

# DRAFT AIA® Document A102™ - 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

«Heath Village Retirement Community »  
«430 Schooleys Mountain Rd »  
«Hackettstown, New Jersey 07840 »

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

« »  
« »  
« »  
« »

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

« »  
« »  
« »

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

« »  
« »  
« »  
« »

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

The parties should complete A102™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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**EXHIBIT A INSURANCE AND BONDS**

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16. The parties agree to utilize the AIA A201-2017 as modified as the General Conditions to this Agreement.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. Except as expressly provided for in the Contract Documents to the contrary, the Contractor at its sole cost, risk and expense shall construct, equip, provide, pay for, and furnish all of the Work in accordance with the Contract Documents and governmental codes and regulations as they apply to the performance of the work.

**ARTICLE 3 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply

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User Notes: (1800826421)

of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

#### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

*(Check one of the following boxes.)*

- The date of this Agreement.
- Within seven days of notice to proceed issued by the Owner.
- Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*
- 

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

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

#### § 4.3 Substantial Completion

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

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

- Not later than  () calendar days from the date of commencement of the Work.
- By the following date:

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

Portion of Work	Substantial Completion Date

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

#### ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)*

«Prorated based upon the increase/decrease in the scope of Work.»

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work shall be as follows: The Contractor's Fee on change order subcontracted work shall be the same as the Fee for the base contract work and applied to additive and deductive change orders. The Fee on work the contractor performs with its own forces shall not exceed XX% for overhead and profit.

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

«Fifteen percent (15%) of the cost of the change of the Work for the subcontractor performing the work. Five percent (5%) for the subcontractor engaging any lower tier subcontractor performing the work. »

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed ~~two and one-half~~ percent ( ~~2.5~~ %) of the standard rental rate paid at the place of the Project and shall comply with Article 7.5.2.

§ 5.1.5 Unit prices, if any:

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

Unit prices are set forth in the “Schedule of Unit Prices” attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Such unit prices are considered complete and include (i) all materials, equipment, labor, delivery, installation, overhead and profit and (ii) any other costs and expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

§ 5.1.6 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

« By submission of the bid proposal and execution of the Contract, the Contractor agrees that the Milestone Dates set forth in Article 3 of this Agreement and as set forth in the Contract Documents are reasonable. Should the Contractor fail to complete the Work in accordance with any said Milestone Date, the Contractor shall and hereby agrees to pay the Owner the sum set forth herein for each consecutive calendar day that elapses between the relevant Milestone Date and the date the Work associated therewith is completed in accordance with the Architect’s certification and the Owner’s approval, as well as for any day on which any work on the project is not completed after a missed milestone, substantial completion, or final completion of the work. This liquidated damage sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of Contractor to complete Work within the time as stipulated; it being recognized by Owner and Contractor that the damages suffered by Owner which could result from a failure of the Contractor to complete the Work on schedule is uncertain and cannot be calculated with any degree of mathematical certainty. In no way shall costs of Liquidated Damages be construed as a penalty to the Contractor. Nothing in this paragraph shall limit the right of Owner to complete the Work following the Contractor’s breach of contract.

Liquidated Damages will be assessed in the amount of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents per day (\$ \_\_\_\_\_/day) for each day beyond the substantial completion date that the project is not substantially complete, and of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents per day (\$ \_\_\_\_\_/day) for each day beyond the final completion date in the contract for the time after substantial completion has been achieved but before final project completion.

**Contractor agrees that the Owner may withhold or deduct Liquidated Damages from the Contract Sum, Contract Balance, or future payments to Contractor. Liquidated Damages shall not serve as a bar to the recovery of actual or other damages that exceed Liquidated Damages, nor shall Liquidated Damages relieve a Contractor from any indemnification or other obligation under this Agreement or the Contract Documents. »**

Commented [ 1]: Optional.

§ 5.1.7 Other:

§ 5.1.7.1 No material escalation costs will be valid or compensable unless the Owner directs, in writing, a delay in the procurement. If the Owner directs, in writing, a delay in procurement, the Owner is responsible for the actual increase in material costs, without any additional Fee for overhead and profit.

Please see clarifications on our bid form

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed ~~« »~~ (\$ ~~« »~~ ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

The Contractor shall be entitled to thirty percent (30%) of any “savings” if Substantial Completion is achieved on or before the date(s) set forth in Section 4.3.1, which may be utilized by the Contractor at its discretion for construction contingency and/or other Work-related costs. Any contingency shall not be utilized in calculating shared “savings”, and “savings” shall not include reduction of scope of Work. Contractor shall be entitled to zero percent (0%) of any “savings” if Substantial Completion is achieved after the date(s) set forth in Section 4.3.1

§ 5.2.1.1 When the GMP includes an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances related to construction (“Owner’s contingency”), the use of the Owner’s contingency shall be at the sole discretion of the Owner. Contractor shall provide a monthly Owner’s contingency status report to Owner.

§ 5.2.1.2 If the Contractor receives bids for portions of the Work, which are less than, or greater than, the amounts budgeted in the GMP approved by the Owner for such portions of the Work, such buyout savings/or reductions shall be added to the Owner’s contingency via the Change Order process.

§ 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

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

Item	Price	Conditions for Acceptance

§ 5.2.3 Allowances are to be used only for the specific purpose of the allowance. The Contractor shall issue a change order, reducing the GMP for unused allowances and related Fee, if any. The Contractor may not use unused allowances for Contingency or unrelated project costs. Allowances, if any, included in the Guaranteed Maximum Price: (Identify each allowance.)

Item	Price

§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based: (Identify each assumption.)

«Low Voltage work referenced in RFP Section \_\_\_ shall be included in the Work and Guaranteed Maximum Price to the extent provided therein.»

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

§ 5.2.7 The Owner is exempt from sales and use taxes in the State of New Jersey and the Owner shall provide such documentation to the degree such documentation allows. The Construction Manager and Subcontractors shall purchase materials for the project free of sales and use taxes.

## ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor’s Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. The Owner may, in writing, order changes in the Work consisting of: additions, deletions, and modifications in the Work specified in the Contract Documents upon which the Owner’s approved budget for the Project was prepared; work which must be performed in respect of unforeseen conditions; changes in the intensity and pace of the Work; uncovering and covering of a portion of the Work, if such portion, upon uncovering, is found to be acceptable; items which are specifically the responsibility of Owner under this Agreement, but are being handled and paid through Contractor as a matter of convenience to the Owner. Such changes shall be known as “Scope Changes” or “Change Orders”. The events described in Paragraph 8.3.1 of the General Conditions shall also result in the issuance of a Scope Change if said events lead to an increase in the Contract Sum, GMP and/or the Cost of the Work. The amount of each scope Change shall be the Contractor’s best estimate of the cost of the change in Work inclusive of “general conditions items” (as said phrase is general understood in the construction industry), the Contractor’s fee, Bond expenses and Insurance costs. Scope Changes shall also include anticipated expenditures of work and building permits if not explicitly included in the Guaranteed Maximum Price. Scope Changes shall be approved in writing by the Owner, failing which change in the Work shall not proceed. The GMP shall be adjusted by the total number of each and every scope change if approved by the Owner.

§ 6.5 By executing a change order, Contractor represents and confirms that such change order includes all types of adjustments in the total amounts and time to which the Contractor is entitled, including but not limited to adjustments arising out of delays or disruptions or both caused by such change. Except as the parties may otherwise expressly agree, by executing a change order the Contractor shall be deemed to have released and waived (i) any adjustments to which it otherwise might be entitled where this change order fails to request such adjustments, and (ii) any increase in the amount of adjustments additional to those requested in the executed change order.

## ARTICLE 7 COSTS TO BE REIMBURSED

### § 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

§ 7.1.4 In the event the contractor operates and maintains a fabrication shop to assemble prefab materials for installation at the jobsite, the contractor’s direct cost (as defined in the remainder of this Article 7) will be considered Costs to Be Reimbursed. However, the contractor’s shop overhead such as plant and equipment, depreciation, taxes, utilities, etc. will be considered covered by the overall Fees quoted as markup on the various components of reimbursable Cost of Work.

**§ 7.2 Labor Costs**

**§ 7.2.1** Actual Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ 7.2.2** Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

**§ 7.2.2.1** Actual Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:  
*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

« »

**§ 7.2.3** Wages or salaries of the Contractor's supervisory or administrative personnel engaged, who would normally be stationed at the field office in accordance with Article 7.2.2.1 but who become engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work

**§ 7.2.3.1** No Contractor personnel stationed at the Contractor's home or branch offices shall be charged to the Cost of the Work. Non-field office-based Contractor management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to project matters is considered to be covered by the Contractor's Fee.

**§ 7.2.4** Actual Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.4.1** Employee bonuses and/or costs associated with Employee Stock Ownership Plans (ESOP), Phantom Stock Plans (or any similar company ownership distribution plans), will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor's Fee.

**§ 7.2.4.2** Overtime wages paid to salaried personnel (if approved in advance in writing by the Owner) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the project will be allowed if the individual is not paid for the overtime worked.

**§ 7.2.4.3** Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor, or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

**§ 7.2.4.4** Any other Contractor labor burden costs that are not specifically defined as reimbursable in this contract agreement are intended to be covered by Contractor Fee.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

**§ 7.3 Subcontract Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

**§ 7.3.1** For scope of work bid packages typically performed by subcontractors, Contractor may “self-perform” such work on a cost-plus fee basis subject to an agreed upon guaranteed maximum price for the “self-performed work”. The Contractor shall bid their proposed Guaranteed Maximum Price for the work to be “self-performed” against at least three other interested trade contractors. Any subcontract for “self-performed work” will provide for payment in an amount equal to the Cost of the Work (as defined in this agreement) and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for “self-performed work” will be consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for “self-performed work” shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining “self-performed work” subject to this contract provision, any division of Contractor, or any separate Contractor or subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee’s relatives will be considered a related party entity and will be subject to this provision regarding “self-performed work”. No self-performed work will be allowed to be performed on a lump sum basis.

The maximum fees payable to the Contractor on self-performed work will be 7.5% on the contractually defined reimbursable cost of self-performed labor, labor burden, materials, and equipment. The maximum fees payable to the Contractor on specialty sub-subcontract work necessary for the self-performed scope of work will be the lower of the base contract Fee or 5% of the cost of the sub-subcontract work. If the contractor does not self-perform the majority of the scope of self-performed work and as a result subcontracts a significant portion of the scope of work to another trade contractor, then no self-performed work fees will apply to the cost of any such sub-subcontracted work.

**§ 7.3.2** Contractor (with respect to its suppliers, subcontractors, and all lower tier subcontractors) shall provide Owner advance written notice and shall obtain Owner's approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to Contractor, Subcontractors or Suppliers whether as Costs of the Work or as reasonable termination costs in the event of termination.

**§ 7.3.3** For scope of work bid packages typically performed by subcontractors and normally awarded on the basis of adequate competitive bidding, whenever only one subcontractor is available to do the work or whenever only one subcontractor submits a responsive bid, Contractor may only award such subcontracts on a cost-plus fee (Fee Not-To-Exceed 7.5%) basis subject to an agreed upon guaranteed maximum price for the “subcontract work.” Any such non-competitively bid subcontract awards will provide for payment in an amount equal to the Cost of the Work (as defined in this agreement) and will not exceed the agreed upon subcontract guaranteed maximum price (GMP). All terms and provisions of any such subcontract award for will be consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such cost-plus fee with GMP subcontracts shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. Non-competitive subcontract work will not be allowed to be performed on a lump sum basis.

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

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the



cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 7.5.2.1** Each piece of equipment to be rented shall have hourly, daily, weekly, and monthly rates) and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the contractor.

**§ 7.5.2.2** All losses resulting from lost, damaged, or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner, and the cost of such losses shall not be reimbursable under this contract.

**§ 7.5.2.3** All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs, and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.

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

**§ 7.5.4** Costs of the Contractor's site office, including general office equipment and supplies, document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel/delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, unless provided by Owner.

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

#### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

**§ 7.6.1.3** In the event that the contractor elects to utilize a subcontractor default insurance program (sometimes referred to as SUBGUARD), the maximum amount to be considered reimbursable costs under this contract will be .75% of the total amount of subcontracts enrolled in such an insurance program. Enrollment in any such program will be limited to subcontracts in excess of \$100,000. Any contractor costs incurred in connection with the contractor's elected subcontractor default insurance program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Contractor's FEE. In the event the Contractor elects to bond selected subcontractors rather than enroll them in the subcontractor default insurance program, the net cost to purchase any such bonds will be reimbursed in lieu of the .75% Note: Contractor will not be reimbursed for any deductibles stated in the Subguard policy. The deductible is considered covered by the .75% and/or the Contractor Fee.

**§ 7.6.1.4** In the event that the Contractor elects to provide Subguard or a similar program of subcontractor default insurance, then the program and the coverage provided by the Contractor shall extend to any additional costs

incurred for the Contractor to replace or supplement the forces of a subcontractor to provide the Work, and such circumstances shall include, but not be limited to, any partial or full termination of the contract of a subcontractor for convenience or otherwise, unless the Owner specifically directs the Contractor in writing to terminate the contract of a subcontractor for convenience.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent. However, the costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees, and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work. Ownership of all equipment, software and licenses shall pass to Owner upon substantial completion of Work referred to in this Section.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval. Ownership of all equipment, software and licenses shall pass to Owner upon substantial completion of Work referred to in this Section.

§ 7.6.7 Costs of document reproductions.

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, with the Owner's prior approval.

#### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

#### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any person or entity which has the right to control the business or affairs of the

Contractor. The term “related party” also includes any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor or as otherwise identified in this Section.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

#### ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1 Salaries and other compensation of the Contractor’s personnel stationed at the Contractor’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contractor by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .9 Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Contractor’s Fee.
- .10 Costs of Contractor’s home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, the Contractor should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at the Contractor’s home or branch offices, or other outside service locations.
- .11 Costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.
- .12 Any Contractor costs (such as accruals for labor, direct labor costs, or warranty insurance costs) related to providing contractor warranty services after final completion of the project. All Contractor warranty costs are specifically considered to be covered by the agreed upon Contract Construction Phase Fee.

#### ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner

may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain at least three (3) bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner shall then determine, with the advice of the Architect and Contractor, which bid(s) will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

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

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

#### ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records as set forth in Article 2.6 of the A201, or for such longer period as may be required by law. The cost of storing the detailed records and accounts as well as the cost of providing the detailed records and accounts to the Owner and the Owner's auditors shall be covered by the Contractor's Fee for overhead and profit.

#### ARTICLE 12 PAYMENTS

##### § 12.1 Progress Payments

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

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

« »

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the «15th» day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the «last» day of the «next» month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «forty-five» ( «45» ) days after the Architect receives the Application for Payment.

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

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

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any Owner's contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. Contractor shall not make changes to the approved schedule of values without Owner's prior written approval.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from the Owner's contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Contractor's billing for any General Conditions contained in the schedule of values shall not exceed the total percentage of Work completed in an Application for Payment. In addition to the other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

(1) A current sworn statement in the form required by N.J.S.A. 2A:44A-37 setting forth an accurate and complete list of the names and addresses of each contractor and supplier who may have a right to file a lien pursuant to the Construction Lien Law. The statement shall also set forth the amount of each subcontract, the amount requested for any subcontractor or materialmen in the application for payment, and the amount to be paid to the Contractor from such progress payment.

(2) A current duly executed waiver of construction liens from the Contractor, to be effective upon and to the extent that payment is actually received, establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current application for payment.

(3) Commencing with the second (2nd) Application for Payment submitted by the Contractor, current duly executed waivers of construction liens from each Subcontractor, Sub-Subcontractor, and Supplier and Materialmen, to be effective upon and to the extent that payment is actually received, establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current application for payment.

(4) Such other information, documentation and materials as the Owner may require.

§ 12.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall consist of:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

- .3 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4 Subtract retainage of ten percent (10%) from the portion of the work completed and invoiced to the Owner in each Application for Payment.
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation;
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007; and,
- .8 Subtract deposit amounts paid by Owner.

**§ 12.1.8 Retainage**

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

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

«Ten percent (10%)»

§ 12.1.8.1.1 The following items are not subject to retainage.

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

« »

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

*(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

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

§ 12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

« »

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

C&C - Ten Percent (10%) until the work is at Ninety Percent (90%), reduce to Five (5%).

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

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

## § 12.2 Final Payment

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

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 the Contractor has delivered to the Owner a Certificate of Occupancy and obtained all regulatory approvals;
- .4 the Contractor has completed all punchlist items to the satisfaction of the Owner and Architect; and
- .5 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

§ 12.2.2 When directed by the Owner, the Owner's auditors will review and report in writing on the Contractor's final accounting for the Cost of the Work.

§ 12.2.2.1 Within three (3) months after completion of the audit, submit a written report based upon the auditors' findings to the Architect delivery of the final accounting to the Owner by the Contractor. Based upon such Cost of the Work as the Owner's auditor's report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201. Owner retains the right to perform an audit as permitted per A201 Article 2.6.

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

« »

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of such savings shall be re-calculated and appropriate credit given to Owner in determining the net amount to be paid by the Owner to the Contractor.

## § 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from sixty (60) days after the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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

The lesser of The Treasury Bill Rates at the time payment is due or the date payment is processed.

## ARTICLE 13 DISPUTE RESOLUTION

### § 13.1 Binding Dispute Resolution

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

*(Check the appropriate box.)*

Arbitration pursuant to Section 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 14 TERMINATION OR SUSPENSION

### § 14.1 Termination

Subject to the provisions of Section 14.2, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 14.1.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14.2.4 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

### § 14.5 Termination by the Owner for Convenience



If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:  
*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)*

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

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

§ 15.2 The Owner’s representative:  
*(Name, address, email address and other information)*

«Chris Black »  
«Fellowship Senior Living »  
«8000 Fellowship Road »  
«Basking Ridge, New Jersey 07920 »  
«Office: (908) 580-3899 »  
«Cell: (908) 239-0096 »  
Email: cblack@fellowshipsl.org »

§ 15.3 The Contractor’s representative:  
*(Name, address, email address and other information)*

« »  
« »  
« »  
« »  
« »  
« »

§ 15.4 The Contractor’s representative shall not be changed without ten days’ prior notice to the Owner.

**§ 15.5 Insurance and Bonds**

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A102™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 15.6 Other provisions:

«§ 15.6.1 All understandings heretofore and between the parties are merged in this Agreement, which alone fully and completely express their Agreement. This Agreement shall be construed under the laws of the State of New Jersey, and any claims and causes of action arising under or in connection with this Agreement shall be brought before a court of competent jurisdiction. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby, and such remaining provisions shall remain in full force and effect. The invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which being valid, legal, and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

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

- (i) that it and its Subcontractors are financially solvent, are able to pay all debts as they mature, and are possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- (ii) that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- (iii) that it is authorized to do business in the State of New Jersey and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- (iv) that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- (v) that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

The foregoing warranties are in addition to, and not in lieu of, any and all other obligations and liability imposed upon the Contractor by law with respect to the Contractor's duties and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder. »

**ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .5 Drawings

Number	Title	Date

- .6 Specifications

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

- .8 Other Exhibits:

(Check all boxes that apply.)

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

« »

- The Sustainability Plan:

Title	Date	Pages

[ « » ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents, if any, listed below:

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

« »

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

OWNER (Signature)

« »« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »

(Printed name and title)