any intellectual property or other similar protected material prepared as part of the Work for any purpose related to the Project. If Contractor does not have the right to grant such a license with respect to such material prepared by third parties, Contractor shall notify Owner promptly.

ARTICLE 10.

Contractor's Representatives and Personnel; Contractor Responsible for Labor Matters; Etc.

10.1 Contractor has designated in Schedule C to the Demolition Agreement one or more representatives who have full authority, individually, to act for Contractor under and with respect to the Contract Documents. The acts of each such representative shall fully bind Contractor; and Owner shall be fully protected in relying upon, or dealing with, any one of such designated representatives. Contractor is an independent contractor and not an Employee of Owner. All Persons assigned to the Work by Contractor shall perform in a manner which is skillful and otherwise appropriate and shall cooperate with Owner and its Employees and representatives. If any Person assigned to the Work by Contractor is unacceptable, in Owner's judgment, Contractor shall terminate the assignment of such Person immediately (and secure an acceptable substitute, if required) without any increase in the Contract Price.

ARTICLE 11.

Books and Records

11.1 Contractor shall keep and maintain the following (the "Books and Records"): (a) complete accounts and cost records of all payments by Owner to Contractor and/or by Contractor to any Subcontractor or other Person in connection with the Work, including records of all Extra Work and Disputed Work performed; (b) copies (and originals, as appropriate) of all documents of any kind prepared, issued, or received by Contractor in connection with the Work or the Project; (c) all payroll records, receiving documents, time books, job diaries and reports, cost analyses, cancelled checks, sales or excise tax filings and returns (or exemptions therefrom), other government filings, and other documents showing acts or transactions in connection with (or relating to or arising by reason of) the Work, the Contract, or any Subcontract; and (d) one complete set of the Demolition Specifications marked to record all changes by Contractor during the demolition and specifying the applicable Change Orders. Contractor shall, upon written notice from Owner, produce any or all Books and Records for examination, audit, and/or copying, during regular business hours, at Contractor's office, by a representative of Owner. Contractor shall keep and maintain all Books and Records for at least six years after Substantial Completion.

ARTICLE 12.

Events of Default; Determination and Consequences of Default

12.1 "Event of Default" means any of the following:

- (a) Contractor fails to commence Work on the Starting Date, subject to Excusable Delays;
- (b) Contractor abandons the Work in violation of Contractor's obligations under the Contract Documents;
- (c) Contractor reduces Contractor's work force to a number which Owner reasonably believes would be insufficient to complete the Work and Contractor fails, after five days' written notice from Owner, to increase the work force to a number sufficient so as to complete the Work;
- (d) Contractor fails to secure and maintain all Required Insurance in accordance with the Contract Documents;
- (e) Contractor does not achieve Substantial Completion on or before the Substantial Completion Date (as extended under Article 18);
- (f) the unpaid balance of the Contract Price is clearly insufficient to complete the Work and to pay all Liens which are Contractor's responsibility under Section 6.7 (and not yet bonded or discharged), and Contractor fails to confirm in writing, after seven days written notice from Owner, that Contractor shall complete the Work in accordance with the Contract Documents;
- (g) Contractor: (i) seeks, consents to, acquiesces in, or suffers the appointment of, a receiver of all or a material part of Contractor's property or income; (ii) admits in writing Contractor's inability to pay Contractor's debts as they mature; (iii) makes a general assignment for the benefit of creditors; (iv) files a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or an advantage under any present or future federal, state or other law relating to bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation or similar relief; or files an answer admitting the material allegations of a petition filed against Contractor in any proceeding under any such law; and/or (v) is adjudicated an insolvent or is subject to an involuntary petition in bankruptcy, and such adjudication or filing is not set aside or terminated within 30 days;
- (h) an attachment is levied or a judgment is executed against all or any material part of Contractor's property or income and the same is not discharged within 30 days;
- (i) Contractor (or the chairman or president, or any vice president, treasurer, or any shareholder owning more than twenty percent (20%) of Contractor's issued and outstanding capital stock, or the sole proprietor of Contractor or any member, manager, general partner or joint venturer of Contractor) is indicted for an alleged felony related or pertaining to the business activities of Contractor; and/or
- (j) except as covered by (a) through (i) above, Contractor fails to perform or observe any other term, covenant, condition and provision of the Contract Documents for twenty-one (21) days after written notice from Owner specifying the nature of Contractor's failure; provided, however, that if curing or correcting such failure requires Work to be performed, acts to be done, or conditions to be removed which cannot be performed, done, or removed within such twenty-one (21) days, no Event of Default shall be deemed to have occurred if Contractor: (i) gives written notice to Owner within such twenty-one (21) days acknowledging that Contractor intends to take all actions necessary to remedy the matter involved with due diligence; (ii) promptly commences to cure and correct the matter involved and diligently continues to prosecute the same; and (iii) cures and corrects the matter involved within a reasonable time, taking into account the relevant circumstances.

12.2 Upon the occurrence of any Event of Default (following the applicable notice and/or cure period specified in Section 12.1 for such Event of Default, if any), Owner may give written notice (the "Five Day Notice") to Contractor. If Contractor still fails to cure or correct the specified default within five days after Owner gives the Five Day Notice, Contractor shall be in "Default" and thereupon Owner may do any or all of the following, in any sequence: (a) terminate Contractor's right to perform the Work, in whole or in part, to the extent specified by Owner; and/or (b) at Contractor's expense, take (or cause to be taken) any and all actions and incur any costs which Owner deems necessary or desirable (in Owner's judgment) to investigate and/or cure all or any portion of such Default. For this purpose, Owner may: (i) take possession of and use (or permit any Person described in (ii) or (iv) below to take possession of and use) any or all materials, tools, plant, equipment, supplies and/or facilities used or to be used by Contractor for the Work (whether on or off the Project Site) to the fullest extent permitted by Law; (ii) employ any architect, engineer, attorney, accountant, or other consultant, or any contractor or other Person, on terms satisfactory to Owner (in Owner's judgment), with or without competitive bidding, to advise and consult, to furnish services, labor, materials, tools, plant, equipment, supplies, transportation, facilities, and/or any other matters of any kind necessary or desirable (in Owner's judgment) to complete the Work, or otherwise to cure

Contractor's Default; (iii) repair or replace any Work or part of the Project, or Work of any other contractor, damaged, removed, or uncovered by reason of Contractor's Default, or the curing and correction thereof; (iv) rebid, re-let, or otherwise award the Demolition Agreement or any portion of the Work to any other Person (whether by negotiation, competitive bidding, or otherwise); and/or (v) compel the Surety under the Performance Bond (if any) to perform Contractor's obligations under the Contract Documents. Contractor and each Surety under the Bonds (if any) shall remain liable under the Contract Documents, whether or not Owner terminates Contractor's right to perform the Demolition Agreement (either in whole or in part) or takes (or omits to take) any other action with respect to any Default.

12.3 Contractor shall be liable to Owner for all Loss-And-Expense paid or incurred by Owner in connection with any and all actions and matters under Section 12.2 (collectively, "Completion Expense"). Owner shall determine the amount of the Completion Expense from time to time, and: (a) to the extent the Completion Expense exceeds the portion of the Contract Price properly attributable to the remaining Work being completed or corrected, such excess amount: (i) shall be deducted from any unpaid balance of the Contract Price or other amounts due Contractor hereunder, to the extent of such balance; and (ii) Contractor shall pay Owner any amount exceeding the unpaid balance of the Contract Price, upon demand; and (b) upon Final Completion of the Work, but only to the extent the entire Completion Expense is less than the unpaid balance of the Contract Price, Owner shall pay Contractor any balance of the Contract Price still due and unpaid for Work actually performed by Contractor, without interest, after Contractor has complied with the requirements of Article 28. For the avoidance of doubt, Owner may use Final Holdback for payment of Completion Expense.

12.4 If Owner terminates Contractor's right to perform the Work and if it is determined subsequently for any reason that an Event of Default did not occur or that Contractor had cured such Event of Default in a timely manner, then Owner's termination of Contractor's right to perform the Work shall be deemed to have been an elective termination of this Demolition Agreement pursuant to Article 20 and Owner shall pay Contractor the Cancellation Payment specified in Section 20.2.

12.5 The rights and remedies of Owner under this Article are not intended to be exclusive. Each right and remedy shall be cumulative and shall be in addition to all other rights and remedies given Owner under the Contract Documents or available at law or in equity.

12.6 This Article is intended to supplement and not limit any provisions of the Supplementary Conditions dealing with the subject matter hereof.

#### ARTICLE 13.

#### Legal Proceedings by Contractor; Governing Law

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13.1 Contractor shall not bring any Legal Proceeding against Owner or any other Indemnitee under the Contract Documents, or with respect to any aspect of the Work, unless Contractor commences the same no later than 365 days after: (a) Substantial Completion, with respect to any claim arising out of, or based on, events prior to Substantial Completion; (b) Final Completion, with respect to any claim arising out of, or based on, events after Substantial Completion but prior to Final Completion; (c) any termination of Contractor's right to perform the Work under Article 12 or Article 20; and/or (d) any abandonment of the Project or purported termination by Contractor based upon any alleged default by Owner. The Contract Documents shall be construed and enforced in accordance with, and governed by, the laws of the State of New York (without regard to principles of conflicts of laws). In the event of any Legal Proceeding between the parties concerning the Contract Documents (or any matter pertaining to or arising under the Contract Documents) which results in a judgment final beyond appeal, the prevailing party shall be entitled to reimbursement from the losing party, upon demand, for all Fees-And-Costs of such Legal Proceeding paid or incurred by the prevailing party. Contractor and Owner agree that any legal action with respect to this Contract (including all defenses to any such legal action and all counterclaims or cross-claims therein) shall be brought and maintained only in the Supreme Court of the State of New York, New York County; and Contractor and Owner accept (and submit to) the jurisdiction of such court.

#### ARTICLE 14.

#### No Waivers; No Third-Party Rights

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14.1 The Contract Documents may not be modified or amended (or any term or provision waived or discharged) except in writing signed by the party against whom such amendment, modification, waiver or discharge is intended to be effective or except as elsewhere provided in the Contract Documents. Except and unless as elsewhere provided in the Contract Documents (or unless otherwise specifically agreed by Owner in writing with respect to a particular matter), no action, failure to act, course of dealing or delay of Owner shall constitute a waiver by Owner of Contractor's compliance with any term or provision of the Contract Documents or shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

14.2 Unless another provision of the Contract Documents provides specifically to the contrary, nothing in the Contract Documents, express or implied, is intended: (a) to confer on any Person other than Owner or Contractor any rights, obligations, liabilities or remedies; or (b) to waive any claim or right of Contractor, Owner, or any Indemnatee against any other Person.

ARTICLE 15.

Correction of Work; Guarantees

15.1 Prior to Final Completion and at any time during the Guarantee Period when Owner gives written notice to Contractor, Contractor shall correct promptly all Work which is incorrect, defective, incomplete, omitted, or not otherwise in compliance with the Contract Documents. Unless otherwise set forth in the Contract Documents, "Guarantee Period" means the period commencing on the date of Substantial Completion and ending on the later of (a) 365 days following such date or (b) 180 days after the completion of the specific corrective action. If Contractor fails to commence required action under this Article within ten (10) days after written notice from Owner, or if Contractor does not thereafter prosecute such action diligently to completion, Owner may undertake the necessary corrective action itself or through other Persons at Contractor's expense. Any costs of corrective action for which Contractor is responsible under this Article shall be deducted from the unpaid balance of the Contract Price (if any) or otherwise paid by Contractor upon demand. This Article is intended to supplement (and not to limit) Contractor's obligations under other provisions of the Contract Documents and under Laws, including Article 2.

ARTICLE 16.

Resolution of Disputes

16.1 The "GOSR Referee" is identified in Schedule C to the Demolition Agreement.

16.2 If Contractor or Owner dispute any action of the other relating to any issue arising under this Demolition Agreement, and if they fail to resolve their dispute within fifteen (15) days after written notice from one party to the other advising of the dispute and specifying this Article, either party may submit a notice of dispute to the GOSR Referee. Each such submission to the GOSR Referee shall specify in reasonable detail:

- (a) the nature of the dispute and/or any information or interpretation requested by the party (the "petitioner") giving notice to the GOSR Referee; and
- (b) the petitioner's proposal for resolving the dispute.

16.3 The petitioner shall include with such request all documents and other materials which the petitioner deems relevant. The petitioner shall give copies to the other party (the "respondent") of all documents and other materials submitted by the petitioner to the GOSR Referee.

16.4 The GOSR Referee shall review each matter submitted and shall allow the respondent an opportunity to submit a written statement of the respondent's position (together with any documents or materials which the respondent deems relevant) within thirty (30) days after the respondent receives the petitioner's submission of documents under Section 16.2. The GOSR Referee shall also confer with both parties together to discuss the dispute and hear argument and may allow either party to submit a further written statement (or statements) of its position. In considering or rendering any decision, the GOSR Referee shall construe, interpret, and apply the Contract Documents strictly in accordance with their terms. The GOSR Referee shall deliver a written decision to Contractor and Owner as promptly as possible, but no later than thirty (30) days after the last document submission by the parties to the GOSR Referee (or conference with both parties, if later). Contractor and Owner shall comply promptly with decisions of the GOSR Referee.

16.5 A decision of the GOSR Referee shall be conclusive and binding on Contractor and Owner with full effect as the decision of an arbitrator under New York law.

16.6 Owner and Contractor shall each bear its own expenses of any proceeding before the GOSR Referee. There shall be no charge for the fees or expenses of the GOSR Referee.

16.7 If the GOSR Referee resigns or is unable to serve, GOSR shall designate a successor within thirty (30) days after application of either party. In such event the time periods for issuance of a determination by the GOSR Referee under this Article shall (if necessary) be postponed day-for-day pending the appointment (and agreement to serve) of the successor GOSR Referee.

16.8 A Surety issuing any Bond with respect to this Demolition Agreement shall be bound by decisions of the GOSR Referee to the same extent as Contractor. Moreover, by issuing its Bond such Surety shall be deemed to have agreed

that submission of any matter to the GOSR Referee, and/or any decision or other action of the GOSR Referee, shall not discharge, release, amend, or waive such Bond or any rights of Owner thereunder.

16.9 Contractor shall not stop Work during the pendency of any dispute. Following a decision of the GOSR Referee, each party (as applicable) shall comply immediately with such decision.

16.10 Contractor acknowledges that the GOSR Referee may be an employee of, or contractor with, Owner or of another agency of the State of New York. Nonetheless, Contractor waives any actual or apparent conflict of interest and accepts the GOSR Referee as the Person to perform the functions which are specified for the GOSR Referee under this Article.

ARTICLE 17.

Commencement of Work; Time

17.1 Contractor shall commence Work on the Project Site, no later than the Starting Date. Subject to Excusable Delays, time is of the essence for Contractor's Substantial Completion of the Work on or before the Substantial Completion Date.

17.2 If at any time the Work is likely to be delayed for any reason, or if Owner otherwise desires to accelerate the Work for any reason, Owner may give written notice requiring Contractor to (a) increase the number of workers and/or the amount or types of machinery, tools, equipment, or materials employed by Contractor in or for the performance of the Work; and/or (b) schedule and conduct additional lawful work shifts. Contractor shall undertake immediately all such action which Owner so requires in order to accelerate the Work, subject to availability of labor and materials. Costs of additional labor, machinery, tools, equipment and/or materials, if any, required under this paragraph shall be borne by Contractor, at Contractor's expense, within the Contract Price where the Work has been delayed by Contractor (as extended for Excusable Delays) or otherwise shall be borne by Owner as an Extra Payment computed in accordance with Article 21. If Owner and Contractor do not agree as to the cause of any delay in the Work, or if Contractor disputes the necessity of accelerating the Work, nevertheless Contractor shall comply with Owner's requirements and shall continue to prosecute the Work. Whether or not Owner exercises the same, Owner's right to accelerate performance of the Work under this Section shall not limit, modify or waive any of Owner's rights or remedies under the Contract Documents.

ARTICLE 18.

Extensions of Time

18.1 Contractor shall be entitled to extensions of the dates of Substantial Completion and Final Completion only for Excusable Delays, subject to compliance with the conditions and requirements of this Article. Contractor may request an extension of time by giving a written notice to Owner which briefly describes the delay and estimates the duration of the delay (a "Delay Notice") within twenty-one (21) days after Contractor receives notice or otherwise becomes aware that the Excusable Delay has commenced or can be expected to commence. Contractor hereby waives and releases any right to an extension of time as to which Contractor does not give a Delay Notice as specified in this Article. Subject to the foregoing, if Contractor is entitled to a requested extension of time, Owner shall issue a Change Order after timely receipt of the Delay Notice. Contractor shall not receive an extension of time under this Article to the extent that Contractor would have been delayed concurrently by any fault of Contractor.

ARTICLE 19.

Suspensions of Work

19.1 Owner may order Contractor, by written notice at any time, to stop the Work (or any part thereof) for any period or periods specified by Owner, for any reasons (i.e., with or without cause). Owner's order shall specify the date on which Contractor shall stop the Work. Contractor shall resume the Work thereafter if and when Owner so orders. Contractor shall receive an extension of time as an Excusable Delay for any period of stoppage ordered by Owner under this Article unless the suspension was necessary by reason of or attributable to Contractor's fault.

19.2 Extensions of time under Article 18, and payment of any amounts that may be due under Section 27.1 for a suspension by Owner, shall be construed as full consideration to Contractor, and as a release of Owner by Contractor (and all Persons claiming by, through and/or under Contractor), with respect to the particular stoppage of the Work.

ARTICLE 20.

Elective Termination By Owner

20.1 Owner may terminate Contractor's right to perform the Contract in whole or in part at any time after the date of the Demolition Agreement for any reason, with or without cause, by at least ten (10) days' prior written notice to

Contractor (the "Termination Notice") specifying the effective date of such termination (the "Termination Date") and the extent to which performance of the Work is terminated.

20.2 Upon a termination under this Article and after Contractor complies with Article 28, Contractor shall be entitled to a "Cancellation Payment" consisting of the following: (a) all amounts (including any Extra Payments) due, but not yet paid, Contractor under the Contract Documents for Work completed prior to the Termination Date; (b) direct out-of-pocket costs of any supplies, materials, machinery, equipment, facilities, or other property, in each case specially fabricated or purchased by Contractor or any Subcontractor pursuant to the Demolition Specifications in accordance with the Demolition Agreement for the sole purpose of performing the Demolition Agreement and not capable of installation and use except as a part of the Work; (c) other reasonable costs for which Contractor is obligated under non-cancellable agreements, even though Contractor has not yet received delivery of the same (but limited as though all Subcontractors have received a notice of termination effective as of the same date and are bound by similar provisions in their Subcontracts); and (d) five percent (5%) of all costs computed under (a) through (c) above; however, (e) minus any amounts due to Owner from Contractor under the Contract Documents. Contractor shall receive no other payments (and, without limitation, no payment of any Included Items) by reasons of such termination.

20.3 Contractor agrees that the Cancellation Payment will fully and adequately compensate Contractor (and all other Persons claiming by or under Contractor) for all Loss-And-Expense attributable to the termination of Contractor's right to perform this Demolition Agreement. After the Termination Date, in Owner's sole discretion (but without any obligation to do so), Owner may take any and all actions necessary or desirable to complete the Work so terminated, including, entering into contracts with other contractors, with or without public letting. Unless Section 12.4 applies, this Article shall not apply to any termination of Contractor's right to perform this Demolition Agreement under Article 12.

20.4 This Article is intended to supplement and not limit any provisions of the Supplementary Conditions dealing with the subject matter hereof.

## ARTICLE 21.

## Change Orders; Extra Work

21.1 Owner may issue Change Orders pertaining to any and all aspects of the Work at any time and for any reason whatsoever, whether and however such Change Orders may revise this Contract, add Extra Work, or require the deletion of Deleted Work.

21.2 Whenever Contractor believes (or has cause to believe) that Extra Work is required, or whenever Contractor performs any Disputed Work (see Section 22.1), Contractor shall deliver to Owner a notice (the "Change Order Advisory") containing (a) a statement of why the particular Work is Extra Work; and (b) a rough order of magnitude as to the Extra Payment involved and extension of time required (if any). For the avoidance of doubt, Contractor understands that Contractor will receive no Change Orders for Unforeseen Conditions or for any other matter under this Demolition Agreement other than Discretionary Owner Changes or other matters for which this Demolition Agreement otherwise makes explicit provision. As used herein a "Discretionary Owner Change" means Extra Work which materially changes the Base Contract Work and is specifically required by a written order of Owner describing the same. The Owner's Representative shall have no authority to issue Discretionary Owner Changes; and no bulletin, interpretation, advisory, or other document of any kind issued by the Owner's Representative or any other Government Entity shall be deemed to constitute a Discretionary Owner Change.

21.3 If Owner issues a Discretionary Owner Change, or if Contractor believes that Contractor has encountered Extraordinary Conditions, Contractor shall submit to Owner a Change Order which shall set forth in sufficient detail all proposed changes in the Work and the reasons therefor. Contractor shall specify, also, whether the Change Order will result in an increase or reduction in the Contract Price and the amount thereof (which shall be governed by this Article). If Owner approves, Owner shall issue a Change Order and Contractor shall implement the particular Change Order in accordance with Owner's instructions. Submission of any proposed Change Order by Contractor shall be deemed a representation by Contractor that (a) the Work covered by such proposed Change Order is Extra Work or Deleted Work, as the case may be, which requires an adjustment in the Contract Price and (b) that the adjustment in the Contract Price set forth in such proposed Change Order is fair and reasonable and does not include any costs which are not permissible under the Contract Documents.

21.4 Contractor shall undertake and complete promptly all Extra Work authorized under this Article. Subject to Section 22.1, Contractor shall not perform any Extra Work without a Change Order signed by Owner specifically authorizing Extra Work.

21.5 Without limiting other provisions of this Demolition Agreement, Contractor shall not be entitled to any Extra Payment for any Extra Work, if and to the extent required by reason of: (a) Contractor's or any Subcontractor's fault;

(b) coordination of Demolition Specifications, other than lack of coordination resulting from material design defects; (c) development of details inferable from the Demolition Specifications; (d) the inclusion or exclusion of any item which should be included or excluded in accordance with good construction practice, whether or not shown or set forth in a Contract Drawing and/or Specification; or (e) any risk or obligation assumed by Contractor in the Contract Documents.

21.6 Owner may request Contractor to submit a price for Extra Work covered by any proposed Change Order. In response, within five Work Days after receipt of any such request, Contractor shall submit a written quotation in a form approved by Owner.

21.7 If Owner and Contractor fail to agree upon the amount of Extra Payment due Contractor with respect to proposed Extra Work and Owner issues a Change Order requiring such Extra Work, or if Owner issues a Change Order without first requesting a quotation pursuant to Section 21.6, Contractor shall proceed immediately with the Extra Work covered by such Change Order; and, unless Contractor and Owner agree on a lump-sum or unit-price payment, any Extra Payment due Contractor shall be computed on the time and materials basis in accordance with Section 21.8. Contractor shall notify Owner by telephone before 3:00 p.m. E.S.T. on any Work Day of all Extra Work to be performed on a time and materials basis which Contractor has scheduled for the next Work Day.

21.8 Whenever Contractor performs Extra Work on the time and materials basis, Owner shall pay Contractor the following reasonable costs actually incurred for the following with respect to such Extra Work: (a) necessary materials (including actual costs of transportation to the Site); (b) necessary direct labor; (c) premiums actually paid by the employer for worker's compensation; vacation allowances, union dues, health, welfare, unemployment, and retirement benefits, and payroll taxes, which the employer actually pays on such direct labor; (d) incremental additional costs of Required Insurance and/or Bonds occasioned by performance of such Extra Work; (e) sales and personal property taxes (if any) required to be paid on materials incorporated in such Extra Work, other than those for which exemption is (or should be) allowed under this Contract; (f) actual rental costs of necessary plant and equipment other than small tools (or, in the case of Contractor-owned equipment, the reasonable rental value thereof); (g) necessary installation and dismantling of such plant and equipment (including transportation to and from the Site), if any; and (h) fifteen percent (15%) (the "Change Order Mark-up") in the aggregate on the total of items (a) through (g) for all Included Items of Contractor and all Subcontractors associated with such Extra Work. Where Contractor performs Extra Work on a time and materials basis and Contractor has not submitted full time sheets with its Requisition for same, Owner will make a provisional payment of 70% of the Extra Payment requested by Contractor in any Requisition with the remaining 30% paid upon Owner's receipt and verification of full time sheets for such Extra Work, subject to Article 24 and the completion of an audit.

21.9 The Contract Price shall be reduced if and to the extent that any Change Order, whether for Deleted Work or otherwise, results in any net reduction in Contractor's cost of the Work. If Contractor and Owner do not agree as to the amount of the reduction, the Contract Price shall be reduced by an amount equal to the estimated cost of the Deleted Work, computed in accordance with Items (a) through (h) of Section 21.8; provided, however, that if any Change Order requires both Extra Work and Deleted Work with respect to related items of Work, the applicable Extra Payment (if any) shall be computed only on the actual net increase in Contractor's cost of the Work. However, any savings or decreased costs attributable to Deleted Work shall not be netted against Extra Payment for an unrelated item of Work.

## ARTICLE 22.

## Disputed Work; Time and Materials Certificate

22.1 If Contractor is of the opinion that any Work ordered to be done as Base Contract Work is instead Extra Work and not Base Contract Work ("Disputed Work"), before proceeding with the particular Disputed Work, Contractor shall give Owner the Change Order Advisory described in Section 21.2. If Contractor fails to deliver such Change Order Advisory within ten (10) days of Owner's direction to perform the Disputed Work, Contractor shall be conclusively deemed to have agreed that such Disputed Work is Base Contract Work, and Contractor shall pay, at Contractor's expense, all costs due to the particular Subcontractor(s) by reason of such Disputed Work.

22.2 For all Disputed Work performed and for all Extra Work performed on a time and materials basis, Contractor shall prepare and deliver to Owner a certificate containing the following: (a) a statement of the number of hours for which workers were actually employed, the wages due such worker, and a brief statement of the categories of work performed; (b) a statement of changes (if any) in the rates and amounts of worker's compensation premiums, state and federal taxes, vacation allowances, and union dues and assessments payable upon any worker's wages; (c) a statement of the amount and character of materials furnished for such Work, the Persons from whom purchased, and amounts payable for the same; and (d) a statement of the equipment used in the performance of such Work, together with the rental (if any) payable for the same.

23.1 Subject to the terms of this Demolition Agreement, Owner will pay (i) eighty-five percent (85%) of the Contract Price for each Project after Substantial Completion of the applicable Project, and (ii) the Final Holdback for each Project after Final Completion of the applicable Project. To this end, Contractor shall submit all Requisitions to Owner (with copies to Owner's project manager). Contractor shall submit to Owner with each Requisition:

- (a) the Line Item Breakdown, annotated to reflect all Work actually completed to date;
- (b) a partial Waiver of Lien from Contractor and every Subcontractor covering all payments by Owner pursuant to previous Requisitions;
- (c) a detailed summary of all Change Orders approved and/or requested to date;
- (d) if applicable, a verified statement setting forth the information required under Section 220-a of the New York State Labor Law;
- (e) original payrolls or transcripts thereof, subscribed and affirmed by Contractor as true; and
- (f) any other certification, reports, documentation or information relating to the Work or the Contract Documents which Owner reasonably requests or are required by Law.

23.2 Within thirty (30) days after receipt of a Requisition satisfactory to Owner pursuant to Section 23.1, Owner will approve or disapprove all or a portion of such Requisition. If Owner disapproves all or a portion of the Requisition, Owner will deliver a written statement of any disapproved amounts pursuant to Section 24.3.

23.3 Owner may withhold payment of all or any portion of a Requisition for the reasons set forth in Sections 24.2 and 24.3 below. However, if, in Owner's reasonable judgment, other grounds for withholding payment do not concurrently exist, Owner will pay any portion(s) of the Requisition not then in dispute within thirty (30) days of Owner's approval of all or the applicable portion of the Requisition.

23.4 With respect to the portion, if any, of the Requisition which Owner has disapproved, Contractor shall immediately undertake all corrective or other action required by Owner and shall continue to prosecute the Work expeditiously in accordance with the Contract Documents. If and when Owner's grounds for withholding payment are removed by judicial determination final beyond appeal, expiration of an applicable limitation period, or written agreement between Owner and Contractor, Owner shall pay Contractor the amount so withheld, less any other amounts still subject to withholding under Sections 24.2 and 24.3.

23.5 If Owner receives notice (or otherwise has good reason to believe) that Contractor has failed to pay any Subcontractor an amount due to such Subcontractor from funds previously paid by Owner to Contractor (*i.e.*, where the funds due to such Subcontractor were covered by a Requisition previously paid by Owner), upon demand from Owner, Contractor shall immediately pay the amount due to such Subcontractor or (if Owner so specifies) shall return such funds to Owner with interest at the legal rate from the date when due. In such event, also, Owner may elect, upon three days' written notice to Contractor, thereafter to issue payments directly to any or all Subcontractors and deduct any and all such payments (including interest thereon) from any amounts due from Owner to Contractor pursuant to this Contract.

23.6 Whenever requested, Contractor shall submit to Owner a sworn statement, in form and accompanied by documents satisfactory to Owner, accounting for the disbursement of funds received from Owner. No payment by Owner shall relieve Contractor of any of Contractor's obligations under this Demolition Agreement.

23.7 If at any time, taking into account any amounts which Owner is entitled to withhold and retain under the Contract Documents, Owner has made payments to Contractor which exceed the aggregate amount then due Contractor under the Contract Documents, Contractor shall repay the excess to Owner upon demand (or Owner may, in its discretion, offset the amount of such payment against amounts due Contractor under Contractor's pending or future Requisitions).

## ARTICLE 24.

## Conditions of Payment; Money Retained Against Claims

24.1 Contractor may submit no Requisitions to Owner unless and until Contractor has prepared and submitted to Owner, and Owner has approved, the Line Item Breakdown.

24.2 Owner may withhold and retain the following amounts from payments requested by Contractor: (a) any amount permitted under Section 24.3 from any payment requested in any Requisition; (b) any amounts then due and payable to Owner under Section 15.1; (c) any Completion Expense due Owner under Article 12; (d) any amounts due Owner under

Article 6; (e) one hundred twenty-five percent (125%) of the amount of any Lien asserted against Owner, the Work, or the Project (or any portion thereof) by any Person claiming by, through or under Contractor which has not been bonded, paid, or otherwise discharged (except to the extent such Lien is asserted as a result of Owner's failure to pay an undisputed amount properly due under to Contractor under this Contract); and/or (f) any other amount which Owner may deduct or withhold pursuant to other specific provisions of the Contract Documents.

24.3 Owner may disapprove and withhold any payment (or any portion thereof) requested in any Requisition if and to the extent that: (a) such Requisition and/or any documents to be delivered therewith are not correct and complete; (b) the Work covered by such Requisition (and/or any previous Requisition) does not comply with the Contract Documents; (c) any Person has asserted a claim or secured a judgment against any Indemnitee, the Work or the Project involving any matter covered by Contractor's indemnification under Article 6 and the applicable Required Insurance (if any) may or will not cover the matter (taking into account all previous such judgments, if any); (d) any statement or representation in any Requisition or other document submitted with respect to the Project or the Work (or for purposes of securing this Contract) was materially untrue or incorrect when made; (e) an Event of Default has occurred under Article 12; (f) Contractor has failed to pay any Subcontractor (or any Person claiming by, through, or under Contractor) any amount previously due to such Subcontractor or other Person for which Contractor has previously received payment; (g) in the case of a Requisition with respect to Substantial Completion, payment of the amount which Contractor requests would leave Owner holding less than the Final Holdback; and/or (h) such withholding is authorized pursuant to Section 756-a of the New York General Obligations Law.

## ARTICLE 25.

## Substantial Completion

25.1 "Substantial Completion" for each Project means the date when all of the following conditions have been satisfied for the applicable Project:

- (a) Contractor has demolished all property on the Project Site and removed all debris resulting from such demolition;
- (b) Contractor, and Owner have agreed in writing upon the final Punch List submitted by Contractor pursuant to Section 25.2;
- (c) Contractor has agreed in writing that Contractor will achieve Final Completion on a specified date; and
- (d) Contractor has delivered to Owner a consent of the Surety to Owner's payment of the amount specified in Section 25.4.

25.2 When Contractor believes that all the Work is substantially complete in compliance with the Contract Documents, Contractor shall prepare a Punch List of incorrect or incomplete Work for Substantial Completion of the Work (or of any portion of the Work designated by Owner). Contractor shall submit to Owner a written notice stating that in Contractor's estimation the Work has been substantially performed in compliance with the Contract Documents, which notice shall have attached thereto a copy of Contractor's proposed Punch List ("Substantial Completion Notice"). "Punch List" means a statement of repairs, corrections and adjustments to the Work, and incomplete aspects of the Work, and the cost to undertake and complete same, which (a) Contractor can complete before Contractor's agreed date for Final Completion under Section 25.1(c) and with minimal interference to Owner's entry into, and use of, the Project; and (b) would represent, to perform or complete, a total cost of not more than one percent (1%) of the original Contract Price. After Owner's receipt of the Substantial Completion Notice and Contractor's proposed Punch List, Owner shall perform an inspection for the purposes of determining whether the Work is substantially complete. Such inspection shall commence within ten (10) days of receipt of the Substantial Completion Notice by Owner and shall be completed with due diligence and in any event within twenty (20) days of commencement of such inspection. When Owner approves the final Punch List, Owner shall deliver to Contractor the final Punch List.

25.3 After the final Punch List is approved by Owner, Contractor shall correct, complete, or furnish the items on such Punch List as required under the Contract; and Contractor shall review and inspect the labor, materials, and services, so furnished for conformance with the Contract Documents.

25.4 Upon Substantial Completion, Contractor may submit to Owner a Requisition, which shall include the submissions required pursuant to Section 23.1, for the unpaid balance of the Contract Price less Final Holdback. Within thirty (30) days after submission of a satisfactory Requisition pursuant to this Section, Owner shall pay Contractor the unpaid balance of the Contract Price, less Final Holdback and any other amounts then withheld under Article 24.

26.1 "Final Completion" for each Project shall occur when all of the following conditions have been satisfied for the applicable Project:

(a) Substantial Completion has occurred and all Work (including all items on the Punch List and all Close-Out Requirements) is complete and in compliance with the Contract Documents;

(b) all Government Entities having jurisdiction have inspected the Work and the Project and have unconditionally authorized all final or permanent permits, licenses, certificates, evidencing the final completion of the Work in accordance with Law and any other approvals specifically required under the Contract Documents;

(c) Contractor has submitted to Owner a Requisition, which shall include the submissions required pursuant to Section 23.1 (except that such Requisition shall include a final Waiver of Lien from Contractor and every Subcontractor covering all payments by Owner pursuant to previous Requisitions), with respect to Final Completion; and

(d) Contractor has delivered to Owner a written statement of the Surety (in form and substance satisfactory to Owner) to the effect that Owner's payment of the unpaid balance of the Contract Price shall not modify or discharge any obligations of the Surety under the Bonds.

26.2 When Contractor believes that the Work (including all Punch List Work and Close-out Requirements) is complete in compliance with the Contract Documents, Contractor shall submit to Owner a written notice stating that in Contractor's estimation the Work has been completed in compliance with the Contract Documents ("Final Completion Notice"). Upon Owner's receipt of the Final Completion Notice, Owner shall perform an inspection for the purposes of determining whether the Work is so performed. Such inspection shall commence within ten days of receipt of Final Completion Notice by Owner and shall be completed with due diligence and in any event within fifteen (15) days of commencement of such inspection. When Owner finds upon inspection that the Work is complete, Owner shall issue to Contractor a certificate of Final Completion.

26.3 Upon Final Completion, Contractor may submit to Owner a Requisition for Final Holdback, less any amounts then withheld under Article 24. Within thirty (30) days after submission of a satisfactory Requisition pursuant to this Section, Owner shall pay the Final Holdback to Contractor, less any amounts then withheld under Article 24 (the "Final Payment").

26.4 Contractor's acceptance of Final Payment shall be construed as Contractor's complete, unconditional and general release of Owner and all Indemnitees by Contractor (and all Persons claiming by, through, and/or under Contractor) with respect to all payments of the Contract Price or any other amounts due Contractor connected with, or arising out of, the Contract Documents or the Work, except for Contractor's claim for any amount then withheld under Article 24. This Section shall not be construed to revive any claim previously waived by Contractor under other provisions of the Contract Documents.

27.1 If acts or omissions of Owner that constitute an Excusable Delay cause Contractor to experience Excusable Delays prior to Substantial Completion (such delays, "Sec. 27.1 Delays") exceeding thirty (30) days in the aggregate; and if, by reason of such Sec. 27.1 Delays, Contractor incurs additional out-of-pocket costs for labor, materials and/or third-party services which Contractor would not have incurred but for such Sec. 27.1 Delays; and if Contractor has given Owner Delay Notices within the time specified in Section 18.1 describing the acts or omissions of Owner which caused the respective Sec. 27.1 Delay(s); then Owner shall reimburse Contractor for the reasonable actual additional direct out-of-pocket costs of labor, materials and/or third-party services incurred by Contractor (without markup for any Included Items) by reason of such Sec. 27.1 Delays exceeding thirty (30) days in the aggregate. Contractor agrees that Contractor has experienced no Sec. 27.1 Delays prior to the signing of this Demolition Agreement.

27.2 Except for extensions of time under Article 18 and subject to Sections 17.2 and 27.1: (a) Contractor alone hereby specifically assumes the risk of all delays in the Work (or the performance thereof) of any kind of duration, whether Excusable Delays or otherwise, and whether or not within the contemplation of the parties and whether foreseeable or unforeseeable and all Loss-And-Expense attributable thereto; and (b) Contractor agrees to make no claim for damages for delay in the Work (or the performance thereof) of any kind whatsoever, whether foreseeable or unforeseeable and agrees that any such claim shall be compensated for solely by an extension of time to complete performance of the Work. Contractor

shall have no right to rescind or terminate this Contract and Contractor shall have no cause of action under any theory of quasi-contract or quantum meruit, by reason of any delay of any kind or duration whatsoever.

**ARTICLE 28.**

**Certain Obligations of Contractor Upon Termination or Completion**

28.1 Upon a termination of Contractor's right to perform the Demolition Agreement under Article 12 or Article 20, Contractor shall:

- (a) stop Work on the date and to the extent specified by Owner;
- (b) take all action as necessary (or as Owner may direct) to protect and preserve all materials, equipment, tools, facilities and other property and the safety of all Persons connected with the Work or the Project Site;
- (c) deliver to Owner promptly complete copies of all Subcontracts, together with a statement of (i) the items ordered and not yet delivered pursuant to each agreement; (ii) the expected delivery dates of all such items; (iii) the total cost of each agreement and the terms of payment; (iv) the estimated costs of canceling each agreement; and (v) sums paid under contracts and all other sums due and outstanding; and, at Owner's option, Contractor shall either terminate or assign to Owner Contractor's rights under each Subcontract and make no additional agreements with Subcontractors with respect to the Work or the Contract Documents;
- (d) deliver to Owner promptly a correct and complete list of all supplies, materials, machinery, equipment and other property previously delivered by Contractor or any Subcontractor but not yet incorporated into the Work;
- (e) give written notice promptly to every Surety which has issued a Bond (with a copy of each such notice to Owner);
- (f) as directed by Owner, transfer free and clear title to Owner by appropriate instruments of title, and deliver to the Project Site (or such other place as Owner may specify), all property paid for by Owner (or, if required under Section 12.2, any other property);
- (g) notify Owner promptly in writing of any Legal Proceedings against Contractor by any Subcontractor relating to the termination of the Work or otherwise;
- (h) deliver to Owner promptly all plans, drawings, manuals, books, records, and other documents which the Contract Documents would otherwise have required Contractor to deliver to Owner prior to (or upon) Final Completion;
- (i) give written notice promptly (if required) under each policy of Required Insurance (with a copy of each such notice to Owner), but continue to maintain any policy of completed operations coverage for the period required under Schedule B; and
- (j) take such other actions, and execute such other documents, as Owner may reasonably request to effectuate and confirm the foregoing matters, or as may be necessary or desirable to minimize Owner's costs, and take no action which will increase any amount payable by Owner under the Contract Documents.

28.2 Upon Final Completion, or upon a termination of Contractor's right to perform the Work under Article 12 or Article 20, Contractor shall: (a) unless Owner directly or otherwise takes possession of and uses the same under Section 12.2, promptly remove from the Project Site all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned, leased, or rented by Contractor, and repair any damage caused by such removal; (b) provide for the termination and removal of any temporary utilities or other services used in connection with the Work; (c) clean the Project Site, the Work and all areas of the Project Site previously occupied by Contractor, and leave the same in a neat and orderly condition; (d) complete and comply with all other Close-Out Requirements; and (e) promptly cause all Employees of Contractor and any Subcontractors to vacate the Project Site.

28.3 If Contractor fails to comply with any obligation under this Article, Owner may perform the action contemplated after five (5) Work Days' prior written notice to Contractor; and, at Owner's election, Owner may deduct the entire cost (or any portion thereof) from the unpaid balance of the Contract Price; or Contractor shall pay the entire cost (or any portion thereof) upon demand, notwithstanding that any other Person may have defaulted in taking similar action or occupied the same areas or otherwise had any responsibility for the condition involved. Contractor shall have no right to further payments under any Requisition until Contractor has complied with all obligations under this Article.

29.1 The Contract Documents embody the entire agreement and understanding of the parties and supersede all prior proposals, agreements and understandings relating to the subject matter hereof.

29.2 Except as set forth in Article 5, Contractor shall not assign or delegate this Contract, the Contract Documents, or any of Contractor's rights, payments, liabilities, or duties under this Contract or the Contract Documents, or any part thereof (or subcontract or delegate the Work, or any part thereof) without the prior written consent of Owner in each case, which Owner may withhold for any reason whatsoever. Any such assignment, subcontract, or delegation without Owner's prior written consent (including any assignment or transfer by operation of law or any transfer of control of Contractor) shall be void against Owner.

29.3 All the terms of the Contract Documents, whether so expressed or not, shall be binding upon the respective permitted successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and by their respective permitted successors and assigns. The headings of the Contract Documents are for purposes of reference only and shall not limit or otherwise affect the meaning thereof. This Contract may be executed (a) in counterparts, a complete set of which shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Contract showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

29.4 If any court determines that any provision of the Contract Documents is illegal or unenforceable, the Contract Documents shall remain in effect in accordance with their terms, excluding the provision declared illegal or unenforceable.

29.5 Nothing in this Contract is intended, nor shall anything herein be construed, to deem Owner and Contractor to be joint venturers or partners with respect to any activity whatsoever.

29.6 Contractor agrees that no members, directors, trustees, managers, officers, or other Employees of Owner shall have any personal liability for any amounts or obligations owing to Contractor or any Subcontractors under or with respect to the Contract Documents. The liability of Owner for Owner's obligations under this Demolition Agreement will be limited to Owner's title and interest in and to the Project.

29.7 Unless and until Owner gives Contractor notice to the contrary, throughout all Projects, Contractor shall work with and take direction and instruction from Owner's Representative (except that all written approvals and Change Orders must be signed by Owner's authorized representative). Contractor shall submit to the Owner's Representative copies of all submissions and deliveries of documents and other materials which Contractor is required to submit to Owner under the Contract Documents. For the avoidance of doubt, references to "Owner" in the Contract Documents shall also be deemed to be references to Owner's Representative unless specifically stated otherwise.

## ARTICLE 30.

## Organizational Representations

30.1 Contractor represents and warrants to Owner as follows:

(a) Contractor is the type of legal entity specified in the Demolition Agreement, duly organized, validly existing and in good standing under the laws of the state specified in the Demolition Agreement;

(b) the execution and delivery of this Contract, and the performance by Contractor of all its obligations thereunder, have been duly and effectively authorized by all necessary action on the part of Contractor, and this Contract has been duly executed and delivered by authorized representatives of Contractor;

(c) neither Contractor nor any of its Employees has offered or given any gratuity to an Employee of Owner or of the State of New York to secure this Contract or to secure favorable treatment with respect thereto; and

(d) there are no judgments, actions, suits, or proceedings existing or pending (or, to the knowledge of Contractor's officers, threatened) against Contractor which can reasonably be expected to have a material adverse effect upon its performance of the Contract.

## ARTICLE 31.

## Notices

31.1 All notices, requests, demands, elections, consents and other communications of any kind whatsoever ("notices") which may or must be given under the Contract Documents shall be addressed to Contractor, Owner and Owner's Representative at the addresses set forth in Schedule C to the Demolition Agreement. Any notice required by the Contract

Documents to be given or made in writing within a specified period of time or on or before a date certain must be transmitted either by hand delivery (which may include commercial delivery service) subject to written receipt, or by U.S. Express, registered or certified mail, return receipt requested and postage and registry fees prepaid. All notices shall be deemed given when received (or date of attempted delivery if refused). Either party (and the Owner's Representative) may change its address for notices by written notice to the other party which complies with the foregoing requirements.

ARTICLE 32.

Funding Source; Other Assignments

32.1 Contractor hereby consents to the assignment of the Contract Documents, and/or any part of Owner's interest therein, to any Government Entity, pension trust or other financial institution which makes, or participates in, a grant, loan, or contribution to finance the Project, whether or not such loan is secured by an Encumbrance, whether directly or collaterally (each a "Funding Source").

32.2 Each assignment pursuant to Section 32.1 shall be subject to the condition that either:

(a) Owner shall agree in writing with Contractor to remain responsible for the full performance of all obligations of Owner under the Contract arising prior to the date of such assignment and the assignee shall agree in writing with Contractor to assume all obligations of Owner under the Contract arising from and after the date of such assignment; or

(b) the assignee shall assume all responsibility and liability for the performance of all obligations of Owner under the Contract, including any obligations arising prior to the date of such assignment.

32.3 Upon Owner's written request, and subject to Contractor's approval (not to be unreasonably withheld or delayed), Contractor shall execute any documents or instruments which any Funding Source or other assignee may reasonably request to confirm and effect Contractor's agreements in this Article, provided such documents are consistent with Section 32.2 above.

ARTICLE 33.

Owner's Tax Exemption

33.1 Owner is exempt from sales tax under the New York State Tax Law. Contractor shall take all actions and comply with all requirements necessary to avail Contractor and its Subcontractors of such tax exemption.

EXHIBIT A

FORMS OF PARTIAL WAIVERS OF LIEN FOR CONTRACTOR AND SUBCONTRACTOR

Payments Received through date hereof: \$ \_\_\_\_\_

CONTRACTOR'S PARTIAL RELEASE AND WAIVER OF LIEN

PARTIAL RELEASE AND WAIVER OF LIEN dated as of \_\_\_\_\_, 20\_\_ made by \_\_\_\_\_ ("Contractor") to and for the benefit of \_\_\_\_\_, a \_\_\_\_\_ with its principal office at \_\_\_\_\_ ("Owner") pursuant to an agreement dated as of \_\_\_\_\_ (the "Contract") covering the Work for the Project known as \_\_\_\_\_ (the "Project"). Unless otherwise specified herein, words and phrases defined in the Contract shall have the same meanings in this instrument.

This Partial Release and Waiver of Lien is given in connection with the payment to Contractor of sums heretofore requisitioned by Contractor for Work supplied, furnished or performed for the Project. Contractor hereby certifies and acknowledges that, as of the date hereof, Contractor has received payments in the aggregate amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for Work performed, furnished or supplied for the Project, and that such payments constitute all sums due and owing to Contractor in accordance with the Contract up to and including the date hereof, except as expressly provided in the following paragraph..

IN CONSIDERATION OF, AND TO THE EXTENT OF, SUCH PAYMENT, Contractor (for itself and its successors and assigns) does hereby release and waive any and all rights, claims, and demands which Contractor has or may have against Owner and the State of New York (the "State") (including any rights which Contractor has or may have pursuant to the New York Lien Law or otherwise to file any Lien or notice of Lien against the Project or any property of Owner or the State), on account of or deriving from Work supplied, furnished, or performed for the Project to and including the date hereof, other than (1) unpaid amounts of prior requisitions which were properly prepared and submitted and which Owner does not dispute; (2) pending claims of which Contractor has given proper written notice to Owner in accordance with the Contract; and (3) pending Change Orders identified in the schedule accompanying this Partial Release and Waiver of Lien.

This Partial Release and Waiver of Lien shall not affect the right of Contractor to recover compensation for Work supplied, furnished or performed by Contractor for the Project to the extent that compensation for such Work is not included within the aggregate amount identified above, but is included within categories (1)-(3) in the immediately preceding paragraph.

IN WITNESS WHEREOF, Contractor has caused this Partial Release and Waiver of Lien to be duly executed as of the date first set forth above by its undersigned officer who is duly authorized to do so.

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name:  
Title:

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

Payments Received through date hereof: \$\_\_\_\_\_

SUBCONTRACTOR'S PARTIAL RELEASE AND WAIVER OF LIEN

PARTIAL RELEASE AND WAIVER OF LIEN dated as of \_\_\_\_\_, 20\_\_, made by \_\_\_\_\_ ("Subcontractor") to and for the benefit of \_\_\_\_\_, a \_\_\_\_\_ with its principal office at \_\_\_\_\_ ("Owner") and of \_\_\_\_\_ ("Contractor") pursuant to an agreement between Subcontractor and Owner [or between Subcontractor and Contractor as agent of Owner] dated as of \_\_\_\_\_, 20\_\_ (the "Contract") covering the \_\_\_\_\_ work for the project known as \_\_\_\_\_ (the "Project"). Unless otherwise specified herein, words and phrases defined in the Contract shall have the same meanings in this instrument.

This Partial Release and Waiver of Lien is given in connection with the payment to Subcontractor of sums heretofore requisitioned by Subcontractor for Work supplied, furnished or performed for the Project. Subcontractor hereby certifies and acknowledges that, as of the date hereof, Subcontractor has received payments in the aggregate amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for Work performed, furnished or supplied for the Project, and that such payments constitute all sums due and owing to Subcontractor in accordance with the Contract up to and including the date hereof, except as expressly provided in the following paragraph.

IN CONSIDERATION OF, AND TO THE EXTENT OF, SUCH PAYMENT, Subcontractor (for itself and its successors and assigns) does hereby release and waive any and all rights, claims, and demands which Subcontractor has or may have against Owner, Contractor and/or the State of New York (the "State") (including any rights which Subcontractor has or may have pursuant to the New York Lien Law or otherwise to file any Lien or notice of Lien against the Project or any property of Owner, Contractor or the State), on account of or deriving from Work supplied, furnished, or performed for the Project to and including the date hereof, other than (1) unpaid amounts of prior requisitions which were properly prepared and submitted and which neither Owner nor Contractor dispute; (2) pending claims of which Subcontractor has given proper written notice to Owner and Contractor in accordance with the Contract; and (3) pending Change Orders identified in the schedule accompanying this Partial Release and Waiver of Lien. "Work" means labor, materials and supplies, furnished or performed by or through Subcontractor with respect to the Project.

This Partial Release and Waiver of Lien shall not affect the right of Subcontractor to recover compensation for Work supplied, furnished or performed by Subcontractor for the Project to the extent that compensation for such Work is not included within the aggregate amount identified above but is included within categories (1)-(3) in the immediately preceding paragraph.

IN WITNESS WHEREOF, Subcontractor has caused this Partial Release and Waiver of Lien to be duly executed as of the date first set forth above by its undersigned officer who is duly authorized to do so.

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

EXHIBIT B

FORMS OF FINAL WAIVERS OF LIEN FOR CONTRACTOR AND SUBCONTRACTOR

Total Payments Received: \$\_\_\_\_\_

CONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

FINAL RELEASE AND WAIVER OF LIEN dated as of \_\_\_\_\_, 20\_\_ made by \_\_\_\_\_ ("Contractor") to and for the benefit of \_\_\_\_\_, a \_\_\_\_\_ with its principal office at \_\_\_\_\_ ("Owner") pursuant to an agreement dated as of \_\_\_\_\_ (the "Contract") covering the Work for the Project known as \_\_\_\_\_ (the "Project"). Unless otherwise specified herein, words and phrases defined in the Contract shall have the same meanings in this instrument.

This Final Release and Waiver of Lien is given in connection with the construction of the Project and in consideration of \$\_\_\_\_\_ in full payment of all sums due under the Contract.

For Owner's benefit, Contractor does hereby certify and acknowledge: (i) that Contractor has supplied Owner with a list of all Subcontractors supplying, furnishing, or performing Work for the Project and that such list is true and complete as of the date hereof; (ii) that upon receipt of the above-described payment, Contractor has received all sums due and owing to Contractor for all Work performed, furnished, or supplied by Contractor for the Project; and, in consideration of such payment, Contractor (for Contractor and its successors and assigns) does hereby forever release and waive any and all rights, claims and demands which Contractor has or may have against Owner and the State of New York (the "State") (including any rights pursuant to the New York Lien Law to file any Lien or notice of Lien against the Project or any property of Owner or the State) on account of or deriving from any Work supplied, furnished, or performed for the Project; and Contractor agrees to indemnify and hold harmless Owner from and against any and all rights, claims and demands of any Subcontractors on account of or deriving from Work supplied, furnished or performed by any such Subcontractor for the Project.

IN WITNESS WHEREOF, Contractor has caused this Final Release and Waiver of Lien to be duly executed as of the above date by the undersigned officer of Contractor who is duly authorized to do so.

\_\_\_\_\_ ]

By: \_\_\_\_\_  
Name:  
Title:

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

Total Payments Received: \$\_\_\_\_\_

SUBCONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

FINAL RELEASE AND WAIVER OF LIEN dated as of \_\_\_\_\_, 20\_\_\_\_, made by \_\_\_\_\_ ("Subcontractor") to and for the benefit of \_\_\_\_\_, a \_\_\_\_\_ with its principal office at \_\_\_\_\_ ("Owner") and of \_\_\_\_\_ ("Contractor") pursuant to an agreement between Subcontractor and Owner [or between Subcontractor and Contractor as agent of Owner] dated as of \_\_\_\_\_, 20\_ (the "Contract") covering the \_\_\_\_\_ work for the project known as \_\_\_\_\_ (the "Project"). Unless otherwise specified herein, words and phrases defined in the Contract shall have the same meanings in this instrument.

This Final Release and Waiver of Lien is given in connection with the construction of the Project and in consideration of \$\_\_\_\_\_ in full payment of all sums due under the Contract.

For the benefit of Owner and Contractor, Subcontractor does hereby certify and acknowledge: (i) that Subcontractor has supplied Owner and Contractor with a list of all subcontractors and vendors supplying, furnishing or performing Work for the Project and that such list is true and complete as of the date hereof; (ii) that upon receipt of the above-described payment, Subcontractor has received all sums due and owing to Subcontractor for all Work performed, furnished or supplied by or through Subcontractor for the Project; and, in consideration of such payment, Subcontractor (for Subcontractor, its successors and assigns) does hereby forever release and waive any and all rights, claims and demands which Subcontractor has or may have against Owner, Contractor and/or the State of New York (the "State") (including any rights pursuant to the New York Lien Law to file any Lien or notice of Lien against the Project or any property of Owner, Contractor or the State) on account of or deriving from any Work supplied, furnished or performed for the Project; and Subcontractor agrees to indemnify and hold harmless Owner from and against any and all rights, claims and demands of any subcontractors or vendors on account of or deriving from Work supplied, furnished or performed by any such subcontractor or vendor for the Project. "Work" means labor, materials and supplies, furnished or performed by or through Subcontractor with respect to the Project.

IN WITNESS WHEREOF, Subcontractor has caused this Final Release and Waiver of Lien to be duly executed as of the date first set forth above by the undersigned officer of Subcontractor who is duly authorized to do so.

[\_\_\_\_\_]
By: \_\_\_\_\_
Name:
Title:

Subscribed and sworn to before me
this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public