



CORPORATE HEADQUARTERS
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NEW YORK
125 MAIDEN LANE
NEW YORK, NY 10038

FLORIDA
6751 N. FEDERAL HIGHWAY #302
BOCA RATON, FL 33334

TRADE CONTRACT

Date:

INSERT DATE

Construction Manager:

The Rinaldi Group
Gateway Plaza
1 Harmon Meadow Blvd.
Secaucus, NJ 07094

Trade Contractor:

INSERT NAME
INSERT ADDRESS

Project and / or
Project Site:

INSERT NAME OF PROJECT
INSERT ADDRESS OF PROJECT

Owner:

INSERT NAME OF OWNER (from Prime Contract)
INSERT ADDRESS OF OWNER

Prime Contract:

Contract between Construction Manager and Owner
Dated: INSERT

Architect:

INSERT NAME OF ARCHITECT
INSERT ADDRESS OF ARCHITECT

Trade:

INSERT Short Description of Work / Trade

Trade Contract Price:

INSERT Enter Amount in Words
INSERT Enter Amount in Numbers

Change Order Overhead and Profit Allowance:

Enter Amount (as a percentage) %

Retained Percentage:

Enter Amount (as a percentage) %

Payment and Performance Bond Required: _____
YES NO ALTERNATE

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EXHIBITS

Exhibit A – Plans and Specifications

Exhibit B – Scope of Work

Exhibit C – Insurance Requirements and Additional insureds

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Exhibit H – Bond Form

Exhibit I – Warranty Form

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Exhibit K – Form of Partial and Final Lien Waiver and Releases

TRADE CONTRACT

WITNESSETH, that the Construction Manager and Trade Contractor for the considerations hereinafter named agree as follows:

ARTICLE 1

SCOPE OF WORK

Section 1.1. Scope of Work.

The Construction Manager and the Trade Contractor agree that the Trade Contractor shall furnish all labor, supervision, materials, scaffolding, ladders, tools, equipment, supplies, permits and incidental materials, insurance, taxes, and anything necessary for the prosecution and completion of work at the Project in its entirety, as described herein (the "Work") for the Project.

ARTICLE 2

TIME

Section 2.1. Time

TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS TRADE CONTRACT. Construction Manager and/or Owner may sustain financial loss if the whole Project or any part thereof is delayed because Trade Contractor fails to perform any part of the Work in accordance with the Contract Documents, including, without limitation, a failure to comply with Construction Manager's directions or the Project Schedule and / or schedule durations contained in Exhibit E hereto and any Substantial Completion, Final Completion or Milestone dates contained therein. Trade Contractor shall begin the Work at the time directed by Construction Manager and shall perform its obligations under this Trade Contract with diligence and with sufficient manpower to maintain the progress of the Work as scheduled, without delaying other trades or areas of work. At the request of Construction Manager, Trade Contractor shall perform certain parts of the Work before other parts, add extra manpower, or order overtime or premium time labor in order to comply with the Project

Schedule, all without any increase in the Trade Contract Price (unless otherwise specifically provided for herein).

ARTICLE 3

CONTRACT PRICE

Section 3.1. Trade Contract Price.

The Construction Manager agrees to pay the Trade Contractor for the performance of the Work the Trade Contract Price in accordance with the terms herein.

ARTICLE 4

CONTRACT DOCUMENTS, CORRELATION AND INTENT

Section 4.1. Contract Documents, Correlation and Intent.

(a) The Contract Documents shall consist of this Trade Contract, the Prime Contract, Exhibit A the drawings and specifications, Exhibit B the Scope of Work, Exhibit C the Insurance Requirements and Additional Insureds, Exhibit D Alternates and Unit Prices, Exhibit E Schedule Requirements, Exhibit F Additional Requirements, Exhibit G Safety Requirements, Exhibit H Bond Form and Exhibit I Warranty Form.

(b) All the Contract Documents shall be read together as complementary and the rights and obligations thereunder shall be deemed cumulative.

(c) When Work is indicated on the Drawings but is not called for in the other Contract Documents, or is called for in the other Contract Documents but is not indicated on the Drawings, and the nature of the Work is such that it should be performed by workers employed by this Trade Contractor or if standard

building practices would require such Work to be performed by this Trade Contractor, then such Work shall be deemed a part of the Work covered by this Agreement and shall be performed by this Trade Contractor without additional compensation.

(d) Notwithstanding anything mentioned in Drawings and Specifications to the contrary, it is understood and agreed that the Trade Contract Price is predicated on the complete installation of all Work of the subject trade unless specifically excluded elsewhere herein. All Work is to be done in a first-class workmanlike manner to the complete satisfaction of Construction Manager, Architect and Owner. The Work includes any and all items normally required to provide a complete, first-class job in every detail for maximum quality, serviceability and appearance.

(e) Qualifications or exclusions contained in the Trade Contractor's proposal for the Work are not accepted or agreed even if same are accidentally attached hereto as an improper exhibit.

(f) The Trade Contractor represents that it is familiar with the Project and has expertise in the scope of this trade and the Work.

(g) Drawing references are for the Trade Contractor's convenience and shall in no way limit the scope of the Work.

(h) Words used herein that have well known technical or trade meanings shall be construed according to their customary meaning within the Metropolitan New York building industry.

(i) The Trade Contractor shall promptly report in writing to the Construction Manager any discovered error, omission, inconsistency or similar defect that may be apparent from Trade Contractor's review of the Contract Documents including the Drawings or Specifications. The Trade Contractor shall cooperate with the Owner and Construction Manager in good faith to resolve such error,

omission, inconsistency or defect in a manner so as to avoid any increase in the Trade Contract Price or delay to the progress of the Work. The Trade Contractor shall not do any work that is inconsistent with the Contract Documents without receiving direction from the Construction Manager.

Section 4.2. Priority of Documents.

The Contract Documents are complementary and what is required by one document shall be deemed to be required by all. In the event of a conflict between the various Contract Documents, then the more stringent provision, as applied to the Trade Contractor, shall govern. Trade Contractor acknowledges that it is familiar with the terms of the Prime Contract and agrees that the Prime Contract (including the contract documents incorporated therein) is incorporated herein in its entirety for all purposes as if copied at length and attached hereto. In the event there is any discrepancy between the Prime Contract and the Trade Contract, then the more stringent provision, as applied to Trade Contractor, shall govern. Trade Contractor is bound to the Construction Manager and assumes toward the Construction Manager all the obligations and responsibilities that Construction Manager assumes to the Owner in the Prime Contract.

ARTICLE 5

ADMINISTRATION AND ARCHITECT

Section 5.1. Construction Manager.

The Owner has employed Construction Manager to administer, manage and coordinate the Work to be performed by Trade Contractor, including reviewing and approving requisitions of Trade Contractor and any other Contract Documents used in the prosecution and completion of the Work.

Section 5.2. Architect.

The Owner has employed the Architect for the Project and who has in turn employed

various engineers and other consultants (collectively the "Architect"):

Section 5.3. Responsibility for Construction Means and Methods, Etc.

The Trade Contractor, its lower-tier trade contractors of all tiers and its suppliers shall be solely responsible for (a) construction means, methods and techniques, (b) establishment of a Site Safety Program that adheres to the Project Safety Program referred to elsewhere herein, (c) all procedures and precautions necessary to comply with the Safety Programs, OSHA standards, and all applicable Federal, State and City safety and health-related codes, rules and regulations, and (d) carrying out the Work in accordance with the Contract Documents.

ARTICLE 6

TRADE CONTRACTOR'S RESPONSIBILITIES

Section 6.1. Adherence to Contract Documents.

The Trade Contractor shall perform the Work in strict accordance with the Contract Documents and it has skilled and qualified personnel to carry out the terms of this Trade Contract. Trade Contractor further represents that it has sound financial capacity to perform all the Work to the completion of the Project and that it is a bondable company capable of obtaining on short notice a bond if required by the Owner or Construction Manager.

Section 6.2. Supervision.

The Trade Contractor shall use its best skill and attention for the proper administration, coordination, supervision and superintendence of the Work. The Trade Contractor shall furnish a competent representative who is to be kept on the Site to represent the Trade Contractor for the purpose of receiving notices, orders and instructions. The Trade Contractor shall also, when called upon by the Construction Manager, report the general progress of the Work at the Site or elsewhere, and shall cause a competent and responsible representative to attend such

job meetings as are called by the Construction Manager. The Trade Contractor shall employ an appropriate number of full-time foremen and assistants, as necessary, who shall be in attendance on the Project during the progress of the Work. The foremen shall be subject to the Construction Manager's reasonable approval and shall not be changed except with the consent of the Construction Manager.

Section 6.3. Labor.

(a) The Trade Contractor shall furnish and maintain an adequate and competent staff and workforce of skilled, competent, experienced, reliable and honest workers on the Project to carry out the Trade Contractor's obligations hereunder in an efficient and timely manner until completion of the Work and shall enforce discipline and order among Trade Contractor's employees and shall not employ on the Project any unfit person or anyone not properly skilled or trained in the task assigned. Prior to commencing the Work, the Trade Contractor shall notify the Construction Manager of the name and the qualifications of its proposed staff, including its foreman and project manager and or on-site responsible party, which shall all be subject to the approval of the Construction Manager. Construction Manager may require Trade Contractor to immediately replace any Trade Contractor employee in Construction Manager's sole discretion at any time and require Trade Contractor to remove same from the Project.

(b) The Trade Contractor shall employ only such labor as, to the satisfaction of the Construction Manager, will perform their services in harmony with other trades on the Project. Should the Trade Contractor fail to carry out this provision, the Construction Manager shall be at liberty, after three (3) days written notice, to terminate the employment of the Trade Contractor, and the Construction Manager may, for the purpose of completing the Work, enter upon the premises and take possession in the same manner and upon the same terms and conditions as described in Section 15.1 of this Agreement. Materials manufactured and installed and deliveries made

shall be by workmen whose trade affiliations shall not cause strikes or work stoppages on the Project. The Trade Contractor is to be responsible for employing the proper tradesmen per applicable union jurisdiction, if applicable. The Trade Contractor is also responsible for taking whatever measures may be necessary to settle any labor disputes and ensure job continuity. Should questions of union jurisdiction arise, this Trade Contractor shall immediately take steps to settle such disputes and shall use such labor as may be determined to have jurisdiction at no additional cost to the Construction Manager, if applicable. Should Trade Contractor fail to take expeditious action, this Trade Contractor shall be responsible for any time lost because of delays arising from such disputes.

Section 6.4. Non-Discrimination and Equal Opportunity.

(a) The Trade Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, marital status, sexual orientation, national origin, ancestry and veteran or citizenship status. Trade Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, marital status, sexual orientation, national origin, ancestry, and veteran or citizenship status. Such action shall include, but shall not be limited to, the following: employment, job classification, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for and quality of training, including apprenticeship.

(b) The Equal Opportunity Clause and Affirmative Action Clauses of Executive Order 11246, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act, and the regulations at 41 CFR Part 60-250, Section 503 of the Rehabilitation Act of 1973 and the regulations of 41 CFR Part

60-741 are incorporated herein by reference to the extent applicable to this Trade Contract.

(c) Trade Contractor shall comply with all Federal, State or Local Equal Opportunity or Affirmative Action Programs, that are applicable to the Project.

Section 6.5. Permits and Legal Requirements.

Trade Contractor shall secure, maintain, renew and pay for all other permits, expeditors (if any) and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work called for under this Trade Contract. The Trade Contractor further agrees that all Work shall be performed in accordance with and all materials furnished by it under this Trade Contract shall comply strictly with all applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction and which affect the Work hereunder ("Legal Requirements") without extra charge or expense. The Trade Contractor shall be liable for a violation of any such Legal Requirements arising out of the performance of the Work by the Trade Contractor and hereby indemnifies and saves harmless the Owner and Construction Manager and all other persons and entities mentioned or referred to as Additional Insureds from and against any delay in the schedule for completion of the Work attributable to any such violation or noncompliance by Trade Contractor and any fine or expense, including reasonable attorneys' fees and disbursements, resulting to them by reason of any such violation by the Trade Contractor. The Trade Contractor shall cooperate with the Construction Manager and Owner by, among other things, appearing at any court, administrative or legal proceedings or hearings held in connection with alleged violations of such Legal Requirements.

Section 6.6. Cutting, Fitting, Patching, Etc.

The Trade Contractor shall do all cutting, fitting, patching and protection of its Work that may be required to make its several parts come together properly and to fit it to

receive or be received by the work of other trades shown upon or reasonably implied by the Contract Documents, and as otherwise set forth herein. The requirement to cut, fit or patch shall be determined by Trade Contractor, provided however, that structural elements of the Project shall not be cut, patched or otherwise altered or repaired without prior authorization of the Architect.

Section 6.7. Taxes.

The Trade Contractor agrees to pay and hereby assumes full and exclusive liability for the payment of any and all contributions or taxes imposed by the laws of the United States of America or by the laws of any state or city and which are measured by the wages, salaries, or other remuneration paid to persons employed by the Trade Contractor on the Work to be performed hereunder or by material and equipment cost therefor. If requested by the Construction Manager, the Trade Contractor shall furnish the Construction Manager such payroll information or employment records as may be necessary to enable the Construction Manager to comply with any law imposing such contributions or taxes, and the Trade Contractor agrees to reimburse the Construction Manager for the entire amount of contributions, taxes or penalties that the Construction Manager may be required to pay because of the failure of the Trade Contractor to furnish such information or records, or because of the failure of the Trade Contractor to pay such contributions or taxes. Trade Contractor shall be liable for the payment of all sales, use or other taxes of whatever nature levied or assessed against the Construction Manager, the Owner or the Trade Contractor arising out of the Work and the furnishing or installing by the Trade Contractor hereunder of any kind of materials, supplies or equipment.

Section 6.8. Surety Bonds.

As a condition of this Contract, Construction Manager or Owner reserves at all times the right to require the Trade Contractor to furnish a Performance Bond and a separate Payment Bond, which Payment Bond shall

provide a direct right of action against the surety by a claimant. Each such Bond shall be in the sum equal to 100% of the Trade Contract Price, shall be in form and substance satisfactory to the Construction Manager and shall be underwritten by a surety company 1) authorized to do and doing business in the State where the Project is located 2) with a "Best" rating of A, or better and 3) that is treasury listed. When required, the Trade Contractor shall furnish to the Construction Manager an original of each such Bond prior to commencing any work at the Project. If required, any payment and performance bonds furnished by the Trade Contractor shall be in the form as approved by the Construction Manager, and shall name the Owner as dual-obligee thereunder. The premium for said bonds shall be included in the Trade Contract Price. Failure to furnish such bonds within five (5) business days from demand shall constitute a material default hereunder.

Section 6.9. Handling and Hoisting of Tools, Equipment and Materials.

(a) The Trade Contractor is responsible for the handling and distribution of its own tools, equipment and materials. Trade Contractor shall confine its tools, equipment and materials and its operations to areas permitted by Legal Requirements or as directed by the Construction Manager.

(b) The Trade Contractor shall organize and coordinate, well in advance of the time required on the Project, the procurement and delivery of all necessary materials, supplies and equipment so that they will be available at the Project as needed for timely completion of the Work.

(c) The Construction Manager will make available through the hoisting trade contractor a material and personnel hoist ("the hoisting facilities") at the Project for the use of all trade contractors on the Project on a reservation basis and, unless provided otherwise in an exhibit attached hereto, at a cost of \$360 per hour regular time and \$500 per hour overtime, or portion thereof; provided, however, there will be a minimum charge of \$360 for any use during

regular time and \$500 for any use during overtime. The Trade Contractor shall make all arrangements for the use of this hoist with Construction Manager's superintendent at least twenty-four hours in advance. The Trade Contractor shall satisfy itself as to the adequacy, size, carrying capacity and projected period of availability of the hoisting facilities for use by the Trade Contractor, location of the hoisting facilities installed or planned for the Project. Neither the Construction Manager nor the Owner can guarantee that the hoisting facilities will be available for use whenever or wherever Trade Contractor desires. No personnel shall be permitted to utilize any material hoists. If the Trade Contractor shall use any scaffold, derrick, material hoist, personnel hoist, or other tools and equipment furnished by the Construction Manager, other Trade Contractors or Owner, Trade Contractor shall satisfy itself as to the safety of said scaffold, derrick, material hoist, personnel hoist or other tools and equipment before using the same and shall be fully responsible for the safety thereof to the same extent as if such scaffold, derrick, material hoist, personnel hoist or other tools and equipment were owned by and in the sole control of the Trade Contractor.

(d) The Trade Contractor may decide not to rent the available hoisting equipment and elect to use rope hoists or other methods. If it does so, any damage caused through the use of its own method will be charged to Trade Contractor. If Trade Contractor installs a rope hoist, it must remove same when same is not in use so that other Trade Contractors will not use same without authorization. The Trade Contractor shall notify the Construction Manager's superintendent of the location at which it intends to use the rope hoist or other methods. In the use of ropes or other methods of hoisting, the Trade Contractor shall so conduct its operations so as not to interfere with or cause injury to other trades and shall move same from location to location, if required, in order to enable the other trades to work expeditiously, and the cost of any such moving shall be the Trade Contractor's sole responsibility.

(e) There shall be no extensions of time permitted or extras or costs paid by the Construction Manager or Owner for walk-up time, lost-time or delivery or trucking charges that may be incurred as a result of personnel hoist, material hoist or vertical transportation breakdowns. The Trade Contractor and its employees must continue to work and walk to the place of the Work, if necessary, subject to union restrictions, during any personnel hoist, material hoist or vertical transportation breakdown, it being acknowledged that such breakdowns occur from time to time on all construction sites.

(f) If the Trade Contractor reserves any hoist, but does not use it, Trade Contractor will be charged for the reserved time at the above noted rates whether or not free hoisting is provided to Trade Contractor pursuant to anything herein.

(g) Trade Contractor must provide sufficient manpower so as to make maximum use of the hoist.

Section 6.10. Layout.

One North/South axis line and one East/West axis line and one benchmark shall be established by others at each level. All subsequent layout on the floors shall be performed by the Trade Contractor who shall be solely responsible for establishing and maintaining the layout, line and grade tolerances required. The Trade Contractor shall perform all engineering and layout for its own Work. If axis lines are provided by others, the Trade Contractor shall verify all axis lines prior to use and shall notify Construction Manager of any discrepancies.

Section 6.11. Temporary Facilities.

(a) The Trade Contractor shall place and relocate its field offices and shanties when and where directed by the Construction Manager and provide all necessary facilities for its workers. It is understood that this Trade Contractor is responsible for the acquisition, maintenance and subsequent removal of all

utility, sprinkler and telephone services required for its field offices and shanties. Each structure Trade Contractor maintains must be of fire-resistant construction if placed inside the Project and must contain a minimum of one (1) 20 lb. dry ABC Fire Extinguisher.

(b) Temporary light and power for small hand tools will be furnished and maintained by the electrical Trade Contractor only during the normal working hours of the trades and for work performed on overtime which has been ordered and approved as overtime work by the Construction Manager, subject to the provisions of Section 7.4.

Section 6.12. Cleaning and Rubbish Removal.

The Trade Contractor shall clear all rubbish created by its operations on a daily basis and collect same in a central location on each floor or in a container provided by the Construction Manager as directed by the Construction Manager's superintendent. If Construction Manager uncovers or learns of Trade Contractor's failure to clear and collect rubbish created by its operations, Construction Manager may clear and collect such rubbish upon notice to the Trade Contractor and all cost and expense of performing such Work shall be charged to the Trade Contractor's account. In the event of a dispute between the Trade Contractor and other Trade Contractors on the Site as to responsibility for cleaning up as required under this Section, the Construction Manager may clean-up and charge the cost thereof to the Trade Contractors responsible therefor as the Construction Manager shall reasonably determine to be fair and equitable, which shall in no way be construed as relieving Trade Contractor of its obligations under this Agreement or any Contract Documents identified herein.

Section 6.13. Substitutions.

Requests for substitutions of equipment, materials or processes other than those specified must be approved in advance in writing by Architect, Construction Manager and Owner and the Trade Contractor will furnish with Trade

Contractor's request for approval of a proposed substitution such drawings, specifications, samples, performance data and other information as may be required to assist the Architect, Construction Manager and the Owner in determining whether the proposed substitution is acceptable. All shop drawings, samples and product data submitted for approval by Trade Contractor that contain substitutions must indicate all substitutes with bold lettering stating "Request for Approval of Substitution". Substituted materials, equipment or processes not previously approved in writing shall not be installed, except at Trade Contractor's sole and complete risk.

Section 6.14. Site Conditions.

By executing this Trade Contract, the Trade Contractor represents that it has visited the Site, familiarized itself with the local conditions under which the Work is to be performed, correlated its observations with the requirements of the Contract Documents and understands that the Work may be done in a congested area and has calculated its price and time schedule accordingly. Material deliveries are to be promptly coordinated with Construction Manager so as not to interfere with neighboring operations at the Project. Trade Contractor shall obtain Construction Manager's approval of any proposed location of materials to be stored on Site prior to delivery of such materials on Site, as well as proposed methods of protecting and safeguarding such materials until installation. The Trade Contractor shall confine operations at the Project to areas permitted by applicable Legal Requirements, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment. The Trade Contractor shall coordinate all of the Trade Contractor's operations with and secure approval from the Construction Manager before using any portion of the Site.

Section 6.15. Reports, Schedules, Etc.

(a) The Trade Contractor shall provide within ten (10) days of execution of this Trade Contract a proposed schedule of

submission of shop drawings (with appropriate cross references to applicable sections of the specifications) and a proposed schedule of deliveries of materials to the Project with periodic update of the status of progress of such shop drawings and material deliveries within two (2) days of request by the Construction Manager.

(b) The Trade Contractor shall, each morning upon the commencement of Work each day, provide a written report (in a form approved by the Construction Manager) to the Construction Manager stating: the number of men, the description of Work, the area of Site or floors and equipment on the Project.

(c) The Trade Contractor shall be responsible for the preparation and cost of any affidavit or instrument or supporting data regarding the Work to be performed hereunder and which is required for the issuance of Temporary or Permanent Certificate of Occupancy or for compliance with any requirements of any governmental authority having jurisdiction.

(d) Whenever required by the Construction Manager, it shall be the duty of the Trade Contractor to file with the Construction Manager, without charge and within five (5) days of written request, a verified statement, in a form satisfactory to the Construction Manager, certifying the amounts then due and owing for labor and materials furnished under the terms of this Trade Contract and setting forth therein the lower-tier trade contractors or suppliers who remain unpaid and the amounts due to each.

Section 6.16. Coordination with Other Trades.

(a) Included in the Work of this Trade Contractor is the complete coordination of this Work with the work of other trades. The Trade Contractor shall coordinate its Work with the work of other trade contractors in such manner as the Construction Manager shall direct. The Trade Contractor shall afford other trade contractors reasonable opportunity for the installation, execution and storage of their respective work and materials. Trade

Contractor shall attend coordination meetings as scheduled by the Construction Manager. Trade Contractor shall perform all preparation of its Work required in order to receive the work of other trade contractors. Trade Contractor shall advise other Trade Contractors of any preparation of its work required in order to receive the work of other trade contractors. Trade Contractor shall advise other trade contractors of any preparation in their work required for its Work and shall provide those trade contractors with location plans and items to be built-in to their work in a timely manner.

(b) If the Construction Manager shall determine that the Trade Contractor is failing to coordinate its Work with the work of other trade contractors as directed, the Construction Manager may upon written notice to the Trade Contractor:

(i) withhold any payment otherwise due hereunder until such directions are complied with by the Trade Contractor;

(ii) direct others to perform portions of this Trade Contract and charge the cost of such work to the Trade Contract Price; or

(iii) terminate any and all portions of this Trade Contract for Trade Contractor's failure to perform in accordance with this Trade Contract pursuant to Section 15.2.

Section 6.17. Damaged Materials and Work.

Material which has become damaged in any way during storage and delivery shall not be used and shall be replaced by this Trade Contractor at no additional cost. The Trade Contractor must protect all of its materials stored on the Project Site prior to installation and take proper precautions to avoid accidental damage by other trades or the elements. Completed work of this Trade Contractor shall be free of dents, tool marks, warping, buckling, open joints, and other defects.

Section 6.18. Quality of Workmanship and Materials.

The Trade Contractor shall perform the Work strictly in accordance with the best modern construction practices and shall use only the highest standard of workmanship and new materials of best quality, subject to the specific requirements of the Drawings and Specifications.

Section 6.19. Project Meetings.

The Trade Contractor shall attend and participate in all regular progress meetings and special job meetings called by the Construction Manager. The Trade Contractor's Project Safety Representative shall attend weekly and/or monthly safety meetings.

ARTICLE 7

PROJECT SCHEDULE AND COMPLETION OF THE WORK

Section 7.1. Time for Completion of the Work.

(a) It is understood and agreed that time is of the essence in the commencement, prosecution and completion of the Work. The Trade Contractor shall and will proceed with the said Work and every part and detail thereof in a prompt and diligent manner and shall and will do the several parts thereof at such times and in such order as Construction Manager may direct. The Trade Contractor shall and will wholly finish the said Work according to the Contract Documents and as required in order to maintain the progress of construction of the Project and in accordance with the time schedules, starting dates and completion dates, as set forth in any Exhibits hereto, except that the Trade Contractor's time for completion as hereinbefore set forth shall be extended by reason of any delay resulting from causes as provided in Section 7.2(c) herein.

(b) The Trade Contractor agrees to have its materials and manufactured products ready so as to begin work at the building within

three days from the time of notification by the Construction Manager.

Section 7.2. Delays, Damages and Extensions of time.

(a) The Trade Contractor shall provide adequate manpower and equipment and materials to keep up with the progress of the job. It is understood that Trade Contractor shall perform the Work during normal working hours except as may be provided otherwise herein. However, Trade Contractor will work overtime at its own expense when its manpower is inadequate to keep up with the progress of the job. All costs of all standby trades will be charged to this Trade Contractor when such overtime is required.

(b) The Trade Contractor shall not cause any unnecessary hindrance or delay to other Trade Contractors on the Project. Should any other trade contractor having or who shall hereafter have a contract with the Owner or Construction Manager for the performance of work upon the Site or the Project sustain any damage through any act or omission of the Trade Contractor, the Trade Contractor agrees to reimburse such other trade contractor for all such damages and to indemnify and hold the Owner and the Construction Manager harmless from all such claims. Trade Contractor shall look to other trade contractors and not to Construction Manager or Owner for any and all damages caused by other trade contractors.

(c) Should the Work be substantially obstructed or delayed by any act, neglect, delay or default of the Construction Manager, the Owner or the Architect or by reason of Acts of God, changes ordered in the Work not resulting from the act or neglect of the Trade Contractor, accidents, fire, strikes or labor disputes not attributable to the failure of the Trade Contractor to perform its obligations under any collective bargaining agreement or labor law and provided Trade Contractor has used its best efforts to resolve such dispute, adverse weather not reasonably anticipatable, war, governmental preemption in connection with a national emergency, or rules, orders or regulations of any

department, bureau or subdivision of any governmental agency, then the time for the completion of the Work shall be extended for a period equal to the time lost by reason of the causes aforesaid as approved by the Construction Manager, but no such allowance shall be made unless a written claim therefor be presented to the Construction Manager and the Owner within three (3) working days after the commencement of such delay and Trade Contractor demonstrates that it could not have anticipated or avoided such delay or obstruction and has used all available means to minimize the consequences thereof. **Trade Contractor acknowledges and accepts that the construction of the Project is complex and subject to delays. Accordingly, and notwithstanding any other provisions of this Trade Contract, Trade Contractor agrees to make no claim for additional costs on account of, and contractually assumes the risk of, any and all loss and expense for delay in the performance of the Work, including any delay occasioned by or resulting from any act or omission of Construction Manager, Owner, Architect or their consultants or other trade contractors employed at the Project site.** No charge shall be made by the Trade Contractor for storage of materials, tools and equipment on the Work during such delay and no claim shall be made by the Trade Contractor for damages for any such delay or cessation of Work of any kind regardless of the cause. **Trade Contractor expressly agrees not to make, and hereby waives, any claim for delay costs, loss of productivity or efficiency, lost profits or extended home office overhead, on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable, and whether or not anticipated.**

(d) The Trade Contractor acknowledges that this Project shall be constructed on a "fast-track" basis. The Trade Contractor shall furnish first class, professional and efficient Work and use its best efforts, skill and judgment to complete its Work in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner and Construction Manager

and consistent with "fast-track" construction, the Project Schedule and the Contract Documents.

(e) If the Trade Contractor or any of its lower-tier trade contractors or suppliers shall delay the progress of the Work or fail to coordinate its Work with the work of the other trade contractors and, as a result thereof, Construction Manager or Owner shall incur damages (including liquidated damages, if applicable), the Trade Contractor shall be responsible for same and shall indemnify and hold harmless the Construction Manager and Owner on account of any such damages.

(f) Trade Contractor shall perform such out-of-sequence Work as is normally performed by Trade Contractor's trade at no additional cost.

(g) The Trade Contractor shall, if directed by the Construction Manager, expedite its Work, at no additional cost, in the lobby space, show office space, model apartments, and on the model apartment floors, if any.

(h) Punch-list work shall be performed by Trade Contractor only at times as will not unreasonably interfere with the use or occupancy of the Project by an occupant at no additional cost to Construction Manager or such occupant.

Section 7.3. Scheduling of the Project.

(a) The planning and scheduling of this Project will be performed and prepared by the Construction Manager and may be programmed using the Critical Path Method. The Trade Contractor agrees to furnish to the Construction Manager such information relating to sequence of operations, manpower availability, and work schedules as will enable proper planning and scheduling of the Project including, without limitation, bar charts or network diagrams, and other details pertaining to manpower, material deliveries and equipment which impact the progress of the Work. The Trade Contractor agrees that it shall arrange and perform its Work in accordance with the schedule for the Project.

(b) A representative of the Trade Contractor shall meet with the Construction Manager and shall furnish to the Construction Manager, from time to time when requested, information necessary for such re-evaluating and updating the schedule for the Project, and, if applicable, information in regard to the Trade Contractor's proposed effort to overcome any incurred delays. The form of such information shall be as required by the Construction Manager. In addition to the foregoing, the Construction Manager shall at all times have the right to request updates as to information regarding Trade Contractor's scheduled performance of the Work or portions thereof and the Trade Contractor shall furnish the same to the Construction Manager within forty-eight (48) hours of the time of such request.

(c) The Trade Contractor is required to consult with and fully cooperate with other trade contractors, as necessary, in order to maintain the schedule and also in regard to any changes which may be required in the Schedule. Any possible means of shortening the Schedule, at no additional cost, shall be brought to the attention of the Construction Manager.

Section 7.4. Overtime.

The Trade Contractor shall work overtime as directed by the Construction Manager. The Construction Manager shall have the right to expedite the Work even out of sequence and, provided the Trade Contractor is (i) in the good faith judgment of Construction Manager not behind in the Work and (ii) not otherwise in default in any of the provisions of the Trade Contract, the Construction Manager shall reimburse the Trade Contractor for the actual additional wages over and above straight time rates determined at premium rates actually paid by the Trade Contractor and approved, in advance and in writing, by the Construction Manager for such overtime for personnel which have been approved by the Construction Manager, plus taxes imposed by law on and fringe benefits and insurance applicable to such additional wages. The Trade Contractor shall not be entitled to any payment on account of overhead or profit with respect to such additional

wages, fringe benefits and insurance. Time slips covering said additional wages must be checked and approved by the Construction Manager's superintendent at the Project on a daily basis. If, however, the Trade Contractor is, in Construction Manager's good faith judgment, behind in the Work or, in Construction Manager's good faith judgment, is delaying the progress of the Work necessary to complete the Project in accordance with the scheduled dates of completion then, if requested by the Construction Manager, the Trade Contractor shall work such overtime hours or days with such additional personnel as may be necessary in the Construction Manager's opinion to either meet the scheduled dates or otherwise keep abreast with the general progress of the Work at the Project and the cost incurred on account of such overtime (including the cost of stand-by trades) shall be borne entirely by the Trade Contractor. Any refusal by the Trade Contractor to commence and perform such overtime work shall constitute a default hereunder.

Section 7.5. Expediting.

(a) Work on procuring and furnishing all materials and equipment required to be furnished by the Trade Contractor shall be started at once so that the Trade Contractor may commence deliveries and start the Work at the Project upon receipt of notice from the Construction Manager. Deliveries of all such materials and equipment to the Project shall be made at such times (including overtime days or hours if necessary) so as to avoid delays to the Project.

(b) The Trade Contractor shall cooperate and direct its suppliers to cooperate in furnishing information to the Owner and Construction Manager regarding deliveries and production and in connection with the expediting of the Project pursuant to this Section.

Section 7.6. Use and Occupancy of Project Prior to Completion.

(a) Occupancy of and use by the Owner of the Project, or parts thereof, or anyone in occupancy under or through the Owner, shall

not be construed as acceptance of the Work and shall not relieve the Trade Contractor from any obligation of performing all of the Work required by the Trade Contract but not completed at the time of occupancy; provided, however, that the Trade Contractor will not be called upon to redo any Work damaged by the Owner or anyone in occupancy under or through the Owner.

(b) Occupancy by or use of the Project, or parts thereof, by the Owner, or anyone in occupancy under or through the Owner, shall not constitute a waiver of claims which Construction Manager may have against the Trade Contractor under this Trade Contract.

Section 7.7. Manpower.

This Trade Contractor shall proceed when and where directed with sufficient labor and manpower to maintain the Project Schedule. The Trade Contractor shall provide adequate manpower to keep up with the progress of the job. If at any time this Trade Contractor falls behind the schedule due to its own fault, Trade Contractor shall immediately commence whatever additional overtime and/ or weekend work required bringing the status of its work back to the schedule approved by the Construction Manager at no additional cost to the Construction Manager. If this Trade Contractor falls behind schedule due to its own fault, the extra costs including premium time costs for the trades to make up such lost time shall be the responsibility of this Trade Contractor.

ARTICLE 8

INSPECTION, TESTING AND CORRECTION OF THE WORK

Section 8.1. Inspection and Correction of the Work.

The Trade Contractor shall provide, both in the shops and at the Site, sufficient safe and proper facilities at all times for the inspection of the Work by the Construction Manager, the Owner, the Architect and the representatives of any lending institution which shall make a

building loan to the Owner, or their authorized representatives. The Trade Contractor shall, within twenty-four hours after receiving written notice from the Construction Manager, at its own cost and expense, proceed to remove from the Site or Project all materials rejected by the Construction Manager, the Owner or the Architect, as not complying with the Contract Documents whether worked or unworked, and to take down all portions of the Work which the Construction Manager, the Owner or the Architect shall, by like written notice, reject as unsound or improper or as in any way failing to conform to the Contract Documents. Work done or materials furnished by the Trade Contractor and not approved by the Construction Manager, the Owner or the Architect will not be accepted. The Trade Contractor shall promptly correct all Work rejected as defective or as failing to conform to the Contract Documents whether observed before or after substantial completion of the Project and whether or not fabricated, installed or completed. The Trade Contractor shall bear all costs of correcting such rejected work, including compensation for the Construction Manager's and the Owner's other consultants' additional services made necessary thereby. The Trade Contractor shall not be relieved from the Trade Contractor's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner or the Architect in their administration of this Trade Contract or by any inspections, tests or approvals required of or performed by others.

Section 8.2. Uncovering of the Work.

(a) If any portion of the Work should be covered contrary to the request of the Architect, Construction Manager or the Owner or the requirements specifically expressed in the Contract Documents, Trade Contractor must, if required in writing by the Construction Manager, uncover such Work for observation and same shall be replaced at the Trade Contractor's sole cost and expense.

(b) If any other portion of the Work has been covered which the Architect, Construction Manager or Owner has not

specifically requested to observe prior to its being covered, either Architect, Owner or Construction Manager may request to see such Work and it shall be uncovered by the Trade Contractor. If such Work is found to be not in accordance with the Contract Documents, the Trade Contractor shall pay such costs arising out of uncovering and repairing the Work in addition to the costs to correct the defective Work.

Section 8.3. Defective Work.

(a) In case the nature of the defect of any particular portion of the Work is such that in the judgment of the Construction Manager, the Owner or the Architect, it is not expedient to have the Work corrected, the Construction Manager shall have the right to deduct such sums of money from the amount due to the Trade Contractor as constitutes a fair and reasonable remuneration for the difference in value of the Work as furnished from that as specified or for the damage to the completed Work.

(b) Should any person or persons at any time assert a claim or institute any action, suit or proceeding against the Owner or Construction Manager involving the manner or sufficiency of the performance of the Work contemplated under this Trade Contract, the Trade Contractor will upon request of the Owner or Construction Manager promptly take over the defense of any such claim, action, suit or proceeding at the sole cost and expense of the Trade Contractor and will also indemnify the Construction Manager and the Owner, all other persons and entities mentioned or referred to as Additional Insureds including those listed in Exhibit C, and save them harmless from and against any and all liability, damages, judgments, costs or expense, including attorney's fees and disbursements, arising out of or in connection with any such claim, action, suit or proceeding.

Section 8.4. Defective Work of Others.

Should the proper, workmanlike and accurate performance of any Work under this

Trade Contract depend in any way upon the proper, workmanlike or accurate performance of any work by another trade contractor on the Project, the Trade Contractor agrees to use all means reasonably necessary to discover any defects in such trade contractor's work, and to report the same in writing to the Construction Manager and Owner before proceeding with its Work which is so dependent and shall allow to the Construction Manager a reasonable time to remedy such defect, it being the intention of the parties hereto that the entire Work on the Project shall be properly performed in a workmanlike manner. Before installation of any material, Trade Contractor shall examine the material to which it is to be applied and shall notify the Construction Manager in writing of all defects which would affect the quality and appearance of the Work. Proceeding with installation shall constitute acceptance of the existing conditions as meeting all requirements for a proper installation.

ARTICLE 9

CHANGES IN THE WORK

Section 9.1. Changes in the Work.

(a) With respect to any changes requested by the Owner, Architect and Construction Manager, the Trade Contractor shall provide a detailed estimate of the cost and schedule impact of such change and shall not proceed with such changes until directed to do so in writing by the Construction Manager as hereinafter provided.

(b) The Trade Contractor shall make no claim for changes in the Work, additional Work or extra Work unless the same shall be done in pursuance of a written order from the Construction Manager as hereinafter provided and notice of all such claims shall be made to the Construction Manager in writing within three (3) working days after the event giving rise to such claim, or such claim shall be considered as abandoned by the Trade Contractor.

(c) Bills for any changes in the Work, additional Work or extra Work shall be rendered at such time and in such form as directed by the Construction Manager. For the purpose of verifying such bills, the Trade Contractor shall upon request produce any and all data to determine the correctness of the charges.

(d) In the event of reimbursable extra Work, for changes in the Work or additional Work performed by the Trade Contractor or any approved lower-tier trade contractor, the Trade Contract Price shall be revised by one of the following methods as determined by the Construction Manager:

(i) by applicable Unit Prices stated in the Contract Documents;

(ii) by a mutually agreeable amount properly substantiated and itemized including the Change Order Overhead and Profit Allowance in the aggregate for overhead and profit for the Trade Contractor or any lower-tier trade contractor performing the work with the Trade Contractor's mark-up on work performed by the lower-tier trade contractor to be 5% in the aggregate for overhead and profit and with the aggregate overhead and profit for Trade Contractor and any lower-tier trade contractor not to exceed 15%;

(iii) by payment of actual reasonable out-of-pocket costs determined on a time and material basis with a mark-up of the Change Order Overhead and Profit Allowance in the aggregate for overhead and profit for the Trade Contractor or any lower-tier trade contractor performing the work with the Trade Contractor's mark-up on work by a lower-tier trade contractor to be 5% in the aggregate for overhead and profit and with the aggregate overhead and profit for Trade Contractor and any lower-tier trade contractor not to exceed 15%; or

(iv) by a mutually agreed to lump sum amount.

(e) The Trade Contractor shall not be entitled to a mark-up upon a lower-tier trade contractor's extra work if such lower-tier trade contractor controls, is controlled by, under common control with, or otherwise affiliated with the Trade Contractor.

(f) The Trade Contractor shall utilize all applicable unit prices when submitting proposals for extra, additional or changed Work and if there are no applicable unit prices Trade Contractor shall use its best efforts in good faith to arrive at an agreeable lump sum amount and failing that shall use its best efforts in good faith to arrive at an agreeable upset price for such Work in the event such Work is performed on a time and material basis.

(g) When there is a dispute as to the value and/or existence of a change, addition, or extra Work, the Trade Contractor shall be required to continue working on the disputed Work and shall be paid on a time and material basis as provided in this paragraph if the Work is an extra, but not if the Work is determined to be a part of this Trade Contract.

(h) When performing Work on a time and material basis, the Trade Contractor, on a daily basis, shall furnish to the representative of the Construction Manager duplicate time sheets, material tickets and slips for other miscellaneous charges, retaining copies of each and securing the signature of the Construction Manager's representative on all time sheets, material tickets and slips for miscellaneous charges. Signed tickets only represent verification of work performed by the Trade Contractor. Signed tickets are subject to all Trade Contract requirements which requirements shall determine which work is extra work to the Trade Contract. All signed documents shall accompany applications for payment.

(i) In the event of changes in the Work which reduce the Scope of the Work hereunder, the Trade Contract Price shall be reduced by an appropriate amount.

(j) Labor rates for all "Time and Material" work shall be calculated on the basis of actual direct labor cost. Indirect costs such as shop costs, trucking, etc. may not be factored into labor rates.

ARTICLE 10

PAYMENTS

Section 10.1. Payments.

(a) Partial payments of the Trade Contract Price shall be paid by the Construction Manager to the Trade Contractor as follows:

Once each calendar month on a date designated by the Construction Manager, the Trade Contractor shall furnish to the Contractor a written requisition on an AIA G702 and G703 form together with supporting affidavits in form and substance satisfactory to the Construction Manager and the Owner for all Work erected in place by the Trade Contractor up to the date of such requisition. If the Architect, Construction Manager and Owner approve the requisition, and all work done by the Trade Contractor theretofore, and all materials erected in place by the Trade Contractor theretofore, and if the Architect, Construction Manager and Owner are satisfied that the Work still to be done and the materials still to be furnished by the Trade Contractor can be completed within the Trade Contract Price, the Construction Manager, upon receipt of the Architect's and Owner's approval of such requisition or so much thereof as they may have found to be correct, and upon receipt from the Owner of the funds necessary to make payment of the amount as approved, shall pay to the Trade Contractor subject to the provisions herein, on or about the 45th day after such requisition was approved, less the Retained Percentage amount, or so much thereof as the Architect, Construction Manager, Owner or Lender may have found to be correct. Before each such payment is required, the Trade Contractor shall give to the Owner, Construction Manager and Lender good and sufficient evidence in a form of the partial lien waiver and release attached hereto as Exhibit K, duly

executed by the Trade Contractor, including obtaining same from Trade Contractor's suppliers and lower-tier trade contractor, that the premises are free from all liens and claims chargeable to the said Trade Contractor. The monthly partial payments hereinabove provided for shall be based upon the percentage complete of the Trade Payment Breakdown furnished by the Trade Contractor and approved by the Owner, Construction Manager and Lender. Such Trade Payment Breakdown shall be furnished within fifteen (15) days after the award of this Trade Contract and is subject to the approval and revision of the Construction Manager at any time. Notwithstanding anything herein to the contrary, Payment by Owner to Construction Manager, for amounts due Trade Contractor, is a condition precedent of the Construction Manager's obligation to pay Trade Contractor but this is not intended to prohibit, hinder or prevent Trade Contractor from pursuing its lien rights against the Owner.

(b) The final payment shall be made by the Construction Manager to the Trade Contractor as follows:

After the Work under this Trade Contract has been completely performed and all as-built drawings have been submitted by the Trade Contractor and accepted by the Construction Manager, the Trade Contractor shall notify the Construction Manager, the Owner and the Architect thereof. Thereafter the Construction Manager, the Owner and the Architect shall have approved all Work done by the Trade Contractor and if the Construction Manager, the Owner and the Architect are satisfied that this Trade Contract has been completely performed and temporary Certificate of Occupancy ("TCO") has been issued for the entire Project, the Construction Manager, upon receipt from the Trade Contractor of the final lien waiver and release attached hereto as Exhibit K duly executed by the Trade Contractor, together with good and sufficient evidence that the premises are free from all liens and claims chargeable to the said Trade Contractor, and upon receipt from the Owner of the funds necessary to make payment of the balance owing, shall pay the balance owing to the Trade

Contractor. If at any time any lien or claim for which, if established, the Construction Manager, Owner or the said premises may be made liable and which would be chargeable to the Trade Contractor, the Construction Manager shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify the Owner, Lender and Construction Manager against any and all costs and expenses arising out of such lien or claim until the same shall be effectively satisfied, discharged or canceled and should there prove to be any such lien or claim after all payments are made, the Trade Contractor shall pay to the Construction Manager or Owner all monies that the Owner or Construction Manager may be compelled to pay in discharging any such lien or claim.

(c) No payment made under this Trade Contract shall be evidence of performance of this Trade Contract either wholly or in part against any claim of the Construction Manager and no payment shall be construed to be an acceptance of any defective Work.

(d) Notwithstanding any provisions in this Trade Contract to the contrary, amounts held back by Construction Manager pursuant to the provisions hereof shall not be released, and progress payments (to the extent provided by law) as well as final payment shall not be made to Trade Contractor unless and until Trade Contractor and all lower-tier trade contractors and suppliers (as requested by Construction Manager) shall duly execute and deliver to Construction Manager written releases of claims and of liens (which releases of lien shall be partial releases as provided by law) in the form attached hereto as Exhibit K. Progress payments shall not be made hereunder unless the requisition is accompanied by such waiver and release of liens in the form attached hereto as Exhibit K.

(e) Each requisition for payment by Trade Contractor, which shall be made on forms provided by the Construction Manager, which shall be acceptable to the Owner, shall constitute a representation by Trade Contractor that (i) the partial payment then requested to be

disbursed has been incurred by Trade Contractor on account of the Work, (ii) the materials, supplies and equipment for which such requisition is being submitted have been installed or incorporated in the Project or have been stored at the Project Site or at such off-Project Site storage locations as shall have been approved in writing by Construction Manager and Owner; provided, however, Owner and Construction Manager shall not be obligated hereby to pay or advance monies for materials stored off-site, unless, at Construction Manager's sole option and discretion, such is approved in advance and in writing by Construction Manager, (iii) the materials, supplies and equipment are insured in accordance with the provisions of this Trade Contract, (iv) to the best of Trade Contractor's knowledge, the materials, supplies and equipment are not subject to any liens or encumbrances, (v) to the best of Trade Contractor's knowledge, no mechanic's, laborer's, vendor's, material man's or other liens have been filed in connection with the Project or any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such requisition has been performed in strict accordance with the Contract Documents and all applicable Legal Requirements, and (vii) the partial payment then requested to be disbursed, together with all sums previously disbursed under prior requisitions, does not exceed that portion of the Trade Contract Price which is allocable to the portion of the Work actually completed up to the date of such requisition and that the remainder of the Trade Contract Price (as the same may have been adjusted hereunder) will be sufficient to pay in full the costs necessary to perform and complete the Work. The Trade Contractor shall execute a payment receipt, in a form provided by Construction Manager, which is acceptable to Owner, at the time of each payment when requested by Construction Manager.

(f) Except to the extent that the Construction Manager has received funds for payment to Trade Contractor, which it has improperly not paid to Trade Contractor, Trade Contractor understands that it shall have a claim

against Construction Manager for payment on account of the Trade Contract Price for the Project, or any other sums that may be due and payable hereunder, only to the extent that this Trade Contractor has fully pursued its lien rights against the Project for which a claim of non-payment is made under the lien law of the State of New York, including a foreclosure action against same (the "Lien Action"), and then only to the extent that, and for the amount that, Trade Contractor's ultimate recovery from the Owner, by virtue of the Lien Action, is less than the proper unpaid amount due this Trade Contractor. The Trade Contractor hereby expressly waives any and all claims with respect to any unpaid sums against Construction Manager under this Trade Contract, unless and until the Lien Action is fully completed. This waiver shall in no way impair Trade Contractor's rights to perfect and foreclose its lien against the Project under the lien law of the State of New York, in the event that it does not receive payment hereunder. Further, this Trade Contractor shall not permit its lower-tier trade contractors or vendors of any sub-tier to place a lien against the Project or improvements thereon.

(g) The Construction Manager, Architect or Owner may decline to approve a requisition for payment in whole or in part or decline to make a payment or may disapprove a previously approved requisition for payment because of evidence of:

- (i) defective Work not remedied;
- (ii) uninsured claims filed;
- (iii) failure of Trade Contractor to make payments to its lower-tier trade contractors or suppliers or employees properly due;
- (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Trade Contract Price;

(v) damage to the Work or other trade contractor's work for which Trade Contractor is responsible;

(vi) reasonable evidence that the Work will not be completed within the required completion time;

(vii) erroneous estimates by Trade Contractor of value of Work performed;

(viii) safety violations by the Trade Contractor or other violations of Legal Requirements;

(ix) other failures of the Trade Contractor to perform in accordance with the Contract Documents; or

(x) failure to meet the requirements of Lender.

Section 10.2. Fixed Price.

The Trade Contract Price shall not be increased on account of escalation or any changes in costs of any materials or labor and/or on account of existing taxes, or any taxes which may be imposed hereafter by Federal, State or City Governments during the life of this Trade Contract.

Section 10.3. Title, Liens and Claims.

Title to all Work, including, without limitation, materials and equipment, shall pass to the Owner upon incorporation of the Work, materials and equipment into the Project or upon payment therefor, whichever shall first occur. Trade Contractor warrants and agrees that all materials and equipment incorporated by it in the Project and all materials and equipment delivered by it at the Site for incorporation in the Project shall be free of any and all liens, claims, chattel mortgages, security interests, encumbrances and conditional sales agreements in favor of Trade Contractor, or any of its lower-tier trade contractors, suppliers, or other persons or entities, of all tiers. Trade Contractor further agrees that any monies it shall receive in payment for Work performed

under this Contract shall be received in trust and used to discharge its financial obligations with respect to the Work. Trade Contractor further agrees that it will not file or cause to be filed any mechanic's lien for materials or equipment furnished or to be furnished and/or for labor performed or to be performed unless default shall first have been made by the Construction Manager in making a payment under this Trade Contract and ten (10) days' prior written notice of such default shall have been given to Construction Manager. Trade Contractor further agrees that if any lower-tier trade contractor or any material man or anyone claiming by or through such lower-tier trade contractor or material man shall file or cause to be filed any lien, the Trade Contractor will, upon notice from the Construction Manager *or the Owner*, cause such lien to be canceled and discharged within ten days from such notice; and in the event of the Trade Contractor's failure to do so, the Construction Manager or Owner shall have the right to cause such lien to be canceled and discharged by bonding or otherwise and in that event any expense so incurred by the Construction Manager or Owner, including the premiums upon any bond furnished for such cancellation and discharge and reasonable attorneys' fees and disbursements, shall be paid by the Trade Contractor or at the option of the Construction Manager shall be deducted from any payment then due or thereafter becoming due from the Construction Manager to the Trade Contractor. In the event of any breach by the Trade Contractor of any of the terms of this Section, the Construction Manager shall have the option to terminate this Trade Contract and the employment of the Trade Contractor. Said right shall be cumulative and shall be in addition to any and all other rights and remedies herein or otherwise by law given to the Construction Manager. Upon receipt of evidence of Trade Contractor's default hereunder with respect to its obligations to make payments to its lower-tier trade contractor and suppliers, the Construction Manager reserves the right to, after five (5) business days' prior written notice, retain any money due the Trade Contractor and pay directly for labor, materials, equipment, tools, plant, facilities, services and all other obligations of the Trade Contractor and to deduct the

amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Trade Contractor.

ARTICLE 11

SAFETY AND PROTECTION OF PERSONS AND PROPERTY

Section 11.1. Protection of Persons and Property.

(a) The Trade Contractor shall comply with all applicable terms and conditions of the Project Safety Program as same may be amended from time to time.

(b) The Trade Contractor shall protect its Work and materials by standard industry methods so that same will not be marred by the work or workers of other trades during installation and until final acceptance of the Work. Trade Contractor shall have full responsibility to install, protect and maintain all materials in proper condition and forthwith repair, replace and make good any damage thereto until final acceptance of the Work hereunder. The Trade Contractor shall also temporarily protect any permanently installed work that may be damaged during installation of Trade Contractor's Work hereunder. The Construction Manager and Owner will not in any manner be answerable or accountable for any loss or damage that shall or may happen to the Work or any part or parts thereof respectively or for any of the materials or other things used and employed in finishing and completing the Work, or for injury to any person or persons, either workers or the public, or for damage to property.

(c) Trade Contractor further agrees that it will, during the performance of the Work, take proper precautions to prevent injury or damages to persons or property, including without limitation providing, erecting and maintaining all reasonable, necessary or required safety devices for its employees and flagmen, erecting proper barricades and other safeguards around its Work and posting danger signs and other warning devices where warranted by the nature of the existing condition

of the Work. In any event, the Trade Contractor shall promptly and properly replace any safety devices provided by others or the Trade Contractor and which are disturbed by the Trade Contractor's operations or forces hereunder.

(d) Trade Contractor shall take all necessary steps to protect and secure its Work, materials, tools, scaffolding, equipment, buildings, trailers and work shacks from vandalism, theft and fire damage and the Owner and the Construction Manager shall not be responsible for losses or damages to such items.

(e) Trade Contractor assumes the risk of loss or damage, direct or indirect of whatever nature, to the Work or to any materials and equipment furnished, used, installed or received by Owner or Construction Manager, material men or workmen in preparation for and in performing services or furnishing materials and equipment for the Work. The Trade Contractor shall bear such risk of loss or damage until final acceptance of the Work by the Owner hereunder or until completion or removal of such materials from the site whichever event occurs last. Notwithstanding the status of any actual or potential recovery or claim under any insurance policy, in the event of any loss or damage to the Work, Trade Contractor shall immediately repair, replace or make good any such loss or damage.

(f) Trade Contractor shall be responsible for compliance with all Federal, State and local safety, traffic, highway, fire, health and environmental protection laws, rules and regulations including, but not limited to, the Construction Safety Act of 1969, The Williams-Steiger Occupational Safety and Health Act of 1970, the City of New York Noise Control Code and the Administrative Code of the City of New York, all as amended from time to time, and all standards, rules and regulations which have been or shall be promulgated by the parties or agencies which administer the aforesaid laws. The Trade Contractor, at its sole cost and expense, shall indemnify and hold harmless the Construction Manager, Owner, all other persons and entities mentioned or referred to as

Additional Insureds referenced herein, including in Exhibit C hereof, the Architect and its consultants from and against any and all costs, expenses and liabilities incurred by the aforesaid parties including, but not limited to, fines, penalties, attorneys' fees and expenses, work stoppages and corrective measures that may result from acts of commission or omission by the Trade Contractor, its lower-tier trade contractors, material men, agents, employees, and assigns in failing to comply with the aforesaid laws, rules and regulations or the other safety requirements set forth herein. The amount of such costs, expenses and liabilities shall be charged to this Trade Contractor's account.

(g) Trade Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the performance of its Work hereunder. The Trade Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to: (i) all Trade Contractor's employees on the Project and all other persons on or near the Project Site who may be affected by the Trade Contractor's operations; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off-site, under the care, custody or control of the Trade Contractor or any of the Trade Contractor's lower-tier trade contractors; (iii) other property at the Site or adjacent thereto; and (iv) the Work of the Construction Manager or other separate lower-tier trade contractors. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, Trade Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel and in accordance with all applicable Legal Requirements. Trade Contractor shall promptly remedy all damage or loss to any property referred to herein caused in whole or in part by the Trade Contractor, any of its lower-tier trade contractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and for which the Trade Contractor is responsible hereunder except damage or loss attributable to

the acts or omissions of the Construction Manager, the Architect, the Owner or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable and not attributable to the fault or negligence of the Trade Contractor. The foregoing obligation is in addition to the Trade Contractor's indemnification obligations set forth elsewhere herein.

(h) The Trade Contractor shall designate a responsible member of the Trade Contractor's organization at the Site (the "Trade Contractor's Project Safety Representative") whose duties shall be the prevention of accidents, enforcement of all Federal, State and City safety and health related laws, rules, regulations, orders and codes, compliance with the Trade Contractor's Site Safety Program and the Project Safety Program and who shall further be responsible for monitoring the Trade Contractor's compliance with the site safety requirements of the Department of Buildings of the City of New York including, without limitation, compliance with Chapter 26, Article 1900 (recodified effective as of September 1, 1987 as Title 27, Chapter 1, Subchapter 19) of the Administrative Code of the City of New York. This person, unless Construction Manager is notified otherwise by the Trade Contractor, shall be the Trade Contractor's most senior supervisor at the Site.

(i) The Trade Contractor shall not load or permit any part of the Work or the Project to be loaded so as to endanger its safety. The Project is designed to support the loads of the finished Project only. No provision is included for stresses or loads imposed by construction operations.

(j) In an emergency affecting the safety of persons or property, the Trade Contractor shall act, at the Trade Contractor's discretion, to prevent threatened damage, injury or loss.

(k) Trade Contractor shall be responsible for seeing that its suppliers and lower-tier trade contractors of all tiers comply with the requirements of this Article 11.

(l) The Construction Manager reserves the right to assess penalties against the Trade Contractor in the event of its persistent failure to comply with the requirements of this Article 11 or the documents or matters referred to herein.

(m) The Trade Contractor shall immediately notify Construction Manager's personnel on Site, as designated, of any accident resulting in bodily injury to its employees or other persons or damage to any property regardless of cause or extent of bodily injury or damage to property. Trade Contractor shall upon initial notification of any accidents, additionally and promptly furnish to Construction Manager a copy of the "Supervisor's Accident Report" and a copy of the "Employees First Report of Injury" or its equivalent.

ARTICLE 12

INDEMNITY AND INSURANCE REQUIREMENTS

Section 12.1. Insurance Requirements.

(a) Trade Contractor agrees to carry insurance, which shall be primary to all other insurance, for its own account and all Additional Insureds as listed in Exhibit C hereto, as set forth on Exhibit C, of sufficient amount to cover any loss or damage that may arise on account of injuries or death happening to its employees, or to any other person, or to any property caused by or in connection with the operations of the Trade Contractor under this Trade Contract, but in any event with the minimum limits of liability set forth in Section 12.1(f) hereinafter. All deductibles or self-insured retention on any policies of insurance required to be supplied by the Trade Contractor, including but not limited to commercial general liability, automobile, and excess, shall be the sole responsibility of the Trade Contractor, and shall not exceed \$10,000 without Construction Manager's prior written approval.

(b) Trade Contractor shall not commence Work under this Trade Contract until it has obtained all of the insurance referred to

herein and such insurance has been approved by the Owner and Construction Manager, nor shall the Trade Contractor allow any lower-tier trade contractor to commence Work until the insurance required of the Trade Contractor herein has been so obtained and approved.

(c) Trade Contractor further agrees to deliver to the Construction Manager (Attention **A. Rinaldi**) before commencing any Work hereunder a Certificate of Insurance, in a form satisfactory to the Construction Manager, showing the name of the insurance company, the date of expiration of the policies, the various endorsements and coverages required herein, the additional insureds required herein, and the limits of liability thereunder, and which endorsement shall recite that thirty (30) days prior written notice will be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight courier service to the Construction Manager (Attention: **A. Rinaldi**) and Owner should such policies be canceled or changed during their term.

(d) Upon commencement of Work, the Trade Contractor shall furnish to **The Rinaldi Group**, (Attention: A. Rinaldi) within thirty (30) days of the execution of this Trade Contract, an executed endorsement to the commercial general liability insurance policy (the "Endorsement") (form attached hereto), evidencing that the Owner, Construction Manager and the parties listed on Exhibit C are additional insureds.

(e) All insurance required to be maintained must be procured from insurance companies authorized to do business in the State where the Project is located and approved by Construction Manager and Owner. All policies required hereunder must contain a waiver of subrogation in favor of the Construction Manager, the Owner, and parties required to be Additional insured's by this Trade Contract, including those listed in Exhibit C.

If Trade Contractor fails to procure, maintain, and/or participate in the insurance requirements set forth in this Article until completion of the Work, Construction Manager or Owner shall

have the right but not the obligation to procure and maintain insurance for and in the name of the Trade Contractor and the Trade Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance or at Construction Manager's option. Construction Manager may offset the cost incurred by Construction Manager against amounts otherwise payable to Trade Contractor hereunder.

(f) The kinds of insurance and limits of liability required of the Trade Contractor shall be:

	<u>Kind</u>	<u>Limits</u>
1.	New York Worker's Compensation Disability Benefits Insurance	Statutory
2.	Employer's Liability	Statutory

<u>Kind</u>	<u>Limits</u>
3. Commercial General Liability Insurance ("CGL") on an occurrence basis with Contractual Liability, Independent Contractors, Products, Products Liability, Personal Injury, Broad Form Property and Completed Operations Endorsements and XCU Endorsement where applicable by the nature of the work	\$5,000,000/ 5,000,000 Bodily Injury Liability/ Property Damage Liability or \$5,000,000 Combined Single Limit except for Trade Contractors in the electrical, structural steel, concrete foundation, concrete, and external work trades, in which event the limits shall be \$10,000,000 To apply per project
4. Automobile Liability Insurance on an occurrence basis including all owned, non-owned and hired automobiles	\$1,000,000 Combined Single Limit each occurrence, Bodily Injury Liability and Property Damage Liability To apply per project

(g) If the commercial general liability insurance policy is renewed at any time that this Trade Contract is in effect, the Trade

Contractor shall furnish to Construction Manager, within thirty (30) days of the commencement of each renewal period, a copy of the Endorsement evidencing such renewal and that the Owner, the Construction Manager and the parties listed on Exhibit C are additional insureds.

(h) Compliance with the foregoing requirements with respect to insurance shall not relieve the Trade Contractor from any liability under the indemnity provisions of this Trade Contract.

(i) At any time that this Trade Contract is in effect, if the identity of the general liability insurance carrier changes, the Trade Contractor is to provide written notification to **The Rinaldi Group** within thirty (30) days of the change, and provide a copy of the Endorsement in accordance with (a) above.

(j) If the Construction Manager and Owner consent to any lower-tier trade contract, each lower-tier trade contractor shall be required to:

(i) comply with the requirements of this Article 12;

(ii) maintain the same forms of liability insurance referred to above; and

(iii) include in its lower-tier contract the indemnification provisions as set forth in Section 12.2 of this Article indemnifying the indemnities under this Trade Contract.

(k) The Trade Contractor is responsible for insuring material and equipment that is to be or may be a permanent part of the completed Project until such time as such materials or equipment are incorporated into the Project. The Trade Contractor is solely responsible for the Trade Contractor's temporary structures, or its materials, supplies, tools or equipment, or any other property not destined to become a permanent part of the completed Project, whether owned or rented, or Trade Contractor's materials and equipment while

stored at off-Project Site storage location or while in transit to the Project Site, and shall make Construction Manager and Owner additional insureds and loss payee in connection with any material stored at the off-site location by the Trade Contractor, especially if such material has been pre-paid.

(l) If any of the Contract Documents require the Trade Contractor to procure or provide the services of a licensed design professional (for shop drawings or for any other reason), Trade Contractor shall ensure that its design professional carries industry standard professional liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Trade Contractor shall submit a Certificate of such insurance, in a form acceptable to the Construction Manager and the Owner, together with any applicable shop drawing or other submission required of the Trade Contractor; lack of such a Certificate shall alone be sufficient cause for the rejection of any such submission.

Section 12.2. Indemnity Requirements.

The Trade Contractor shall, to the fullest extent permitted by law and at its own cost and expense, indemnify and defend the Construction Manager, the Architect, the Owner, all other persons and entities mentioned or referred to as Additional Insureds in Exhibit C hereof, their directors, officers, partners, agents and employees (the "Indemnitees"), and save them harmless from and against any and all claims, damages, losses, liabilities, suits, judgments, actions and all expenses (including attorneys fees' and disbursements) arising out of any act, error or omission or breach of the Trade Contract or infringement of any patent right by the Trade Contractor or any of its lower-tier trade contractors or suppliers of any tier in connection with the performance of the Work hereunder or otherwise arising out of, in connection with or as a consequence of the performance of the Work hereunder; provided that nothing herein shall require the Trade Contractor to indemnify or hold harmless an Indemnitee hereunder to the extent such claim is caused by the negligence of such Indemnitees.

The foregoing indemnity shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist in favor of any Indemnitees hereunder. The foregoing indemnity shall include bodily, without limitation, injury and death of any employee of the Trade Contractor and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any applicable workers compensation, disability benefits or other similar employee benefits acts. Trade Contractor further agrees that so much of the monies due under or to become due under this Trade Contract as may be considered necessary by the Construction Manager may be retained by the Construction Manager until all such suits, claims, actions or proceedings for damages as aforesaid shall have been settled or determined, unless Trade Contractor presents evidence satisfactory to the Construction Manager that Trade Contractor has provided a defense and indemnity for and on behalf of Construction Manager and all other additional insureds as listed on Trade Contractor's policy for its work at the Project, and shall also have provided proof of adequate insurance for same covering the Construction Manager and the other Indemnitees as additional insureds.

ARTICLE 13

SHOP DRAWINGS AND SAMPLES

Section 13.1. General Requirements.

(a) The Trade Contractor shall review, approve and submit to the Construction Manager PROMPTLY IN ACCORDANCE WITH AGREED SCHEDULES FOR SUBMISSIONS AND IN SUCH SEQUENCE AS TO CAUSE NO DELAY IN THE WORK of the Trade Contractor, the Construction Manager or of any separate trade contractor, all Shop Drawings, Coordination Drawings, Product Data and Samples required by the Contract Documents at its sole cost and expense. No extensions of time will be granted to Trade Contractor because of Trade Contractor's failure to have Shop Drawings, Product Data and Samples submitted in ample time to allow for processing.

(b) By approving and submitting Shop Drawings, Coordination Drawings, Product Data and Samples, the Trade Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto and that it has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents and with the requirements of other sections or trades related thereto as may be required for the proper and complete installation of the Work.

(c) The Construction Manager will forward Shop Drawings, Coordination Drawings, Product Data and Samples to the Architect. If the Construction Manager finds such submittals not to be complete or in proper form, it may return them to the Trade Contractor for immediate correction or completion and Trade Contractor hereby agrees to immediately correct or complete same, as the case may be, and resubmit same to the Construction Manager. Any delays resulting from such incomplete or incorrect submissions shall be the responsibility of the Trade Contractor and such submissions shall only be deemed submitted for purposes of satisfying Trade Contractor's obligations hereunder with respect thereto when they are submitted in correct, complete and proper form.

(d) The Trade Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Construction Manager's forwarding Shop Drawings, Coordination Drawings, Product Data or Samples to the Architect, or by the Architect's approval thereof unless the Trade Contractor has given written notice of such deviation to the Architect and Construction Manager at the time of submission and the Architect has given written approval to the specific deviation. The Trade Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Coordination Drawings, Product Data or Samples by the Construction Manager's forwarding of same materials to the Architect or the Architect's approval thereof.

(e) The Trade Contractor shall direct specific attention, in a manner satisfactory to the Architect, on all resubmitted Shop Drawings, Coordination Drawings, Product Data or Samples, to any and all revisions and shall highlight, in particular, in a manner satisfactory to the Architect, any revision other than those requested by the Architect or Construction Manager.

(f) No portion of the Work requiring submission of a Shop Drawing, Coordination Drawings, Product Data or Sample shall be commenced until the submittal has been approved in writing by the Architect. All such portions of the Work shall be performed strictly in accordance with approved submittals.

(g) The Trade Contractor shall prepare composite Shop Drawings (a/k/a Coordination Drawings), and installation layouts, when required, to depict proposed solutions for tight field conditions. These composite Shop Drawings and field installation layouts shall be coordinated in the field by the Trade Contractor and its lower-tier trade contractors for proper relationship to the work of all other trades, based on field conditions.

(h) The Architect will review Shop Drawings, Coordination Drawings, Product Data and Samples with reasonable promptness and will return them to the Construction Manager with the Architect's stamp applied thereto. If Architect notates such Shop Drawings, Product Data and Samples and if Trade Contractor asserts that such notations by the Architect shall increase the Trade Contract Price or time of completion, Trade Contractor shall provide written notice of such to the Architect and Construction Manager before proceeding with the Work.

(i) The Trade Contractor shall furnish detailed Shop Drawings and Coordination Drawings or other design drawings for the Work to the Construction Manager for the approval by the Architect prior to their use in the Work and shall process and return ("turn around") coordination drawings within 48 hours after receipt. Approval of any design drawing or

manufacturer's drawing by the Architect shall not relieve Trade Contractor of any responsibility for (i) execution of the Work in strict accordance with the requirements of the Contract Documents or (ii) the manner in which the Work performs when completed.

(j) The Architect shall furnish to the Trade Contractor from time to time such further drawings or explanations as may be necessary to detail and illustrate the Work, and the Trade Contractor shall conform to the same as part of this Trade Contract without additional cost. All Shop Drawings, Submittals, Samples and Product Data are and will remain the property of the Owner. Trade Contractor shall exercise the utmost diligence to obtain in a timely manner all drawings and other information necessary to fulfill the Work, and if at any time drawings and/or information have not been furnished which are necessary for the completion of the Work, the Trade Contractor shall, from time to time and at frequent intervals, inform the Construction Manager in writing as to what drawings or information may still be required to complete the Work within the time hereinafter specified and the sequence in which such drawings or other information shall be required.

Section 13.2. Shop Drawing Requirements.

(a) General Requirements: Shop Drawings shall show design, materials (kind, thickness and finish), dimensions, assembly, attachments, connections, and other details necessary to insure that they accurately interpret Contract Drawings and Specifications and also show adjoining work in such detail as required to provide proper connection with same. Shop Drawings shall be numbered consecutively and insofar as possible shall be uniform in size.

(b) Identification: All Shop Drawings shall be identified with the name of the Project, building or buildings for which the Shop Drawings are being submitted. The Architect's name and Project Number, Owner's name, Construction Manager's name, date of submittal, drawing number, revision number and date of each revision, if any, as well as the Specification Section under which the work is to be performed

and the Drawing and detail numbers that relate to the Shop Drawings shall be identified on all Shop Drawings.

(c) Transmittals: All Shop Drawings, cuts and brochures shall be accompanied by a letter of transmittal from the Trade Contractor setting forth the same identification as required above. Trade Contractor shall number transmittals consecutively and shall indicate the Submittal Procedure number being followed. Transmittal shall also indicate if Shop Drawing is resubmitted and note Architect's file number for original submittal.

(d) Submittal Procedures: The Trade Contractor shall submit Shop Drawings in accordance with Submittal Procedures and as set forth in the Specifications, with the number of copies and in the form as required by the Construction Manager.

(e) Architect's Distribution & Stamp: Following the Architect's review of each Shop Drawing submission, the Architect and/or his Consultants will retain one black and white print each, and return the reviewed reproducible print and one black and white print to the Construction Manager with the Architect's stamp and signature affixed thereto, annotated as follows:

(1) "APPROVED" means approved for construction, fabrication and/or manufacture subject to the provision that the Work shall be in accordance with the requirements of the Contract Documents. Final acceptance of the Work shall be contingent upon such compliance.

(2) "APPROVED AS NOTED" means, unless otherwise noted on the drawings, approved for construction, fabrication and/or manufacture subject to the provision that the Work shall be carried out in compliance with all annotations and/or corrections indicated on the reproducible print and in accordance with the requirements of the Contract Documents. Final acceptance of the Work shall be contingent upon such compliance. If also marked

"RESUBMIT", the Trade Contractor may proceed with construction, fabrication and/or manufacture under the same conditions as stated above, however, the Trade Contractor must submit the shop drawing with required revisions and corrections to certify that all notes and annotations are being complied with as specified.

(3) "DISAPPROVED"

means that major deviations from the requirements of the Contract Documents exist in the submittal. No work based on such drawings shall be constructed, fabricated or manufactured. Trade Contractor shall revise the drawing in compliance with Architect's annotations and pursuant to all requirements of the Contract Documents and shall resubmit the drawings to Architect for approval (with a copy to Construction Manager).

(f) Trade Contractor's Distribution:

The Trade Contractor shall obtain and provide such number of prints as determined by the Trade Contractor for his field distribution. Trade Contractor shall have copies of all Shop Drawings at the Project Site at all times and shall make them available to the Architect's representatives. Shop Drawings marked "DISAPPROVED" shall not be kept at the Project Site.

(g) Cost of Submittal and

Distribution: All charges in connection with the delivery of Shop Drawings to the Construction Manager's office or where directed by the Construction Manager shall be paid by the Trade Contractor.

Section 13.3. Sample Requirements.

(a) General Requirements: Where possible, all samples required for a particular Specification Section shall be submitted together. Trade Contractor shall furnish, for the approval of the Architect, all such samples as he may require from time to time and all workmanship, materials, and equipment furnished hereunder shall be in strict accordance with said approved samples. Samples shall be submitted from the same source which will

supply the actual job. Samples shall be of adequate size to show quality, type, color, range, finish, texture and other specified characteristics. Samples of materials or products which are normally furnished in containers or packages, which bear descriptive labels and/or application or installation instructions, shall be submitted with such labels and/or instructions.

(b) Identification: All samples shall be labeled, tagged or otherwise clearly identified. Labels or tags shall set forth the name of the Project, building or buildings for which the Sample is being submitted, Architect, Construction Manager, Trade Contractor and/or supplier, the name of the manufacturers, fabricator, or processor, the trade designation, grade and quality of the material or product, the date of submittal, and specific identification of each sample and a precise reference to the Specification Section, Article and Paragraph wherein the material, product, or element of the Work is specified. Each label or tag shall have sufficient clear space to permit the application of the review stamps of the Construction Manager and the Architect.

(c) Transmittals: All Samples shall be accompanied by a letter of transmittal from the Trade Contractor setting forth the same identification information as required above. Trade Contractor shall number transmittals consecutively in sequence with the Shop Drawing transmittals. Where appropriate, test data and/or manufacturers' certificates shall be referenced in and forwarded with the letter of transmittal. Samples without accompanying certificates or test data will be returned without action.

(d) Submittal Procedure: The Trade Contractor shall submit the number of samples as directed by the Construction Manager.

(e) Architect's Distribution & Stamp: Following the Architect's review of each Sample submission, the Architect will return two of each set of samples to the Construction Manager with the Architect's stamp and signature affixed

thereto and annotated in a manner similar to Shop Drawings.

(f) Trade Contractor's Distribution: When Samples are returned, the Trade Contractor shall retain such Samples in a suitable place at the Project Site for use by the Trade Contractor, its lower-tier trade contractors, the Architect and his authorized representatives to insure that all Work is being installed in accordance with approved Samples. The remaining approved Samples will be retained by the Architect. Samples marked "DISAPPROVED" shall not be kept at the Site.

(g) Cost of Submittal and Distribution: All charges in connection with the delivery of Samples to the Construction Manager's office or where directed by the Construction Manager shall be paid by the Trade Contractor.

ARTICLE 14

SUBCONTRACTING AND ASSIGNMENTS

Section 14.1. Assignment or Subletting.

(a) The Trade Contractor shall not sublet, assign or transfer this Trade Contract or any part thereof or any interest therein or trade contract any part of the Work called for by this Contract or permit the further sub-subcontracting of any part thereof without prior written approval of the Construction Manager. The Trade Contractor shall not subcontract any portion of the Work to any proposed lower-tier trade contractor to whom Owner or Construction Manager have objection. Every such lower-tier trade contract shall require the lower-tier trade contractor to be bound by and to comply with all the Contract Documents and Trade Contractor shall cause its lower-tier trade contractors to comply with all the Contract Documents. Notwithstanding the fact that the Construction Manager and the Owner may approve a lower-tier trade contractor hereunder, such approval shall in no way be construed as creating any contractual relationship between the Construction Manager or the Owner and such lower-tier trade contractor nor relieve the Trade

Contractor of its obligations for the performance of the work covered by such subcontract. Any assignment by the Trade Contractor, including but not limited to the assignment of its right to receive payment under this contract, without the express written consent of the Construction Manager shall be deemed null and void.

(b) The Trade Contractor shall be responsible for the acts, omissions, work, materials and equipment of the Trade Contractor's employees, lower-tier trade contractors and suppliers and their agents and employees and any other persons directly or indirectly employed by any of them.

(c) Neither the Owner nor the Construction Manager shall have any obligation to pay or to see that payment of any monies is made to any lower-tier trade contractor except as may otherwise be required by applicable law. The foregoing shall not, however, prevent the Owner or the Construction Manager from making payment to a lower-tier trade contractor of the Trade Contractor pursuant to the provisions hereof.

(d) The Trade Contractor hereby agrees to include the following provision in every agreement and/or purchase order relating to the purchase by the Trade Contractor of materials, merchandise, goods or products to be installed and made a part of the improvement of premises hereunder:

(i) The supplier expressly agrees that the Construction Manager and the Owner shall be third-party beneficiaries of all of the obligations of the supplier hereunder, including without limitation, the beneficiary of all warranties, expressed or implied, which the supplier makes hereunder relating to materials, equipment, goods, merchandise or products ("Materials") to be sold hereunder by the supplier. Nothing herein shall be construed to make this an agreement between the Construction Manager and Owner or the supplier except to the extent provided in the immediately preceding sentence and the supplier acknowledges that it has no Contractual

rights, expressed or implied, that it can assert against the Construction Manager or the Owner.

(ii) Without limiting in any manner any obligations of the supplier with respect to the quality of the Materials, the supplier expressly warrants and agrees that the Materials to be furnished hereunder shall be merchantable and shall be fit for the purpose for which such Materials are purchased.

(e) The Trade Contractor agrees to include in each subcontract for any work hereunder a requirement that such lower-tier trade contractor include in every agreement and/or purchase order relating to the purchase of materials, equipment, merchandise, goods or products to be installed hereunder language similar to that set forth in paragraphs d(i) and d(ii) above.

ARTICLE 15

DEFAULT AND TERMINATION

Section 15.1. Construction Manager's Right to Stop the Work and Perform the Work in the Event Of Default.

(a) In the event of Trade Contractor's default hereunder by its performance of defective work and/or its failure to perform any task required hereunder, the Construction Manager may, without prejudice to any other remedy the Construction Manager may have, upon forty-eight (48) hours prior written notice to the Trade Contractor, but shall not be obligated to, perform or cause to be performed such task and charge the Trade Contractor all cost and expenses incurred by the Construction Manager or Owner or Architect in connection therewith. In such case, an appropriate change order shall be issued deducting from the payment then or thereafter due to the Trade Contractor all cost and expense incurred by the Construction Manager or Owner or Architect in correcting such deficiencies and/or performing such task, including compensation for the Architect and its consultants and the Owner's other consultants for additional services made necessary by such

default, neglect or failure. If the payments then or thereafter due to the Trade Contractor are not sufficient to cover such amounts, the Trade Contractor shall pay the difference to the Construction Manager.

(b) If the Trade Contractor fails to correct defective Work as required elsewhere hereunder or persistently fails to carry out the Work in accordance with the Contract Documents, the Construction Manager, by a written order signed by the Construction Manager or its agent, may order the Trade Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Construction Manager to stop the Work shall not give rise to any duty on the part of the Construction Manager or its agents to exercise this right for the benefit of the Trade Contractor or any other person or entity.

Section 15.2. Failure to Perform.

(a) Should the Trade Contractor be adjudged bankrupt, or make a general assignment for the benefit of creditors, or should a petition under the Bankruptcy Act or under any other act relating to insolvency be filed by or against the Trade Contractor, or should a receiver be appointed on account of its insolvency, or should Trade Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or of materials of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence or fail in the performance of any of the obligations on its part herein contained, the Construction Manager may, if the Trade Contractor fails to cure such default within three (3) days after receipt of written notice from the Construction Manager, in addition to any other rights provided hereunder or otherwise by law, stop the Work and/or discontinue the employment of the Trade Contractor hereunder and cause the Work to be performed and completed and deduct the cost thereof from any money due or thereafter to become due to the Trade Contractor for the said Work, and enter upon the premises and take possession of all materials, tools and equipment of every kind

whatsoever thereon, and employ any other person or persons to finish the Work, and to provide the materials therefor; and in case of discontinuance of the employment of the Trade Contractor, it shall not be entitled to receive any further payment under this Contract and, if the expenses incurred by the Construction Manager in finishing the Work shall exceed the unpaid balance of the amount to be paid under this Trade Contract, the Trade Contractor shall pay the difference to the Construction Manager. Upon the discontinuance of the Trade Contractor's employment hereunder, Construction Manager may engage Trade Contractor's lower-tier trade contractors and suppliers to complete the Work.

(b) Trade Contractor shall be responsible for all direct and consequential damages arising from Trade Contractor's breach of this Trade Contract, including costs associated with any defects in Trade Contractor's Work.

Section 15.3. Termination Without Cause.

The Construction Manager may terminate this Trade Contract at any time, even though the Trade Contractor is not in default hereunder upon five (5) days prior written notice from the Construction Manager. In such event, the Construction Manager shall pay to or for the account of the Trade Contractor on account of the Work performed prior to the effective date of such termination (1) all actual costs approved by the Construction Manager as having been paid or incurred by the Trade Contractor in connection with performance of the Work; (2) all costs incurred with the Construction Manager's prior written approval in settling or discharging commitments entered into in good faith by the Trade Contractor in connection with performance of the Work; and (3) a reasonable amount to cover general overhead expenses of the Trade Contractor incurred in connection with the performance of the Work and which are not covered by payments under Items (1) and (2) above not to exceed 10%; and (4) an amount equal to 5% of the total of Items (1), (2) and (3) above in lieu of all profits which the Trade Contractor would or might have realized if this

Contract had been completely performed; provided that the workmanship, materials and equipment for which payment is to be made as aforesaid are in accordance with the requirements of this Contract. Under no circumstances shall Trade Contractor be entitled to receive any profit or overhead on the Work not performed, or any termination fee as a result of such termination. There shall be deducted from the amount determined above all payments previously made and all amounts which the Construction Manager is entitled to charge the Trade Contractor under this Trade Contract. In no event shall the amount to be paid to, or for the account of, the Trade Contractor pursuant to this Section plus all amounts previously paid the Trade Contractor under this Trade Contract exceed the Trade Contract Price or percentage earned, as adjusted.

ARTICLE 16

WARRANTIES AND GUARANTEE

Section 16.1. Warranties.

The Trade Contractor warrants to the Construction Manager that all materials and equipment furnished under this Trade Contract will be new unless otherwise specified and that all Work will be of first-class quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to those requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Construction Manager, Architect or the Owner, the Trade Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment supplied hereunder. This warranty is not limited by the provisions of Section 16.2.

Section 16.2. Guarantee.

(a) If, within one year after the date of Final Completion of the entire Project or within such longer period of time as may be prescribed by the terms of any applicable warranty required by the Contract Documents, whichever shall be the longer, any of the Work is found to be

defective or not in accordance with the Contract Documents, the Trade Contractor shall correct it promptly after receipt of a written notice from the Construction Manager or the Owner to do so (unless the Owner has previously given the Trade Contractor a written acceptance of such particular defective or improper workmanship or material), and the Trade Contractor will further repair any Work or damages as a result of said defective or improper workmanship or material, or damage in connection with the repair of same. This obligation shall survive both final payment for the Work or designated portion thereof and termination of the Trade Contract.

(b) The warranties and guarantees provided under the Contract Documents shall be for the benefit of and enforceable by the Construction Manager and the Owner of the Project and its successors and assigns.

(c) The Trade Contractor shall obtain and deliver to Construction Manager and the Owner any specific warranties given by its lower-tier trade contractors or suppliers which shall expressly provide that they are for the benefit of and enforceable by the Owner, Construction Manager as well as Trade Contractor. The Trade Contractor also agrees to furnish Construction Manager and the Owner with all operating manuals for all equipment.

(d) If the Owner or Construction Manager shall perform or arrange for the performance of corrective work required to be performed by Trade Contractor but which Trade Contractor has failed or refused to perform, upon due notice, the Trade Contractor's warranties and guarantee hereunder shall not be affected in any manner, and Trade Contractor hereby expressly waives all claims that its warranties or guarantee were impaired due to the corrective work performed by, or at the direction of, the Owner or Construction Manager.

(e) The warranties and guarantee provided for in the Contract Documents are in addition to and not a limitation of any rights the Construction Manager or Owner may have under the terms of the Contract Documents,

including without limitation breach of Contract or as otherwise provided by law.

ARTICLE 17

CONSTRUCTION MANAGER'S RIGHT TO PERFORM WORK AND AWARD SEPARATE CONTRACTS

Section 17.1. Construction Manager's Right to Perform Work and Award Separate Contracts.

The Construction Manager reserves the right to perform Work related to the Project with the Construction Manager's own forces and to award separate Trade Contracts in connection with other portions of the Project or other work on the Site under these or similar conditions whether or not similar to the type of work called for under this Trade Contract.

ARTICLE 18

ADDITIONAL PROVISIONS

Section 18.1. Notices.

All notices hereunder shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, or sent by a nationally recognized overnight courier service, at the addresses set forth on the first page of this Trade Contract.

Section 18.2. Signs and Confidentially and Media Communications.

The Trade Contractor further agrees not to display on or about the premises any sign, trademark or other advertisement, and to remove everything of an advertising nature when so directed by the Construction Manager or Owner. Trade Contractor shall treat all information relating to the Project and all information supplied to it by Construction Manager, Owner, Architect or any other person or entity as confidential and proprietary information and shall not permit its release to other parties or make any public announcement or publicity releases without written permission from Construction Manager. Trade Contractor

shall also require all lower-tier trade contractors and vendors to comply with this requirement.

Section 18.3. Binding Effect.

This Trade Contract shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and permitted assigns.

Section 18.4. Legal Forum.

Any dispute or claim arising out of this Trade Contract, or from a breach of this Trade Contract, and which is not resolved by the terms and provisions of this Trade Contract or the Prime Contract, shall be submitted to the Supreme Court of the State of New York, County of New York. Trade Contractor (i) irrevocably submits to the non-exclusive jurisdiction of the courts of the County of New York in the State of New York, and appellate courts from any thereof; and (ii) irrevocably waives any objection that it may have at any time to the laying of venue of any suit, action, or proceeding arising out of or relating to this Trade Contract brought in any such court, and irrevocably waives any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. This Trade Contract is entered into pursuant to the laws of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

The Trade Contractor agrees to participate in, join in, and be bound by any proceeding, be it Judicial, Administrative, Arbitration or other (including in accordance with the Prime Contract) that directly or indirectly relates to this Trade Contract or the Project and for which the Construction Manager demands, by written notice, that Trade Contractor participate. Any claim or action by the Trade Contractor must be commenced within two years of the date the cause of action accrued, but in no event later than one year after Substantial Completion of the entire Project. If any claim or dispute arises relating to this Trade Contract, the Trade Contractor shall immediately

make all of its books and records available to the Construction Manager for review and audit for a period of not less than six years after final payment, or for such longer period as may be required by law.

Section 18.5. Severability.

If any provision of the Contract Documents is invalid or unenforceable as against any person or party, the remainder of the Contract Documents and the applicability of such provision to other persons or parties shall not be affected thereby. Each provision of the Contract Documents shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by law.

Section 18.6. Rights and Remedies.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available under applicable law.

Section 18.7. No Waiver.

No action or failure to act by the Construction Manager, the Architect or the Owner shall constitute a waiver of any right or duty afforded any of them under the Trade Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed to in writing.

Section 18.8. Survival.

The obligations of the Trade Contractor hereunder, including without limitation obligations concerning indemnity, warranties, discharge of liens and defense of Construction Manager and Owner in connection therewith, shall survive the expiration or earlier termination of this agreement.

Section 18.9. Cooperation with Lender.

Trade Contractor shall cooperate, and shall cause its lower-tier trade contractors to cooperate, with any financial institution that provides construction or permanent financing for the Project as well as any consultant employed by any such Lender (herein collectively called the "Lender"). Without limiting the generality of the foregoing, Trade Contractor shall supply or cause to be supplied all information and documentation requested by Construction Manager or Owner to comply with the requirements of Lender in the form, if any, required by Lender. Upon Construction Manager's or Owner's request, Trade Contractor shall execute and deliver an amendment to this Contract to reflect Trade Contractor's obligations with respect to the construction or permanent financing after such financing has been arranged, including Trade Contractor's agreement to perform its obligations hereunder for benefit of Lender if Owner defaults under the construction loan.

Section 18.10. Entire Agreement.

This Trade Contract contains the entire understanding between the parties and supersedes any agreements, statements,

commitments, or proposals heretofore had between the parties and may not be changed orally.

Section 18.11. Captions.

Captions and titles of the different Articles and Sections are solely for the purpose of aiding in the location of provisions of this Trade Contract and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

Section 18.12. Assignment.

This Trade Contract, at the option of Construction Manager or the Owner, may be assigned to the Owner or such entity or entities as Owner may direct without the consent of the Trade Contractor and, in such event, the assignee shall assume only the Construction Manager's liabilities hereunder arising from and after the date of such assignment; provided, however, that nothing contained herein or in any such assignment shall be deemed to release Trade Contractor from liability to Construction Manager, Owner or such other entity or entities with respect to claims arising prior to the date of any termination of this agreement or prior to the date of any such assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

In the presence of:

Construction Manager:

By _____
(SEAL)
(The Construction Manager to sign here)

Date _____

Name _____

Title _____

In the presence of:

Trade Contractor:

By _____
(SEAL)
(The Trade Contractor to sign here)

Date _____

Name _____