**OGCA**

 **OWNER • GENERAL CONTRACTOR AGREEMENT**



**OGCA** 2015.4

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**1. DATE OF THIS AGREEMENT** : **\_\_\_/\_\_\_\_/\_\_\_\_.**

**10. THIS AGREEMENT IS BETWEEN**: the **Owner & Contractor** below (see par.1600 for more information):

OWNER(s): Owner 1:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Owner 2:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

GENERAL CONTRACTOR (GC):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**20. OWNER & CONTRACTOR AGREE TO** all of the previous and following statements, definitions, dates, information, terms & conditions of this entire multiple page agreement:

**30. THIS AGREEMENT IS FOR THIS PROJECT** (see par.1600 for more project information):

Project Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**40. DEFINITIONS** : See par.1300 below for definitions used in this agreement.

Note: delete all red guidance notes before printing form & have Owner Attorney(s) adjust for the location of the project. This form is not a valid contract until Owner’s Attorney(s) reviews, edits & approves.

**45. THIS AGREEMENT IS THE PROJECT CONTRACT** between GC & Owner(s) (The Parties). This Project Contract is the complete and entire full written agreement between The Parties for this Project; all other written, verbal or electronic references, negotiations, representations, agreements, previous contracts, discussions by The Parties, and any other communications of any kind between The Parties and/or with or between other parties are hereby made null & void. All understandings and “meeting of the minds” between The Parties regarding this Project are contained in this one single Project Contract (OGCA Owner General Contractor Agreement). This Project Contract may only be adjusted, changed or revised through written modifications, dated & signed by both parties, per par.160 (unless par.160 provides otherwise).

**50. DISPUTE RESOLUTION PROCESS (ultimately: BINDING ARBITRATION)**

(Owner & GC initials agreeing to binding arbitration: Owner 1:\_\_\_\_\_\_\_Owner 2:\_\_\_\_\_\_), GC initials:\_\_\_\_\_.)

The dispute resolution process has 3 steps:

1st: sincere & polite personal conversations via Skype or in person (not e-mails). There must be at least 3 documented discussions on specific dates resulting in no resolution before proceeding to the next step. Architect will take minutes of such discussions & will administer them.

2nd: Mediation (administered by the AAA & in accordance with its Construction Industry Mediation Procedures in effect on the date of this agreement). A request for mediation will be submitted in writing via email (or as required by AAA procedures) from one party to the other party and also filed with the person or agency administering the mediation. Any request for mediation can also be made simultaneously with a request for binding arbitration, however any such request will have mediation precede arbitration, with arbitration held for at least 60 days from date of filing, unless postponed another number of days agreed to between The Parties or a court order. If arbitration is delayed, The Parties may (if mediation does not result in an agreeable resolution) select arbitrator(s) & determine when arbitration can occur.

3rd: **Binding Arbitration**: disputes arising out of this agreement that are not resolved by the preceding resolution attempts, or otherwise resolved between The Parties, shall be subject to binding and irrevocable arbitration, per the Federal Arbitration Act, administered by the AAA (American Arbitration Association), in accordance with the Construction Industry Arbitration Rules in effect on the date of this agreement, except as modified by this agreement, including a forum selection naming the venue indicated in par. 60 below. A request for arbitration shall be made from one party to the other party, in writing and both emailed and delivered to them by certified US Mail, and filed with the people or entity administering the arbitration. Both of The Parties hereby agree to accept such certified US Mail notice(s) from the other and to acknowledge receipt thereof to the other party within 3 days of receiving such notice(s). If such notice or appearance date is ignored by one party, the unresponsive party shall be deemed to have defaulted and held as the accountable party in the arbitration proceedings. The decision of the arbitrators in favor of either party is final and judgement can be entered upon that decision in a court having jurisdiction of The Project.

A person or entity as one of the parties in an arbitration may include other parties by joinder when those other parties have substantial involvement in issues being discussed and decided. The Project Structural Engineer, Geotechnical Engineer and Project subcontractors and materials providers may be joined in arbitration. See par.230 regarding compensated voluntary involvement of Architect in arbitration, to which all parties agree.

Claim Amounts & Related Discovery: If the amount of all claims and counterclaims involved in the above action(s) are less than $50,000 then The Parties agree to present each of their own documents as evidence, unless both Parties agree otherwise or the Arbitrator(s) directs otherwise. Evidence where claims & counterclaims equals $50,000 or more will be handled in accordance with Federal Rules of Civil Procedure, however each party will be allowed one deposition from each party, 3 more witnesses of fact, and depositions of expert witnesses, unless The Parties agree otherwise or the Arbitrator directs otherwise. Expert witnesses may be hired by either party or be employees of either party.

No legal court action or litigation is permissible under this agreement: only those actions above in par. 50. All actions above in this par. 50 must be brought within five (5) years from the date of Substantial Completion. In the absence of a Substantial Completion notice, this time will commence from the date of the GC &/or Owner obtaining a CO (Certificate of Occupancy). In the absence of a CO, this time shall commence from the time of Owner occupancy. If the project is not habitable (in the sole opinion of the Architect), this time shall be from the date of the GC’s last service at the Project Site. Failure of either party to bring any action within the specified time period above shall constitute a full & complete waiver & release of any rights, actions, or cause of actions that may have arisen in favor of either party. Time is expressly of the essence of this provision. It is agreed to & understood that this time period may be shorter than otherwise provided for by law.

The preceding arbitration agreement is enforceable under the laws in any court having jurisdiction in the area of The Project.

**60. VENUE**: (venue agreed to: Owner 1:\_\_\_\_\_\_\_Owner 2:\_\_\_\_\_\_), GC initials:\_\_\_\_\_\_.)

Any actions (including the arbitration described in par. 50 above) will take place at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (physical street-city-state office address of Owner’s Attorney closest to Owner’s project in state of Owner’s project). It is understood that Owner(s) & GC entered into this agreement with this venue as a main point of agreement and the Parties agree Not to attempt to change this venue. It is agreed to & understood that this provision may be otherwise than allowed by local, State or Federal laws.

The Parties agree to enforce the venue stated in this par. 60 in this OGCA (Owner-General Contractor Agreement) and to exercise their influence in compelling others to comply.

**70. RECOVERABLE COSTS**: in the event either the Owner(s) or the GC attempts litigation rather than following the agreed-upon dispute resolution process per par. 50 of this agreement, and the Owner(s) or GC successfully compels arbitration in accordance with this agreement, the unsuccessful party agrees that the Arbitrator shall be entitled to award damages to the prevailing party for their costs, including reasonable attorney’s fees, to compel arbitration in accordance with this agreement, including venue provisions.

**80. LIMITS OF LIABILITY**: (Limits of liability agreed to: initials: Owner 1:\_\_\_\_\_\_\_Owner 2:\_\_\_\_\_\_), GC initials:\_\_\_\_\_\_.)

The Parties agree that the GC’s & Owner(s) limits of liability, whether arising in contract or tort in any way related to or arising out of this agreement is $25,000 or one fourth (25%) of the GC’s paid invoices, whichever is more. This means: in the event of a dispute, if the GC or Owner(s) chooses to instead issue a payment to the other Party, in the greater of the two values set forth above, there will be no possible action of any kind from GC or Owner(s) or other parties, including arbitration and all matters past, present, pending & future will be considered resolved permanently.

**90. CONSTRUCTION DOCUMENTS, CONTRACT DOCUMENTS, GC CONSTRUCTING PROJECT**

GC will provide, construct or otherwise cause to be built & provided: the items, work, arrangements, materials, systems, energies and products indicated in the Contract Documents. The **Contract Documents** are defined as being the following:

.1 THIS CONTRACT: agreement between the Owner and GC, including all forms & attachments thereto.

.2 CONSTRUCTION DOCUMENTS: Architect’s Construction Documents (CDs) which consist of the Working Drawings & Specifications provided by the Architect (dated \_\_\_\_/\_\_\_\_\_/\_\_\_\_\_), the Structural Engineer’s Construction Documents which consist of their Working Drawings & Specifications (dated\_\_\_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_) and listed as follows: See Architect’s and Structural Engineer’s attached Drawing Index, which also includes the Architect’s Bid Forms (copies of which are also being provided electronically from the Architect).

.3 ADDENDA: The Contract Documents also include: any Addenda prepared by the Architect and listed as follows:

Addenda # Date Page Count

1.

2.

3.

4.

.4 CHANGE ORDERS: the Contract Documents also include changes in the work that are in writing and signed by the Owner, GC, and Architect per par.160

.5 INSTRUCTIONS TO CONTRACTORS: issued by the Architect during the Bidding process, dated \_\_/\_\_\_/\_\_\_\_\_\_.

.6 CONSTRUCTION DOCUMENT REVISION MEMORANDUM: from the Architect, as a clarification as to what, if any changes are to be made to the project Construction Documents as a result of any Value Engineering with the successful Bidder, dated \_\_\_/\_\_/\_\_\_\_, and any spreadsheet reflecting such changes in the Construction Documents along with GC changes in prices dated \_\_\_/\_\_/\_\_\_\_\_.

**100. CRITICAL PROJECT DATES**

.1 START OF CONSTRUCTION is the Date of Agreement, in par. 1. If this is otherwise, indicate other Start of Construction date here:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

.2 SUBSTANTIAL COMPLETION: date of substantial completion will be \_\_\_\_\_\_\_\_\_\_\_ calendar days after the Start of Construction Date. This is the number of days the GC will take to bring the construction to this stage of completion. However, this Date may be altered per par.160 due to changes in the work and other circumstances.

.3 FINAL COMPLETION: 30 days after Substantial Completion.

**105. PROJECT TIME**

See “”Critical Project Dates” in par. 100. The length of time indicated in the Contract Documents are of the essence. The length of time indicated is a contractual condition. When and if the GC experiences delays for any legitimate reason indicated in par. 160, GC may create a Change Order for extension of days indicated in par 160.

**110. PRICE TO PERFORM THE PROJECT WORK**

The GC will charge a total amount of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to perform, provide, run, administer, build and otherwise cause the Project Work to be physically constructed, in conformance with the Contract Documents (indicated in par. 90). However, this amount can be altered up or down based on change orders per par.160 mutually signed by GC & Owner(s).

This Price to Perform the Project Work is broken down into a Schedule of Values spreadsheet submitted by the GC and attached to this agreement and approved by the Architect & Owner(s) by date and initials. The original Schedule of Values will be the Bid Form the GC submitted on Bid Date, and there may be an altered Schedule of Values that reflects any Value Engineering, also attached, indicating any changes in the original bid.

ALLOWANCES: state any allowances here, immediately below, for what portion of the project (if any):

PRICING BY UNITS: state any pricing by units (rather than by fixed flat fee) here, immediately below, for what portion of the Project Work, (if any):

OWNER OPTIONAL BID ITEMS: if the Owner has accepted any alternate bid items, typically listed on ArCHspec™ sheet A15.1 in Specifications Division 0, Section 00392, and/or in Section 00380 (if using ArCHspec™ for Bid Forms and specifications), so state any of these bid items that have been accepted here, immediately below that comprise a portion of the Price to Perform the Project Work, otherwise it will be that None of the alternate bid items have been accepted, unless they are already a part of the GC’s Schedule of Values initialed by Owner and GC.

See Architect’s attached Construction Document Revision Memorandum (CDRM) and Final GC Pricing Spreadsheet.

The Price to Perform the Project Work includes everything required to properly provide, build and make this project and complete the project in a functional and Code-compliant manner in accordance with the Contract Documents & AHJ.

**120. PAYMENT REQUEST PROCESS, COMPENSATION TO GC, DEFICIENCY CORRECTIONS, LIEN RELEASES**

Contractor will submit Requests for Payment, typically once a month, using a payment form acceptable to Owner, Architect and any Lending Institution. PAY REQUEST PROCESS SHALL BE AS FOLLOWS (and include):

.1 GC PAY REQUEST SUBMITTAL: Contractor will submit his/her requests for payment (“Pay Requests”) electronically to the Architect, typically once a month on a specific date/day, during the project. Pay Request will be accompanied by an updated Schedule of Values, detailing items of work % completed since the previous Pay Request, and an updated Construction Schedule, including any other documentation as may be requested by Architect, within reason. GC will email Pay Requests & attachments to Architect approximately the number of days indicated immediately below before the scheduled next Architect’s Site Visit: 7 DAYS

.2 ARCHITECT’S SITE VISITS(s) & REPORTS: Architect will appear at the project site (or his/her staff members and/or other professional parties involved in the project), usually on a specific day of each month, prescheduled with the GC to be AFTER the GC’s Pay Request application. This visit will occur, unless the Architect has mitigating circumstances per par.240.2. The Architect will tour the project, making observations, comparing what has been accomplished versus the Project Construction Documents. Architect will take digital photos & make notes. Any project Structural & Geotechnical Engineers will likely make similar observations. Architect will leave the project site and within a few days (usually the number of calendar days indicated immediately below), produce a Site Visit Report noting and depicting the various conditions, with a focus on any items not in conformance with the final approved Construction Documents (CDs). The Architect will email the report(s) he/she has made to the GC and Owner simultaneously. 4 DAYS

.3 PAY REQUEST REVISION: If in the opinion of the Architect the GC’s Pay Request does not appear to properly represent the amount or quality of work accomplished and/or required to support the payment amount requests, the Architect will Not approve the Pay Request and will confer with the GC as to the amount(s) to be revised. At such time as the original or revised Pay Application becomes in conformance with amounts deemed appropriate by the Architect, the Architect will approve the Pay Request and will send the approved Pay Request to the Owner. This is intended to typically occur within the same number of days as the Architect’s Site Visit Report creation (above), subject to the GC’s cooperation (for the GC to revise and produce another adjusted Pay Request), otherwise, the days above for the Report and Pay Request adjustment & approval could expand. The date of Architect’s Pay Request approval will be the Payment Certification date for the purposes of calculating any interest accrual per par 130.

.4 OWNER PAYMENT: The Owner, upon receiving the approved Pay Request will take steps to promptly pay the amount approved as soon as possible, but in no case later than the number of days indicated in the Grace Period below (subject to any Lender cooperation & performance), after the date the Architect approved the Pay Request.

GRACE PERIOD: Owner shall have the number of days grace period indicated below from the date the Architect approves Pay Requests until the payment is due. There will be no interest due on payments made within this grace period. Note: the Owner(s) lender could add days to this grace period, expanding the number of days required, due to no fault of the Owner(s) and for which the Owner will not be liable for interest. Owner(s) will exert their influence to induce lender to expedite payments as swiftly as possible. 7 DAYS+/-

TOTAL # ESTIMATED DAYS:from GC Pay Request submittal until Payment: 18 DAYS +/- (Note: this ideal number of days could take longer, depending on other entities & events beyond the Architect’s, Engineer’s, GC’s, & Owner’s control: see items above).

.5 DEFICIENCY CORRECTIONS: By the date of the Next Site Visit, the GC will have corrected any deficiencies noted in the previous Site Visit Report(s), whether from the Architect, Structural Engineer, Geotechnical Engineer or other professional. No following Pay Request(s) will be approved until all of the previous deficiencies have been corrected to the satisfaction of the Architect, Structural Engineer, Geotechnical Engineer and other professionals.

.6 LIEN RELEASES: GC will include Lien Release(s) required every month, attached to each Pay Request electronically, indicating full and complete payment from the GC to his own company and to all subcontractors, material & system and other suppliers & providers of the Project Work up to the date of the Previous payment in that amount paid as of the Last Month prior to the current Pay Request. Pay Requests without the Lien Release (except for the very first Pay Request) will be put on hold until the Lien Release is provided. GC will use Lien Release Forms provided with this agreement, **signed, dated & sealed by a licensed Notary** in the State of the project, as follows:

.a Project Interim Construction Lien Release (form # **1 (red) PICLR**): for all interim GC lien releases, starting with the 2nd Pay Request, continuing through the 2nd to Final Pay Request.

.b Project Final Subcontractor & Supplier Lien Release (form # **2** **(yellow) PFSSLR**): for The Lien Releases provided by the GC for each and every Subcontractor & provider of any kind on the entire project from the beginning to Final Completion. GC shall include this requirement in contract(s) the GC has between GC and GC’s subcontractors & suppliers. It is recommended that GC obtain these releases as the GC progresses through the project, from the beginning through the end, keeping them in a dedicated file. GC to provide ALL of these subcontractor & supplier Lien Releases to Architect & Owner along with the Final Completion Pay Request. There will likely be 50+/- of these. It is Not necessary to provide these during the progress of the project, only at Final Completion.

.c Project Final Construction Lien Release (form # **3 (green) PFCLR**): for the Final umbrella Lien Release provided by the GC for the Project. This must accompany the Final Pay Request.

The above (and below) process will be used every month, once a month, for the duration of the project.

.7 PAYMENT FOR MATERIALS & ITEMS STORED: Pay Requests may include amounts for which receipts are furnished and electronically attached to the Pay Request(s), for materials & items (for eventual incorporation into the Project Work) delivered and securely stored at the Project Site, protected by lock & key under the GC’s control. If approved by the Architect & Owner(s) in writing (email is acceptable) in advance, before purchase, payment can be made on other materials & items stored, protected from theft, damage, fire, flood, and the environment, off site at another location within 10 miles of Project Site under the GC’s sole control. Architect will need to personally visit such locations and see any such stored materials & items during Architect’s normal Site Visits, before approving payments on such items. GC will need to escort Architect to visit such places of storage before, during or after Architect’s Site Visits, as requested by Architect. GC will need to remove any concealing materials and items to allow Architect to properly ascertain, in general, quantities of materials so stored. It is preferred and will expedite payments if items being incorporated into the work are on the Project Site and either incorporated into the Project Work or stored in a secure manner at the Project Site, rather than remotely.

.8 FINAL PAYMENT: See par. 1490 & 1495. Also see par. 1480 for Substantial Completion.

**125. TITLE TO THE PROJECT WORK IS OWNED BY THE OWNER(S) WHEN PAYMENT IS MADE**

GC hereby agrees & warrants that ownership title of all Project Work paid for to date is conveyed to the Owner immediately when Owner(s) pays most recent Pay Request(s). GC agrees that when GC submits a new Pay Request, that all previous Project Work has been paid by the GC, that has been paid for by the Owner(s). GC agrees that to the best of GC’s understanding, that all previous Project Work will have no liens or claims of any kind (especially from any 3rd parties, subcontractors, material & system providers, GC’s company, & others who provided work, materials and/or energies for the Project Work to date).

**130. RETAINAGE ON PAY REQUESTS, INTEREST ACCURES ON AMOUNTS NOT PAID (OVER $500K)**

.1 Owner will retain 5% of each progress payment until the Final Payment. GC’s Pay Requests shall indicate a 5% retainage amount on amounts earned, and also on the Schedule of Values form.

.2 Amounts due to & owned to the GC and unpaid (including retainage) will accrue interest starting on date the grace period is over for each approved Pay Request. Interest rate on amounts unpaid shall accrue at 3% simple annual interest, compounded yearly.

(NOTE: Attorney for the Owner will need to verify State laws regarding retainage in whatever state the project is being constructed: which means: the paragraph in which this red note is included may need editing by the Owner’s Attorney in the State of the Project).

Owner shall keep retainage amounts in a separate, single bank account, in the joint name of the Owner & GC company. Neither the Owner nor the GS will be able to withdraw any funds without the written consent of the other. Whether or not this account pays interest is of no consequence. The Owner shall owe interest on these funds at the rate indicated above. These are funds earned and due the GC and being withheld, they shall earn interest, and Owner will deposit the retainage into this joint account when the Owner pays each monthly Pay Request to the GC. Owner will multiply the amount of retainage in this joint account (just before Final Payment) x the % indicated above x the number of months the account has had deposits in it, divided by 12, divided by 2, as the average interest rate on the amounts therein. This amount from this calculation will be the lumpsum interest added to the account by the Owner just before making Final Payment to the GC.

Within 14 days after signing this Agreement by both of The Parties, Owner shall reveal to the GC this retainage account number and location of the account (preferrably a Project local bank).

At time of Final Completion, and after GC’s compliance with items in par.1490 & 1495, GC will be given complete access to the retainage account by the Owner at the time of Final Payment, by means of turning over complete ownership of the retainage account to the GC and removing the Owner from that partial ownership. This will fulfill the Owner’s obligations under this par. 130.

RETAINAGE AMOUNT DETERMINES INTEREST BEARING ACCOUNT REQUIREMENT: this interest bearing account on retained GC earnings will only be required when the Price to Perform the Project Work indicated in par.110 (and as modified by subsequent Change Orders) is more than $500,000. If the Price to Perform the Project Work is less than this amount, then the requirement for a separate account per this par.130.2 in which retainage is kept is not required and interest will not be due the GC for retained amounts. (Have project local Attorney for Owner verify above paragraphs under par. 130).

**135. GC PAYMENTS TO SUBCONTRACTORS**

Immediately after Owner’s payment each month, GC will pay GC’s subcontractors, materials suppliers, energy providers and other providers for the Project Work in a prompt manner, in full, for their portions of the Project Work to date for the last month, prior to the next Pay Request.

The Owner, Architect, Engineer(s) have no responsibility for paying any subcontractors or suppliers of any kind, or for verifying their payment, nor for verifying Owner’s payments to the GC.

Payments to the GC by the Owner do not indicate approval of any work not in compliance with the Contract Documents.

**150. INSURANCE COVERAGES BY THE PARTIES**

.1 GC SHALL PROVIDE THE FOLLOWING INSURANCE:

.a Comprehensive General Liability (CGL): $1,000,000 per incident and $2,000,000 general aggregate.

.b Worker’s Compensation: shall meet statutory limits mandated by State law in the location of the project.

.c GC shall secure an endorsement to its CGL coverage to cover GC’s obligations under par. 258 Indemnification.

.d Property Insurance on any remote location in which GC intends to store Owner’s materials during the course of the Project for losses of all kinds, including but not limited to fire, theft, water and other losses. Coordinate with par.255.2.

.2 OWNER SHALL PROVIDE THE FOLLOWING INSURANCE:

.a Builder’s Risk Property insurance to cover the value of the Owner’s property, including work provided to date under this agreement. This may be called “Builder’s Risk” insurance and the Owner will provide this, as they will own the improvements that are built on their land and should any harm come to those improvements, the Owner is the party to whom such payment shall be made.

.b General Liability: Owner shall also provide General Liability insurance covering him/herself, should anyone other than the GC’s forces enter the property and cause harm to themselves.

.3 BOTH PARTIES SHALL: have their respective insurance companies email Acord forms to the other and to the Architect indicating the proper coverages indicated above BEFORE construction commences.

.4 RIGHTS WAIVED: Unless not permitted by the Owner’s Builder’s Risk Property Insurance Policy, the GC and Owner waive all rights against each other and against any of their suppliers, subcontractors, staff members, consultants, agents, each other, the Architect, Architect’s consultants, their agents & employees, Structural Engineer, Geotechnical Engineer, other professionals, their agents and employees, for damages caused by fire or other loss to the extent covered by property insurance or other insurance for the project.

**155. SUBROGATION CLAIMS, CONSEQUENTIAL DAMAGES CLAIMS**

GC and Owner(s) waive claims against each other involving consequential damages regarding The Project. This waiver by The Parties incorporates the following:

A. Insurance covered losses, including subrogation claims. Also, Builder’s Risk insurance, unless this paragraph and waiver is not allowed by the actual insurance company policy for this risk. This subrogation waiver applies to people, companies and other entities that are called on for indemnification who did not pay for a required insurance policy, even if the party had insurable rights in The Project.

B. GC losses for salaries and wages for main administrative business costs for staff located at a main business address, and for any losses related to standing in the community or status of whatever location, related business costs and any financing expense and profit loss, staffing efficiency degradation, and staffing loss. However, this will not include any unrealized profit margins directly associated with The Project.

C. Owner expenses involving standing in the community or other issues relating to status of whatever location, staffing efficiency degradation, staffing loss, loss of income (due to any reason related to The Project), loss of profit or lending ability or sources, lack of ability to use The Project or related facilities.

D. This waiver applies to both of The Parties and is given from Owner to GC and from GC to Owner. This waiver is unlimited and is applicable to any and all consequential loss or damages. This waiver by both of The Parties applies to consequential losses related to Project Work Stoppage per par.1475.

E. If the Contract Documents contain provisions for Liquidated Damages, this par. 155 shall not prevent that.

**160. CHANGE ORDERS/ REVISIONS TO THE PROJECT & MODIFICATIONS TO THIS AGREEMENT**

160.a TIME ADJUSTMENTS RELATED TO WORK CHANGES: Any additional or fewer (if any) calendar days involved with any of the Changes below shall be indicated on the Change Order (or other related) form by the GC.

160.1 CHANGE ORDERS: Owner may wish to have additional work performed, or other changes, or to not perform some items of the work indicated in the Contract Documents. Owner may order such changes. This contract remains in force. In this circumstance, the GC will evaluate the costs involved and propose a Change Order that includes the added or deleted cost(s) with associated profit & overhead as a lumpsum addition or deletion from the contract. Architect will evaluate GC’s proposal and render his/her opinion to the Owner. This may proceed as a Lumpsum Change Order if The Parties agree. However, if the Owner decides that the GC’s proposed Change Order is not reasonable and there is no agreement, then one of two things can occur:

.1 NO CHANGE ORDER: The Owner can elect to Not have the work change occur and leave things as they were prior to the requested Change Order proposal.

.2 COST PLUS CHANGE ORDER OPTION: The Owner can require the GC to proceed with the Change, as a Cost Plus Change Order: rather than the GC’s proposed lumpsum amount, all parties agree for the Owner to pay for actual costs incurred (as evidenced by time records & receipts for items), plus the GC’s previously disclosed profit rate added to the costs associated with the change.

If the Owner instead decides to accept the Lumpsum Change Order, then the Owner and GC will both sign the Change Order and the GC will perform that work involved (or not, in the case of a deletion change order), at the appropriate time of construction sequencing. The amount of the Change Order will not become due until the work is performed (or in the case of a deletion change order, the reduction in the contract amount will be immediate).

160.2 MINOR CHANGES IN THE WORK: having no change in the cost: Architect has the authority to request minor revisions to suit field conditions to result in improved results, in his sole opinion, for work not yet performed. Architect will provide such revisions in writing. Architect’s changes so handled will be in force and will commit both the Owner & GC. Both the Owner & GC hereby agree to this. GC shall make such Architect’s revisions in a timely manner. Such minor changes shall Not require the approval of or signatures of the Owner(s) or GC.

160.3 CONCEALED CONDITIONS AFFECTING THE WORK: if unknown circumstances that are significantly different from those indicated in the Contract Documents (or vary from what is ordinarily found in the region of the project) are discovered to exist in subterranean locations, or other concealed or unknown situations that the GC could not have realized at the time of bidding, then the GC will be entitled to reasonable compensation to add such additional work as such conditions may require, plus the GC’s normal profit. GC will provide receipts and lists of such additional charges along with his/her calculation of profit when preparing the Change Order for such situations.

160.4 SUBSTITUTIONS: If GC desires to make substitutions for certain items, components, materials, systems or arrangements, the GC shall first provide the Architect detailed information regarding such contemplated substitutions for the Architect’s consideration. GC shall pay the Architect $125/hour to review such GC substitutions, with an initial payment, in advance, of $250, applied by the Architect toward the evaluation time. If evaluation also requires input of Structural, Geotechnical or other engineering, GC shall provide payment to those disciplines at their hourly rates, with an initial payment to them, as they may require. GC desired substitutions may or may not be approved. Payment for evaluation time does not guarantee acceptance. Such substitutions must be approved in writing by the appropriate Engineer and/or the Architect prior to the GC moving forward with such substitutions. GC shall request such substitutions well in advance of their date of need to avoid project delays, which shall not be deemed the result of Architect or Engineer’s review time. If using ArCHspec™ for specifications, see Specifications, Division 1, Section 01022 Substitutions for added information.

160.5 ADDITIONAL INSPECTIONS, APPROVALS, REVIEWS: beyond those indicated in the Contract Documents at the time of the Date of this agreement, per par.1450.2 may be requested by the GC as additional separate compensation.

160.6 INCLEMENT WEATHER: the number of days this project may take for Substantial Completion (in par.100.2 ) may be extended by the number of GC documented days that rain, ice, substantial snow, sleet, and other harsh environmental occurrences that make work difficult and dangerous, and so as a result, outside Project Work will not be performed during these instances, as reviewed & approved by the Architect. GC will not claim days & circumstances that any reasonable local GC would consider acceptable for work, nor will the GC claim days during which the GC merely wishes to move personnel to another project. Also, GC can often perform administrative in-office duties during inclement weather, or assign staff to fabrication & preparation or clean-up duties under cover. GC is to fill out a written Change Order form for each requested inclement weather extension and electronically submit to the Architect. Architect will not unreasonably withhold from approval such requests. Up to 30 (calendar) inclement weather days may be claimed by the GC during the course of the project for which there will be no added compensation. However, if the number of accrued inclement weather days exceeds 30 calendar days, then the GC will be entitled to claim added overhead & profit for those days over 30, should they be approved by the Architect.

160.7 CIRCUMSTANCES BEYOND GC’s CONTROL AFFECTING TIME: for unexpected situations caused by others outside of the project, fire, delivery delays, personnel injuries, or other situations leading to unanticipated construction delays beyond the GC’s control, the GC will submit a Change Order form requesting an extension of contract time, which shall not be unreasonably withheld in the sole opinion of the Architect. Such request will Not be a demand for more compensation, but rather, relief from the required Substantial Completion date.

**165. EXISTING CONDITIONS**:

GC, Architect, Engineers and others bear no financial or other responsibility regarding the integrity of any existing elements at the Project Site. This includes any existing buildings, geological elements (such as soil and subterranean conditions that are concealed) and any other items that constitute existing components or items that have not been exhaustively investigated by the GC, Architect, Engineers and others. GC, Architect, Engineers and others have not been compensated to engage in such verifications. Therefore, the Owner is, by default, assuming that whatever existing items Owner(s) owns at the Project Site are acceptable and will function properly. However, if any existing conditions upon which the GC depends for proper conditions to exist (such as support, water-tightness or other properly functioning conditions) do Not, in fact have such desired characteristics, that the GC may and likely will request a Change Order per par.160 to compensate the GC for unknown additional efforts to revise existing conditions to become suitable for the new Project Work.

**170. SURVEYOR, PROJECT LAYOUT**

Architect may have in the Construction Documents, as a condition of laying out the project, that the GC must engage the Surveyor that the Owner(s) had perform the original land survey. In this case, the GC will engage and pay the Owner’s Surveyor to layout the project footings, foundation walls and any other items requiring construction precision, such as but not limited to: driveways, paved areas, alignments, decks, walls, and other items as may be required. The Surveyor will request of the Architect and the Structural Engineer the necessary computerized files to allow them to perform their work.

As of this date, the Architect’s files will be in AutoCAD2015LT. The Surveyor engaged will be able to use this file type or request a previous version of the same software. The Surveyor will use the computerized files to insert GPS coordinates into their robotic laser surveying equipment to precisely layout the Project Work.

**180. COORDINATION WITH VARIOUS PROFESSIONALS**

Contract Documents may refer to GC’s coordination with various professionals during the construction of the project. This will likely include the Architect, Structural Engineer, Geotechnical Engineer, Surveyor & others. GC will contact & update referenced & required consultants at the appropriate stages of construction to result in a well-coordinated project with the proper input of all involved consulting entities.

**190. FACILITATION & DISTRIBUTION OF CONSTRUCTION DOCUMENT DRAWING SETS**

GC agrees to use the Architect/Engineer provided PDF files to have GC’s local print shops run the sets of drawings & specifications from which to build the project. Regarding signed and sealed sets, GC will comply with the following:

GC will: run a minimum of 7 hardcopy paper sets of the size specified by the Architect.

If the PDF sets have previously applied electronic professional seals & signatures, then the GC only needs to distribute the sets as follows: 1 set to the Structural Engineer, 1 set to the Architect, 1 set to the Owner, 2 sets to the AHJ (Authority Having Jurisdiction) for the Building Permit (if 2 sets fulfills their requirements, otherwise, provide the Building Department as many sets as they require), and 2 sets for the GC to have at the jobsite.

But, If the PDF sets do Not have seals & signatures yet, the GC will send the sets to the following people in this manner:

(all with GC prepaid return means to & from all entities) a minimum of 7 hardcopy paper sets of the final CDs, sent to the Structural Engineer to sign & seal. The Structural Engineer will keep 1 set. The Structural Engineer will then return 6 sets to the GC (using the GC’s prepaid return means). The GC will then send those 6 sets to the Architect, who will sign & seal and keep 1 set. The Architect will then return 5 sets to the GC ((using the GC’s prepaid return means). The GC will then submit 2 of the signed & sealed sets to the Building Department (for the location of the Project) unless the Building Department requires a different number of sets, which the GC will provide and include in the previous submittals to the Engineer(s) & Architect. The GC will then have 3 signed & sealed sets remaining. The GC will send 1 set to the Owner. The GC will take the remaining 2 signed & sealed sets to the jobsite office, with one under protection at all times, to serve as a record set, onto which any revisions to the project are drawn in red.

**200. SCOPE OF CONSTRUCTION DOCUMENTS**

The intention & purpose of the Construction Documents is to include everything required & necessary to properly build the Project Work by the GC. What is required by the GC is intended to mean as being required by all of GC’s work forces, as it applies to them and their suppliers, subcontractors, prefabricators & others supplying work, materials, systems and energies for the Project Work.

**220. ARCHITECT & ENGINEER’S PROJECT CONSTRUCTION DOCUMENTS, OWNERSHIP, LICENSING, USE**

The Architectural Construction Documents and any Engineering Construction Documents are the property of the Architect & the respective Engineers who created them, as intellectual property. As such, the Architect and the Engineers own the copyright to the documents they created. This copyright has not been sold to anyone; it is retained by the Architect and the Engineers. The Owner(s), GC and others involved in the Project are hereby licensed by the Architect & the Engineers to copy, print and use PDFs of the Construction Documents, provided solely by the Architect, as is necessary for them to bid, build and provide this one, single Project. No one involved with this Project may use the Architect and/or Engineer’s Construction Documents for other projects or for any other purposes than this one single Project. At the end of this Project, all entities in possession of the Construction Documents shall return them to the GC who will file those GC needs for their records. The remainder of the Construction Documents will be destroyed by the GC by fire. All parties having PDFs of the Project, at the conclusion of the Project shall erase such files from their computers, with the exception of the GC, who is allowed to retain PDFs for future reference. Future derivative designs may Not be created by the GC or others in possession of the Architect & Engineer’s Construction Documents, as this would violate copyright law. The Architect and Engineer’s Construction Documents may Not be used for renovations or additions to the Project now or in the future, without the Architect’s involvement and without the Architect’s newly created work indicating such additions and revisions to the original design. Anyone wishing to use the Architect’s documents for purposes outside of and beyond this one Project must first contact the Architect to arrange for new professional services to accomplish such new work. GC hereby agrees to use the Architect & Engineers’ Construction Documents to build the Project Work, along with other ancillary documents as are provided by prefabricators of engineered products & other systems used in the Project Work, as indicated in the Architect and Engineer’s Construction Documents. GC will only use Architect’s documents that bear “For Construction” on them in the lower right hand corner and will refuse to build from Architect’s Construction Documents that have “Not For Construction” on them in the lower right hand corner.

**230. NON-JOINDER OF ARCHITECT, NOT ONE OF “THE PARTIES”**

Owner(s) & GC agree to have contractual provisions regarding agreement(s) between the Parties, with Attorneys &/or Other Parties involving this project to omit comments of “joinder” of the Architect or other mentions of Architect from being involved in any legal or arbitration proceedings in those agreements, including this agreement.

The Parties agree to Not sign any agreements with other each other or with 3rd parties naming Architect as participants (and/or “joinder” or related language) until The Parties are able to compel others to remove Architect from such possible dispute resolutions. The Parties agree to never seek to compel, by legal force, the Architect as an un-compensated participant in any actions involving The Parties or 3rd parties regarding this project, and to protect, indemnify and defend Architect against The Parties and against any 3rd parties who seek any actions against the Architect involving this project. The foregoing refers to the Architect being compelled to travel, appear & participate in disputes & other matters for no compensation & without choice.

However, if the Architect’s voluntary presence is desired, The Parties agree to compensate the Architect at the Architect’s standard hourly rate for all time the Architect needs to spend to travel to the location of arbitration and to render assistance and/or testimony in such proceedings and to also reimburse the Architect for Architect’s costs x 25% involved in making such appearances, including but not limited to: travel costs, lodging, meals, fuel, displays, time, preparation, displays, and other costs involved with Architect’s appearance(s), including, if deemed appropriate solely by the Architect: having legal counsel representing the Architect attend such proceeding with the Architect, including reasonable Attorney’s fees involved in research, preparation & appearances, filings and related costs of Attorney(s) so involved, and any related costs involving Architect’s participation. Architect’s appearances in such matters will be determined by the Architect and his/her schedule, which may require rescheduling of the dispute resolution proceedings. The Party requesting the Architect’s appearance shall provide an initial payment to the Architect for such appearance in the amount of $5,000 (to be paid to the Architect 45 days or more in advance of any requested appearance). If and when this initial amount is consumed in the appearance(s) charges or future appearance(s), by the Architect’s and/or his/her Attorney(s), the Architect shall submit a request for an additional amount, which amount shall be paid by the requesting party at least 30 days prior to the Architect’s subsequent appearance(s) and/or the appearance of Architect’s Attorney(s). This process will be observed and repeated until the Architect’s appearance(s) are no longer requested. It is expressly understood by The Parties that the Architect is not responsible for the construction of the project, nor is the Architect responsible for the built project in any way. The Contractor is responsible for the construction and for the constructed physical project, not the Architect. Obtaining in-person testimony of the Architect and/or his/her legal counsel will be a compensated event(s). Lack of payment in advance of the proceeding as indicated above will result in the Architect and/or his/her Attorney not appearing and not participating in such proceedings. This is with the knowledge and consent of The Parties. Any legal or quasi-legal discussions about Architect’s compelled appearance(s) hereby agree to be quashed by The Parties and their Attorneys.

**240. ARCHITECT’S ROLE IN THE PROJECT**

.1 ARCHITECT IS A CONSULTANT TO THE OWNER(s) and no one else. The Architect is Not one of “The Parties”. The Architect will perform various Construction Administration duties as agreed to with the Owner and no one else. The Architect will use the Contract Documents to compare the ongoing work versus what the documents indicate and make observations and reports documenting the findings. Architect is empowered by the Owner to administer the Project for the Owner as indicated in the Contract Documents and in a separate agreement between the Owner & Architect.

.2 PERIODIC SITE VISITS: Architect will periodically visit the Project, typically within the number of days indicated in par.120.1 after the GC’s monthly Pay Request transmission to the Architect, unless the Architect is out of the Country, or has other obligations making it impossible to be present, and makes the GC & Owner aware of this. The Architect will make observations of what is conveniently visible through Architect’s normal pedestrian movement through the Project Work, not necessarily including climbing of ladders or scaffolding or on-roof walking or other dangerous situations, in the sole opinion of the Architect. The Architect will take digital photos & compare what is seen with the Contract Documents and will issue a report documenting such findings. The Architect is in no way representing that such intermittent observations & subsequent reports will detail each & every possible non-conforming work or items that may be in non-conformance with the Contract Documents. There may be unnoticed or concealed items that do not comply with the Contract Documents and the Architect bears no responsibility to identify all such possible variations. Architect’s periodic site visits will Not be exhaustive. Engineer(s) and other Owner consultants, including Building Department inspectors may be and probably will be making visits and inspections of the Project Work periodically.

.3 ARCHITECT HAS NO LEGAL OBLIATIONS TO GC or to any of GC’s work force, providers to GC or others and is not in direct contract with the GC or any GC providers of any kind. Architect’s performance of Construction Administration activities will not be challenged or demanded in any way by the GC or GC’s subcontractors or suppliers of any kind.

.4 ARCHITECT WILL ACT IMPARTIALLY & fairly to all parties and will render decisions about matters during construction relating to interpretations, definitions, design intent, clarifications & similar items, in the best interests of the Project Work, and in consideration of all parties and what the Architect deems as reasonable and in compliance with the intent of the Contract Documents, as may be inferable from the Contract Documents. The Architect’s determinations are final and all of The Parties agree to accept the Architect’s decisions. Architect’s decisions on such matters will be in writing (emails are acceptable) and/or as drawings, as the Architect deems appropriate. Architect will request that The Parties comply with such decisions and execute their portion of actions required. Architect is Not responsible legally or otherwise for outcomes or consequences of such decisions & interpretations performed by the Architect in the course of faithful service.

.5 ARCHITECT IS NOT RUNNING THE CONSTRUCTION and is not in control of the building of the Project Work, is Not in charge of and is Not responsible for: the final or in-progress built Project, or its: construction methods, means, safety precautions, fabrication, formwork, ordering, delivering, shipping, unloading, installing, protecting, cleaning, fixing, preparing, removing, repairing, maintaining, fabrication, or other items & services & components involving the assembly of or corrections to the Project Work.

Only the GC has control over the preceding items and the GC is the sole party entirely responsible for The Project Work. Architect is Not responsible for physically laying out or building The Project Work. Architect’s role during construction is to observe, advise, process payments, and help decide questions.

Architect is Not responsible for failures on the part of the GC, including, but not limited to: failure to construct the Project Work in compliance with the Contract Documents, or to provide safety precautions on the Project Site that could pose a hazard to people, equipment and other things.

.6 ARCHITECT WILL PROCESS GC’s PAY REQUESTS per par. 120 above. Architect’s decisions on such matters do not guarantee that actual amounts spent, stored or installed by GC will not vary from GC’s Pay Request amounts.

.7 ARCHITECT’S EMPOWERMENT & DUTIES per the Contract Documents cannot be altered unless there is written agreement to do so on the part of the Owner, GC & Architect. The Parties & and Architect agree to be reasonable in such alterations, if they become necessary in the opinion of all involved.

.8 ARCHITECT &/OR ENGINEER(s) MAY REFUSE ACCEPTANCE of Project Work that is in non-compliance with the Contract Documents.

.9 ARCHITECT WILL RENDER DECISIONS: When either of The Parties request, in writing, that the Architect make a consideration & decision about the Project Work regarding questions either of them may have, the Architect will expeditiously undertake, review and decide such situations, using the Contract Documents as the guide. Architect’s decisions about such matters will be final and uncontested by The Parties.

.10 GC’s SUBMITTALS will be expeditiously reviewed by the Architect, however, GC will comply with par.160.4 regarding substitutions. Architect’s reviews of GC submittals will be only to the extent of checking general compliance with Contract Documents and the intent of them, unless Architect deems more detailed review is required.

.15 ARCHITECT HAS NO LIABILITY: All of The Parties agree that the Architect has no liability for performing his duties in good faith, as indicated above, below and throughout this agreement.

**250. GENERAL CONTRACTOR REQUIREMENTS, RESPONSIBILITY, ROLE IN THE PROJECT**

.1 FIELD MEASURING, ADJUSTING TO FIELD CONDITIONS: GC will study & compare conditions, sizes and circumstances on the Contract Documents with Project Site conditions and will verify actual field sizes, slopes, angles and other information to result in fabrications, materials & components fitting properly and being installed correctly into the Project Work to be in compliance with Contract Document requirements. GC will advise Architect and coordinate solutions with Architect for any situations, omissions or errors that could create problems before ordering, purchasing, fabricating, transporting, delivering & attempting to install into the Project Work. GC will not knowingly proceed with anything that GC knows will create a problem. GC will work with the Architect to solve such situations before they are built.

.2 FAMILIARITY WITH PROJECT SITE, CONTRACT DOCUMENTS, LOCAL CONDITIONS

The act of signing this agreement serves as testimony that the GC, his subcontractors & suppliers of all types have visited, walked & studied the Project Site, are intimately familiar with the local community, neighborhood, town, city, County, State & Federal requirements, and have thoroughly studied the Contract Documents, which consist of this agreement, the Construction Documents and all other referenced items in par. 90.

.3 SHOP DRAWINGS & OTHER SUBMITTALS TO THE ARCHITECT FROM THE GC: GC will, early in the Project Work, study, analyze and review the complete Contract Documents, including the Construction Documents (Working Drawings & Specifications), with special emphasis on required submittals, shop drawings & samples stipulated in the Specifications. GC will prepare or cause others to prepare the required shop drawings & product submittals as soon as possible.

As Shop Drawings & Submittals become available, the GC will (as much as possible) ELECTRONCIALLY send these to the Architect for review and will courier or US Mail physical samples (and any other physical submittals) to the Architect, with prepaid return labels and packaging for any items requiring a return to the GC’s office.

If provided for in Architect’s Specifications and if using ArCHspec™, see Architect’s Submittal requirements, typically on sheet A15.1-A15.2(+/-) of the drawing sheet set, in Specification Division 1, Section 01018.

Note: Shop Drawings, Submittals, Samples and similar items are NOT Contract Documents and do not have the same force and effect as the approved Contract Documents do.

Any added comments by the GC or his subcontractors and material & other providers on Shop Drawings, Product Data, Samples & similar submittals that violate Contract Documents and the Construction Documents (intentionally or otherwise) , to the effect that: “Approval of this submittal indicates complete approval in all ways, even if different from the approved Construction Documents” is void and of no effect. The Architect will NOT be “approving” any submittals, but rather, “Reviewing” for general compliance with the Contract Documents. Such reviews do not guarantee that submittals that are known by the submitter to purposefully violate the Construction Document requirements will be acceptable if incorporated into the Work. If such violations become known later, such violating items will be removed and replaced by the GC and his forces for no added compensation, with items indicated as being acceptable in the Contract Documents replacing any improper, deficient or unauthorized items.

GC and his work forces will Not order, purchase, fabricate, ship, deliver, store or install anything that has not first been reviewed and approved by the Architect and/or Engineer(s), if an item requiring Shop Drawings, Product Data Submittals and/or Samples for selection by the Architect.

GC’s delays in providing the shop drawings & other submittals shall not affect the project schedule or influence the Architect’s ability or right to reject submittals not in compliance with Contract Documents.

.4 BUILDING PERMIT, PROJECT WORK CHARGES & FEES, COORDINATION: GC will take signed & sealed Construction Document sets to the Project local Building Department & other additional Authorities Having Jurisdiction (AHJ) for various items, and will secure the AHJ Building Permit & other permits required for the Project Work. GC will pay for building permit(s), other permits for The Project Work not yet obtained but required, charges, inspections and fees required, as part of his Project Work (for which GC is compensated from the Price to Perform the Project Work). GC will comply with the AHJ’s requirements to result is obtaining the Building Permit. GC is responsible for preparing, gathering and coordinating ancillary items that are required by the Building Official, but that are Not being provided by the Architect, such as, but not limited to: Energy forms (such as REScheck or other(s) that may or may not be required using Architect’s energy values specified), Prefabricated truss & LVL and other specialty prefabricated structural item shop drawings, calculations, signatures & seals of Licensed Structural Engineers at the providers of such specialty systems, and any other required items made necessary by local authority that the Architect & Project Engineer(s) are not providing. For instance: a well or septic permit may be required, which the Owner may or may not yet possess (see Specifications, if any, and Site Plan(s). Such necessary permit costs (if not already obtained) should be factored into the GC’s Price to Perform the Project Work.

GC will coordinate the Project Work with Building Department, Health Department and other AHJ (there may be several) to schedule AHJ inspections, certifications and other events, as required by AHJ, to give access to and allow visibility of the various stages of construction as required by AHJ(s). GC will not knowingly install Project Work that is known to be rejected by AHJ, and will coordinate such items in writing with the Architect long before these situations arise and before they are purchased, ordered, shipped or installed, to allow ample time to coordinate solutions.

.5 CONSTRUCTION RESPONSIBILITY, COORDINATION & DIRECTION OF ALL PROJECT WORK

GC will solely control and direct all construction at the Project Site and at all Project related locations concerning the Project Work. GC is completely and solely responsible for all of the Project Work, including the work, materials, supplies, products, fabrications, information, calculations, shop drawings, submittals, warrantees, components, labor and other items provided by all of the GC’s subcontractors, material providers and suppliers of all types for every aspect of the Project Work (except for those items that are declared to be provided by the Owner(s) in the Contract Documents). GC will provide GC’s best knowledge, capabilities, best staff members and most experienced subcontractors to produce the highest quality Project Work possible within the limits of the requirements of the Contract Documents. In no circumstances will the GC be allowed to blame his staff, subcontractors, or providers of any type for anything improper involving the Project Work. GC is making the choices of who to use on the project for labor, materials and other items. GC is entirely in charge of construction methods, means, ways of assembling, sequencing, equipment used, personnel, and how things will be made to go together for the Project Work.

.6 SALES TAXES, CHARGES FOR ITEMS RELATED TO BUILDING THE PROJECT WORK

GC is completely responsible for all sales taxes and other taxes, surcharges and other fees levied or required to allow the GC to build the project in the location of the Project Work.

.7 SUPERVISION OF STAFF, WORKERS, CONDUCT, PROJECT SITE, TRASH: GC will provide professional licensed experienced and knowledgeable construction supervision of all personnel, subcontractors, suppliers and others working or entering the Project Site. GC will not allow the Project Site to be exposed without security to protect the Project Work and to protect others from injuring themselves. GC will require that personnel from GC company & others under GC’s control operate and conduct themselves in a professional manner. If music is present, the sound from such devices will Not be allowed to cross the Project Site Property line. In other words: if the music is loud enough to hear outside of the Project Site, it’s too loud. Any music will be turned down low enough so that personnel can speak to each other without adjusting the sound. GC will require that project staff from all providers conduct themselves professionally, courteously and safely at all times. Personnel on-site will treat visitors & others with respect when they are present. Site personnel will treat each other with courtesy and respect and will never run or use tools in any manner for other than what they were designed to do: build projects with construction materials. Personnel will never use loud, abusive or offensive language. Personnel violating such restrictions will be removed from the Project Site by the GC. Personnel will help each other accomplish tasks, in particular, those involving heavy weight & long or bulky objects that could be dangerous for one or fewer people to deal with than more people and/or equipment to safely handle such items. Adequate number of personnel will be at the Project Site to handle such items. Site personnel shall be trained & experienced in the tasks & work set before them & will be supervised by field foremen with 10 years minimum experience in the construction of custom homes.

GC will instruct, monitor & require staff to comply with specified trash disposal methods on a daily basis, per Construction Documents provided by Architect. This clean-up procedure will be as indicated in the Architect’s specifications. If Architect uses ArCHspec™, this will typically be found in the A15 series sheets, Specifications, Division 1, Section 01020 CLEAN UP. If Specifications are not provided, this requirement remains. It is required that the project interior and exterior be cleaned on a daily basis, with no piles of debris or fires allowed. Loose boards with nails will have the nails removed and the wood neatly stacked above ground for future use. GC must furnish trash dumpsters to handle the trash and be in place before construction starts. All trash, soil and debris will be removed as dumpsters fill and at project completion. At the end of the project, all of the GC’s & his providers’ equipment, excess materials, debris and other construction paraphernalia will be removed and transported away from the Project Site. This includes changing over from a temporary power pole (if any) to the permanent electrical service entrance at the building. Surfaces and other elements will be cleaned.

.8 PAYMENT & CONTROL FOR MATERIALS, WORK FORCE, LABOR, EQUIPMENT METHODS OF TRANSPORT & ASSEMBLY: GC is solely responsible for paying for all materials, workers, labor, equipment, transportation, supplies, and all assembly of the Project Work as required by the Contract Documents.

.9 UMBRELLA WARANTEE, VARIOUS PRODUCT & MATERIAL WARRANTEES

.a GC is solely responsible to provide an “umbrella” warrantee (on GC’s company letterhead) on the entire Project Work in conformance with Project Warrantee requirements indicated in the Specifications (if so provided). If ArCHspec™ is used for specifications, this will normally be found under Specification A15 sheet series, Division 1, Section 01010. This time period for this comprehensive “bumper to bumper” warrantee (covering all parts of the Project Work, is usually 1 year from the date of Substantial Completion or as otherwise indicated in the Specifications. If there are no specifications, then this time period will be 1 year from the date of Substantial Completion.

.b GC will induce, require and demand that all of his subcontractors, material and product supplies and other providers of items that have manufacturer’s warrantees, prior to receiving their final payment, will provide warranty cards from the manufacturer, filled out in the Owner’s name and Project Work Address with the Owner’s other information, email and a photocopy of the receipt for the items installed that are being warranted, per the Specifications. If Architect is using ArCHspec™, this is often located on the A15 series sheets, in the Specifications, Division 1, Section 01010. If there are no specifications, then this requirement remains a project requirement. GC will collect all of the manufacturer’s warrantee cards with accompanying receipts along with manufacturer’s maintenance and operation manuals and instructions then assemble into a Warrantee and Maintenance Manual for the Owner. Requirements for this manual are located in the same specification section as the warrantees above.

.c GC hereby guarantees and warrants that GC and all of his subcontractors & providers for the Project Work, has, will and is providing new materials, of unbroken and intact quality items, without any faults, soil, wear or other problematic and questionable characteristics, properly installed in accordance with the Contract Documents and manufacturer’s written instructions. Note: where historic or “distressed” characteristics are specified in the Construction Documents, those characteristics may supersede those in the preceding sentence.

.10 FIXES, REPAIRS, CORRECTIONS, REPLACEMENTS TO PROJECT WORK

Should the Architect and/or Engineer(s) reject work of the GC per par.240.8, the GC will expeditiously remove and replace such deficient work with new work and/or materials and related items required to correct the deficiency(ies). GC is responsible for the costs related to such replacements of deficient work. This includes all cost, time and related items and personnel involved in removing, finding, exposing, demolishing, replacing, fixing, monitoring, testing and installing, patching & blending new work in place of the deficient work.

This replacement of defective or deficient work (in the sole opinions of the Architect and/or Engineer(s)) not in compliance with Contract Documents, will remain in force for a period of one year beyond Substantial Completion. If during that period, the Architect and/or Engineer(s) discover deficient and/or defective work/components/items/materials or related items, the GC will replace such items as indicated above in this par. 250.10. This is in addition to the GC’s related requirements for other warrantees on the Project Work.

Should the GC be unresponsive and/or not make such requested corrections indicated in this par. 250.10 within 40 days of such request(s) in writing, provided by the Owner and/or Architect and/or Engineer(s) to the GC, Owner may make such improvements/fixes/repairs and corrections per par. 270.3 with Owner’s other Contractors. In this event, the cost of such Owner-mandated corrections will be deducted from the Price to Perform the Project Work to the original GC, and reflected in the GC next Pay Request.

GC and his subcontractors and providers of all types will perform whatever modifications, corrections, blending and similar alterations are necessary to allow the items, components and other aspects of the Project Work to correctly connect, fit and contact each other as intended in the Contract Documents.

.11 HOMEOWNERS ASSOCIATION COMPLIANCE, LOCAL, SITE & OTHER REQUIREMENTS, REGULATIONS & LAWS

GC will limit the Project Work to the Owner’s land and will not allow erosion of soil or other elements or personnel, materials, parking, debris, utilities, runoff, or other items to infringe or trespass on any neighboring lands without legal easements for such items being indicated and approved in the Contract Documents (particularly on the Site Plan(s)). GC (and all of GC’s providers) will comply with all local laws, ordinances and regulations, including those of any Homeowner’s Associations, Villages, Towns, Municipalities, County, and State & Federal entities. GC will comply with site requirements indicated on the Contract Documents.

**255. GC SHALL PROVIDE PROTECTION OF PEOPLE, THE PROJECT WORK AND OTHER RELATED ITEMS**

.1 PROTECTION FOR PEOPLE: At the location of the Project Work, and at locations of stored materials & items intended for use in the Project Work, GC is solely responsible for Safety: GC will supervise, maintain and protect the life & limb of Project Work staff & personnel, subcontractors, suppliers of all types, AHJ personnel, Architect, Engineer(s), guests, visitors, Owner(s), and any others who may come onto the Project Work Site. GC will adhere to all construction hazard protections required by local, state, federal and other laws & regulations governing such practices, including but not limited to hazards such as: fall protection at incomplete construction levels, ditch and excavation protection for personnel working in these situations, and other protections as required to provide safety for people working on the Project, in addition to common sense practices to protect people from injury. GC will extend his protections around the Project Site so that other people and domestic pets adjacent to the Project Site will not face or encounter hazards generated by, through or from the Project Site. GC to provide Insurance per par. 150.

.2 PROTECTION FOR THE PROJECT WORK: At these same locations, GC is also solely responsible for supervising, maintaining, securing and protecting the property and the Project Work itself and all related materials, supplies and components from theft, damage and other perils, to the extent of daily good work common sense practices (such as lock & key, fencing) and compliance with local, State & Federal laws. GC will also protect adjacent property from damage and hazards occurring from or through the Project Site. GC will expeditiously fix, repair and correct any damage occurring on the Project Site or on adjacent property and land, occurring as a result of (in whole or part) the Project Work, erosion and other events coming from the Project Site and adversely affecting neighboring property. GC is liable and responsible for the acts and conditions being created on the Project Site and how that work impacts adjacent land & property, including all of the GC’s subcontractor and providers of all types.

INSURANCE NOTES: Owner is providing Builder’s Risk Insurance per par.150 on the Project Work at the Project Site, therefore, this insurance coverage is Not required as part of GC’s protections indicated above.

However, GC shall maintain theft and other damage protections as required to secure and protect any of the Owner’s property held at remote locations not at the Project Site. The GC is held responsible for the security of such remote stockpiles of Owner’s property. Should any damage or other losses of such remote Owner Property being held by the GC occur, the GC is required to replace such loss at his own expense and resources.

GC shall furnish property insurance for any such remote locations in which GC intends to store Owner’s Property during the course of the project. Coordinate this paragraph with par.150.

**258. GC SHALL HOLD HARMLESS & INDEMNIFY CERTAIN ENTITIES**

As allowed by the laws governing the location of the project, the GC shall hold harmless and indemnify the Owner(s), Architect, Architect’s consultants (and Architect’s agents and employees), Structural Engineer, or any of them from and against claims, expense & losses, damages claimed, including but not limited to Attorney fees, court costs, actual and calculated losses of any kind, judgements and other claims and decrees, resulting from or occurring as a result of executing the project requirements. The foregoing is with the understanding that any such claims and costs are due to damage of physical property, injury of persons, equipment, property and pets, illness and/or death. However the foregoing shall be only due to the negligent acts and mistakes made by the GC, his/her subcontractors, material suppliers and/or others operating under his control or at his direction, and for which the GC is liable, whether or not claims, damages, expenses and other loss is due to in whole or in part by an indemnified party.

**260. CONTINUOUSLY WORK**

.1 MOBILIZATION: Within 14 calendar days from the Date of this Agreement per par. 1. by both of The Parties, the GC will coordinate and arrange for GC’s work forces to be on the Project Site and/or in other locations, proceeding with the various items of Project Work and preparations necessary for proper forward progress of the Project Work.

.2 CONTINUOUSLY WORK: GC will continue to have personnel and/or subcontractors, material providers and others, as required, working continuously on the Project Work a minimum of 4 days a week, every week, until the Project Work is completed, unless inclement weather or other negative circumstances make it unsafe or impossible for people involved with The Project Work to provide this amount of Project Work on site for each and every week.

.3 CONSTRUCTION SCHEDULE: within 30 days after Date of Agreement, GC will provide a Project Schedule that will indicate when the various portions of the work will be accomplished, illustrated on a weekly basis, as to what work will be taking place for shop drawings & submittals, ordering, fabrication, shipping, delivery, installation, reviews & inspections and Substantial & Final Completion, of the various aspects of the Project Work. GC may use whatever software GC deems appropriate for his needs, however GC will need to furnish the Project Schedule to the Architect in either an Excel Spreadsheet or a PDF (if using more sophisticated scheduling software such as MS Project), as the GC may prefer. GC will update GC’s Project Schedule each month, factoring in any changes and will electronically forward to the Architect each month, just prior to sending Architect GC’s Pay Request each month.

**270. OWER(s) REQUIREMENTS, ROLE IN THE PROJECT**

.1 FUNDING & PAYMENTS: One of the Owner’s most important obligations in this agreement: to pay for the Project Work, in accordance with par. 120. If the Owner does not make prompt payment, the work will stop or be delayed and there can be consequences per par. 1475.4.

.2 CONSTRUCTION DOCUMENTS, CONTRACT DOCUMENTS, SURVEY: Owner will direct his Architect & Engineer(s) to make the Construction Documents and Contract Documents available to the GC. This will typically include a copy of a Land Survey. If for any reason, it does not, the GC has every right to request and receive a professional land survey through the Owner’s resources and at the Owner’s expense. The GC cannot be expected to respect boundary lines and building setbacks, to know where any easements are located, utilities or other aspects without having a proper, legal land Survey.

.3 WORK STOPPAGE ORDER(s) BY OWNER, MAKING OF CORRECTIONS

a. For reasons indicated, in par.1475, the Owner is empowered to order a written Project Work Stoppage. Owner may elect to dismiss the GC due to such reasons, or Owner may have another Contractor fix or repair improper work, and/or Owner may allow the GC to continue with the Project Work, after certain situations have been improvement and corrected.

b. In the event a Work Stoppage (termination) is ordered by the Owner on a permanent basis with the original GC, per the above, Owner may have others complete the Project Work, per par. 1475, with rights & remedies so stated therein.

.4 OWNER PAYING DIRECTLY FOR SOME FEW ITEMS DIRECTLY: Although this agreement is conceived to have the GC be entirely responsible for all Project Work costs, fees & charges, there are some few items that the Owner is paying for directly, per the Contract Documents. See the Specifications and other documents for information on these items. Also, due to ownership provisions in the legal system, there may be some few items that the Owner must provide through Owner’s own resources directly, such as easements, community assessments and similar items. All other items are intended to be paid for by the GC.

.5 ADDITIONAL CREWS, LABOR, MATERIALS AS SEPARATE OWNER AGREEMENTS OUTSIDE OF THIS CONTRACT: Owner may have separate items of work handled by other crews of people doing related but separate activities. This is allowed under the terms of this agreement. Should this occur, GC will plan and work with Owner’s separate personnel to accommodate their efforts and sequences in the work in a logical and convenient manner for all people involved. Any unexpected charges, losses, improper work or other events leading to unexpected costs associated with having separate crews (the GCs, versus the Owner’s separate crew(s)) will result in either the Owner or GC paying for the cost, based on who is responsible for such difficulties, on a case by case basis, as determined solely in the opinion of the Architect, whose decision(s) shall be binding and final on The Parties.

**280. OWNER’S USE OF PROJECT & PROJECT SITE DURING CONSTRUCTION**

Owner is expressly forbidden to appear on the project site at times when the GC is not present during the course of construction, until such time as the project reaches Substantial Completion and construction hazards no longer exist. The reason for this clause is help prevent the Owners from encountering incomplete conditions that could harm them. If the Owners visit the project site and/or enter the under-construction and as-yet incomplete construction without the GC being present to secure the project and to escort and guide them, they are at risk for encountering conditions that could cause them physical harm including death. If the Owners take it upon themselves to violate this term of the agreement, they hereby assume full and total responsibility for their own welfare and they agree to not create any legal actions against the GC and/or against GC’s insurance company(s) or others involved with the project for any damages that could occur to themselves, their guests (if any) and/or their property and related persons, property and/or pets. While the GC is taking reasonable precautions to secure and protect people, any construction site, by its very nature involves rough and incomplete conditions that can and will pose hazards to people (and to domestic pets).

**290. OWNERSHIP OF PROJECT SITE**: Owner(s) represents that he/she/they are the record owner(s) of the real property (land and any improvements thereon) to be improved as identified in the Contract Documents.

**300. AUTHORITY HAVING JURISDICTION, GOVERNING LAW**

This Project Contract between the GC and Owner(s) is governed by the law in the location of The Project. The Authority Having Jurisdiction (AHJ) is the Building Department that issues the Building Permit and other authorities, such as the Health Department. In the absence of such a AHJ, the Architect and the other Project Engineers will function as the AHJ as far as the GC is concerned, assuming that the Owner engages the Architect and Engineers and compensates them for such services. In the absence of this, the State of The Project is the AHJ.

**400. CONTRACT ASSIGNMENTS NOT PERMITTED**

None of The Parties to this agreement will assign or attempt to assign this agreement to any other entity without the written, dated approval of the other Party. Also: none of The Parties will assign or attempt to assign the work of the Architect and/or Engineer(s) to any other entity.

**1210. SEVERABILITY**: if any legally binding entity finds any part of this agreement unenforceable, then all other parts of this agreement will remain enforced to the maximum extent permitted.

**1300. DEFINITIONS**: Note: all definitions apply whether capitalized or in lower case or mixed upper and lower case or in quotation marks or in any other format.

Miscellaneous Definitions: “Parties” or “The Parties” = Owner & GC. “Other parties”= anyone other than Owner & GC. “par.”= paragraph (as in the paragraphs contained in this specific agreement). “3rd parties”=anyone other than Owner, GC & Architect. “GC”=General Contractor. “&”= and.

“AAA”= American Arbitration Association.

“Agreement” or “The Agreement” or “This Agreement”= this Agreement in this Contract about This Project.

“AHJ”= Authority Having Jurisdiction (as in local Building Department, Health Department or other governing entity.).

“Life & limb”= all parts of a human being’s body.

“Owner” or “Owner(s)” or “Owner 1” and/or “Owner 2” or other renditions of “Owner”= the person, persons, and/or company that owns the Project Work and the Project Site/Land, who will be responsible financially and otherwise for making payments to the GC and for providing other things required in the Contract and in the Contract Documents and in the Construction Documents in the capacity of the Owner.

“Price to Perform the Project Work”= all of the money being agreed to pay the GC from the Owner to provide The Project Work, per par.110.

“Project” or “The Project” or “This Project”= this one single project discussed & referred to in This Agreement, unless indicated otherwise in the Contract Documents. This Project includes everything in the Project Work.

“Project Construction Documents” or “Construction Documents”=Working Drawings & Specifications created by the Architect and any Engineer(s) for this Project, indicating the Project Work to be accomplished.

“Project Contract”= this OGCA (Owner-General Contractor Agreement) between The Parties.

“Project Site”= the location of the land of The Project, as depicted in the Contract Documents, where The Project will be built and provided.

“Project Work”= materials, means, methods, items, components, labor in the field on the project, overhead, profit, transportation, fuel, electricity, water, energies of all types, forces, negotiations, administrative efforts, ordering, delivering, paying, coordinating, constructing, equipment, building, permitting, correcting, adjusting, crafting, prefabricating, protecting, cleaning, arranging, providing access to and from, and all other materials, systems, and physical & mental efforts, and anything and everything required to make the Project in the location and with the features and procedures indicated in the Contract Documents to be provided by the GC.

**1450. OBSERVATIONS, REVIEWS, INSPECTIONS, TESTING**

.1 From time to time, the Contract Documents and AHJ and Architect & Engineer(s) may require that certain reviews, tests, inspections and similar checking & verifications occur to provide the necessary AHJ approvals, Architect & Engineer(s) consent/approvals as indicated in the Contract Documents and as required by the AHJ. GC will so order, provide and comply with such requirements, as part of his Project Work.

.2 However, tests & approvals that become required after the signing of this Contract, and Not indicated in the Contract Documents (or reasonably inferable therefrom), will be paid for by the Owner as an amount additional to the agreed upon Price to Perform the Project Work.

.3 GC will not hide, cover or conceal new work elements added since the Architect’s (or Engineer(s)) previous site visit, so that the Architect (or Engineer(s)) may conveniently and easily observe the new work for which the current Pay Request is seeking payment, during the Architect (or Engineer(s)) next site visit. However, if the GC must cover certain items (such as rebars in footings that need to have concrete poured over them), then the Contractor will advise the Architect and additional arrangements will be made to provide evidence of the new work items that are being covered (such as digital photographs by the Contractor in the field during the covering process, and/or supplemental Architect and/or Engineer visits).

**1475. PROJECT WORK STOPPAGE**

.1 OWNER’S STOPPING THE PROJECT WORK FOR NO REASON: If the Owner(s) wishes to stop the Project Work for no reason, the Owner may do so. Under such circumstances, the Owner will pay the GC for any and all costs associated with the GC’s work to date of Project Work Stoppage, including GC’s overhead & profit for that work performed. GC will also be entitled to receive payment for unrealized normal reasonable profit projected on Project Work not yet accomplished, but planned, through to the end of the Project Work, as fair compensation for unplanned sudden demobilization and downtime associated with redirecting workforces in an abrupt manner. Architect will review this unrealized profit calculation and render a decision on its fairness; the decision of which will be accepted by The Parties as binding.

.2 OWNER’S JUSTIFIABLE PROJECT WORK STOPPAGE: Owner may stop the Project Work and conclude & permanently stop further work under this Contract for the GC, should the GC not provide adequate work forces to properly execute the Project Work in a timely manner or not diligently perform the Project Work as indicated in par.260, and/or the GC does not make prompt and complete payments to GC’s service and material providers for the Project Work, as indicated in par.135 & 120, and/or does not employ workers with the proper skills (or enough of them) to professionally execute the work in a craftsman-like and proper manner in the sole opinion of the Architect, and/or GC does not comply with AHJ and/or locally enforced laws, regulations and requirements of supervisory, community and law-enforcement entities (despite warnings and previous infractions), and/or disregards and/or non-compliance with Contract Document requirements in a manner felt to be significant by the Architect in the Architect’s sole opinion.

.3 CONSEQUENCES OF ABOVE OWNER’S JUSTIFIABLE WORK STOPPAGE: It is extremely important that the original GC endeavor to not allow the above conditions to happen, if at all possible, as there can be serious financial consequences (see below). When and if the above par.1475.2 conditions occur, the Owner can, without jeopardizing any cures and other solutions at his disposal in this agreement, and after notifying any other entities having an interest in the GC’s performance, such as insurance companies and surety holders, completely stop, cancel and end the engagement of the GC with regard to this Contract and the Project Work, after 7 days written notice to the GC and those stakeholders. It is expressly understood that all conditions related to financial responsibility of the original GC with regard to completion costs (per par. 1475.3.b) in this agreement will continue to remain in force, even after removal of the original GC from the Project Work.

.a In the event that the Owner chooses to end the GC’s involvement in the Project Work due any or all of the above listed causes, the Owner will, immediately after the time indicated in par 1475.3 above, claim everything on the Project Site, including anything presently owned by the GC, then will proceed to have the Project Work completed by others as the Owner determines is reasonable.

.b In the event the above occurs, the original GC will not receive any further compensation until the Project Work has been completed by others at the Owner’s direction. At that point, if the remaining quoted amount of the original GC’s Price to Perform the Project Work (per par.110) is more than what it has actually cost the Owner to have others complete the Project Work, then the original GC will be paid the remainder. However, if the actual cost to finish the Project Work is more than the original GC’s quoted Price to Perform the Project Work (per par.110) (less the amount already paid to the original GC to the time of Project Work Stoppage), then the original GC will pay the overage to the Owner. Any dispute over this issue shall be subject to the Dispute Resolution Process in par. 50.

.4 PROJECT WORK STOPPAGE BY GC

.1 The GC may stop work on the Project, if any of the following circumstances occur:

.a if Owner does not make payment for 30 days beyond the number of days alloted in par.120.4.

.b if Architect does not review and authorize GC payment for 30 days past allotted number of days per par.120 (assuming GC has complied with all requirements of par.120, with special emphasis on par.120.1, 120.3, 120.5, 120.6, 120.7), through no fault of the GC.

.2 The GC may then provide written notice (email + certified letter(s)) notifying both Owner & Architect, giving them

7 additional days to correct the situation. If payment has not been received by the end of this additional number of days, then the GC may end his involvement in this Project Work, cancelling his efforts to perform any further Project Work, and to demand payment for Project Work performed to date of Work Stoppage that has not yet been paid by Owner, including previously agreed to overhead & profit margins on that amount of work performed but not yet paid, plus reasonable costs of Project Work Stoppage actually encountered and paid for, with receipts & calculations documenting such costs.

.3 In the event the GC stops the Project Work without any of the above reasons in par.1475.4.1, then the Owner will be justified in enforcing Owner’s Justifiable Project Work Stoppage per par.1475.2.

**1480. PROJECT WORK SUBSTANTIAL COMPLETION**

DEFINITION: Substantial Completion= the Project Work is reasonably complete so that the premises can be functionally used by the Owner for the intended purpose as defined by the Architect, and a Certificate of Occupancy can be and is provided by the GC & AHJ. There may be and probably are minor remaining final corrections & touch-ups to be made.

SUBSTANTIAL COMPLETION SITE VISIT & REPORT: at such time that the GC declares in writing that the Project Work is Substantially Complete (or will be by a certain date), Architect will schedule a Site Visit, similar to the Architect’s previous such visits per par. 120.2. The Architect will produce a Substantial Completion Report per par.120.2. It may be that the Architect has a difference of opinion as to whether the Project Work has or has not reached this stage of completion. The report will so note items remaining in the terms of a “PunchList” that need to be completed by the GC prior to another Substantial Completion Site Visit #2, or if the project can move to the Final stage, after completing the PunchList.

At some point, the Architect will issue a Certificate of Substantial Completion as part of this or subsequent Site Visits, when, in the Architects’ sole opinion the Project Work is Substantially Complete. The date on this form will be the official date of Substantial Completion. Many other Project Work items depend on this date, as indicated throughout the Contract Documents, in particular, this is the date that all warrantees begin for the Project Work.

**1490. PROJECT WORK FINAL COMPLETION & FINAL PAY REQUEST**

DEFINITION: Final Completion= everything on all previous PunchLists and Site Visit Reports and indicated Deficiencies have been corrected & completed as indicated by the Architect, AHJ, and Contract Documents. No new deficiencies exist or are noted.

FINAL COMPLETION ARCHITECT SITE VISIT & REPORT: When the GC indicates in writing that the Project Work has reached Final Completion (or will be by a certain date), the Architect will schedule a Site Visit, similar to the Substantial Completion Site Visit above.

FINAL PAY REQUEST: GC will issue a Final Pay Request to the Architect, similar to the previous Pay Request procedure in par. 120 and timed to coordinate prior to the Final Completion Site Visit per par. 120. FINAL PUNCHLIST REVIEW: Architect will review the previous PunchList to determine if all previous items and defects noted have been corrected & completed. There may or may not be new items noticed at this time. Nothing shall preclude as yet unnoticed defects from now being added to the previous PunchList, now updated to be Final or near-Final. If the complete PunchList is determined by the Architect to be finally complete (in the Architect’s sole judgement), then the Architect will issue a statement on the Final Report that the Project Work has been completed.

FINAL PAYMENT APPROVAL: After the Final Completion determination above, the Architect will expeditiously approve the GC’s Final Pay Request. However: this will not occur until the GC has submitted all of the final requirements for Final Payment Requirement per par.1495 below. Final Payment is not required or due until the following items in par.1495 are provided by the GC to the Architect. The same time limits are in effect for the Final Payment as have been for the previous payments per par.120.

**1495. FINAL PAYMENT REQUIREMENTS**

Requirements for Final Payment and retainage release (GC to provide to Owner & Architect):

.1 Final Lien Releases indicated in par.120.6 . This will require that GC is solvent and financially capable of paying all of the debts on this project just before GC receives final payment.

.2 Not used.

.3 Consent of any Surety Company (that may or may not be involved) to final payment.

.4 Insurance Certificate from the GC’s insurance provider, indicating that insurance coverages required by the Contract will remain in effect for at least 30 days until after a written notice is provided to the Owner.

.5 Written statement from GC to Owner indicating that GC believes that any insurance desired to be continued should be able to be continued by the Owner, if desired, for the insurance coverages controlled by the Owner henceforth.

.6 Final Payment to GC and GC’s payments to subcontractors and suppliers of all types hereby is agreed by The Parties to create a satisfaction of payment & waiver of any future claims, other than previous claims made in writing and understood by all parties to indicate previously unresolved payments outstanding existing at time of Final Pay Request. However, as such outstanding claims would be cause to not approve Final Pay Request, it is doubtful that there will remain such claims at the time of the Final Pay Request.

**1500. SIGNATURES EVIDENCING AGREEMENT:** signatures immediately below indicate agreement with all of the above, previous & following OGCA (Owner-General Contractor Agreement) provisions & attachments (as of date in par. 1.):

(NOTE: have project area local Owner’s Attorney insert any locally required provisions (in the location of the Project) here regarding any special legally required notices regarding length of time available to cancel a signed agreement, or other information necessary to comply with local laws)

X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner 1 signature above Owner 1 printed name above

X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner 2 signature above Owner 2 printed name above

X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

GC (General Contractor) Authorized signature above GC (General Contractor) Authorized person above

X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

GC (General Contractor) Legal Company Name printed above

**1600. OWNER & GC NAMES, ADDRESSES, PROJECT LOCATION, CONTACT INFORMATION:**

**OWNER**(s): Owner 1: Legal Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Owner 2: Legal Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mailing address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Physical Address of Owner(s) (if different than mailing address):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Main phone for Owner(s):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email address: Owner 1:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Owner 2:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**GENERAL CONTRACTOR** (GC): Company Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Legal Name of General Contractor (GC) License Holder Person for Contractor Company:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

State of licensure of individual holding license and License Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mailing Address of GC company:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Physical Address of GC company (if different than mailing address):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone number of GC:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Cell phone of GC license holder:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email of GC company and GC license holder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**PROJECT**:

Project Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Project address/location : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Project Type: RESIDENCE for the Owners.

**ARCHITECT**:

Company Name & Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Person in charge of this project:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Phone of company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Email for Architect:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**1700. EXHIBITS / ATTACHMENTS:** (add any attachments, as referenced in the Project Contract and make sure that each attachment has initial and date blanks for each of The Parties, signifying their agreement to each)

**PROJECT INTERIM CONSTRUCTION LIEN RELEASE**

**1**

**for: MAIN GENERAL CONTRACTOR**

**PICLR** 2015.1



**& RELATED SUBCONTRACTORS & SUPPLIERS (by reference)**

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STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

Before me, a Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, owner of the company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

the main **General Contractor** (GC), that furnished labor, materials and services under a Contract with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Owner)

on a PROJECT identified as: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

located at:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

and who, having been duly sworn, testified that All of the Subcontractors, Suppliers, Material suppliers service suppliers, his own company, and other entities under his control on this Project have been paid all monies owed for any and all labor, materials & services they provided on this Project from the beginning of this Project up to the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_, minus any amount(s) retained per the Contract and enforced laws, and that there are no known outstanding Liens or claims of any kind existing or planned by any entity working or supplying this project and that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the company\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Prime General Contractor)

therefore waives and releases any and all lien rights or claims on the Project for all related labor, materials and services, to the amounts paid as indicated herein up until today’s date.

This the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_.

By:

Title:

Sworn to and subscribed

before me this \_\_\_\_\_\_\_\_\_ day of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_\_\_\_.

GC to use this form for all Interim General Contractor Lien Releases starting from the 2nd Pay Request, through the 2nd to last Pay Request.

Notary Public

My Commission Expires:

**PROJECT FINAL SUBCONTRACTOR / SUPPLIER CONSTRUCTION LIEN RELEASE**

**2**

**PFSSLR** 2015.40



**for: SUBCONTRACTOR AND/OR SUPPLIER**

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STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

Before me, a Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, owner of a company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

one of the Subcontractors and/or Suppliers, that furnished labor, materials and services under a Contract with the General Contractor (GC): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (GC company name)

on a PROJECT identified as: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

located at:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

and who, having been duly sworn, testified that he/she and/or his/her own company, and other entities under their control on this Project have been paid ALL monies owed for any and all labor, materials & services they provided on this Project from the beginning of this Project to the END of the project (for this Subcontractor and/or Supplier), which is the: \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_, and that there are no known outstanding Liens or claims of any kind existing or planned by this Subcontractor and/or Suppliers that has worked on or supplied this project and that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (🡨this Subcontractor and/or Supplier person, of this company🡪)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

therefore waives and releases any and all lien rights or claims on the Project for all related labor, materials and services, to the amounts paid as indicated herein up until today’s date.

This the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_.

By:

Title:

Sworn to and subscribed

before me this \_\_\_\_\_\_\_\_\_ day of

GC to require that all of GC’s Subcontractors and Suppliers provide this form, when GC is making Final payments to each Subcontractor & Supplier, from the beginning of the Project to the End. GC to keep these in a dedicated file. Provide them all to the Architect & Owner with Final Pay Request.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_\_\_\_.

Notary Public

My Commission Expires:

**PROJECT FINAL CONSTRUCTION LIEN RELEASE**

**for: MAIN GENERAL CONTRACTOR**

**3**



**& RELATED SUBCONTRACTORS & SUPPLIERS (by reference)**

**PFCLR** 2015.20

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STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

Before me, a Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, owner of the GC company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

the main **General Contractor** (GC), that furnished labor, materials and services under a Contract with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Owner)

on a PROJECT identified as: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

located at:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

and who, having been duly sworn, testified that All of the Subcontractors, Suppliers, Material suppliers service suppliers, his own company, and other entities under his control on this Project have been paid ALL monies owed for any and all labor, materials & services they provided on this Project from the beginning of this Project to the END of the project, which is the: \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_, and that there are no known outstanding Liens or claims of any kind existing or planned by any entity working or supplying this project and that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the GC company\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Prime General Contractor)

therefore waives and releases any and all lien rights or claims on the Project for all related labor, materials and services, to the amounts paid as indicated herein up until today’s date.

This the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_.

By:

Title:

Sworn to and subscribed

before me this \_\_\_\_\_\_\_\_\_ day of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_\_\_\_.

General Contractor to use this form for GC’s FINAL UMBRELLA Lien Release, accompanying GC Final Pay Request.

Notary Public

My Commission Expires:

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**DELETE ALL RED NOTES BEFORE PUBLISHING THIS FORM!**

THE FOLLOWING ARE INSTRUCTIONS & NOTES REGARDING YOUR USE OF THIS FORM:

YOU ARE AGREEING TO THE FOLLOWING AS A CONDITION OF USING THIS FORM:

A. NOT A CONTRACT UNTIL…:

This form is NOT a contract until you and your Client’s (Owner’s) Attorney review, edit and adjust it to suit the location of this project. This is the most important issue. Various states have different requirements about how certain clauses are phrased, where they may be located in an agreement and whether or not there must be additional signature lines next to certain critical clauses, as determined by each state. Creating an agreement form that would work in all 50 States is desirable, but that is a moving target: laws are constantly changing in every state. That is why there are Lawyers: it is their job to protect your Client (Owner) and provide counsel regarding modifications to insure that whatever form of agreement you, as an Architect (or your Clients or General Contractors) of residential projects use, will be effective. No doubt there will be special circumstances in some states that may require more adjustments to this form than others. YOU & YOUR CLIENT MUST CONSULT AN ATTORNEY LICENSED IN THE STATE WHERE THE PROJECT IS LOCATED. Have them review the form of agreement after you have adjusted it to suit your practice and the project information. That will be some of the best money your Client will have invested in the project (a consulting Attorney).

B. WORDING CREATED AROUND RESIDENTIAL ARCHITECTURE PRACTICE:

You & your Client may or may not have problems or have other issues with the final form of a modified version of this agreement. Nothing is iron-clad. However, ArCH believes that if you compare this form against others, that you will find that you may prefer this agreement, as it is specifically adjusted by licensed Architects practicing residential design. Do NOT believe that you can use this form “out of the box”. ***You (your Client (Owner)) Must have a consulting Attorney(s) review and adjust this form to suit the laws of the state where the project is located: this is a requirement to which you are agreeing when you purchase and use this form.***

C. INDEMNIFICATION:

By using this form, you hereby agree to protect, defend, and hold harmless ArCH: Architects Creating Homes, LLC (also called “ArCH”) and their officers, members, founders, consultants, and other related ArCH parties, from any actions made by you, your Client, any Contractors or others under your direction or guidance. You and your Client (the Owner(s)) are using this form at your/their own choice, as a point of beginning, which you & they agree to have reviewed, edited and revised by your Attorney(s) or your Client’s Attorneys who is/are licensed in the state(s) of whatever projects you choose to engage yourself. The Attorney(s) will turn this form into the final Contract you and your Client and Contractor may use. Without your Attorney’s guidance (or that of your Client’s (Owner’s)), this will remain a form with text on it, and not a legal instrument.

D. FILL OUT ALL BLANKS in this form, or revise information throughout it to suit your practice and the project involved.

E. DELETE ALL RED items (including these guide notes) before printing the using the agreement, after you have filled out and adjusted the agreement to suit your practice and the project, after having your Attorney(s) and/or your Client’s Attorney provide their advice to you and your Client (when they are the Owner(s)).

F. VENUE:

1. It is suggested that you indicate the venue location as the street address of your Client’s project local Attorney’s office that has his/her office closest to the Project.

 a. This is so that if your Client ever has a dispute with the Contractor, that your Client’s Attorney’s inconvenience is minimized, as well as the legal expense, if the agreement is honored by all parties.

2. Counsel to date believes that Binding Arbitration through the AAA procedures allows for the “forum selection” naming the venue as an approved method of indicating the location of any proceedings. As long as all parties agree to this forum location (venue) in the agreement, this should be an enforceable provision. However, this is not guaranteed.

3. In a dispute, it is certainly possible that one of the parties to this agreement could challenge the Dispute Resolution Process (arbitration) along with the venue location provision, however, this is an issue which should be contested by your Client, if this occurs, as the AAA rules, as part of this agreement, should allow enforcement of both the arbitration & the venue provision. Nothing involving a legal dispute is guaranteed, and judges, arbitrators and juries do things that mystify Attorneys every day. So, it is not known if this arbitration & venue provision could be successfully challenged. However, see the Recoverable Costs paragraph, which allows your Client to be compensated for any efforts they need to make defending their position of the original Arbitration and venue selection dispute resolution process. In other words, it may be that a state of a physical project location may hold up both the Arbitration and its AAA venue forum agreement, in which case, any expenses your Client has made, according to the present agreement wording, would allow the Client to recoup those costs to require the challenging party to pay for your costs (as the Architect). Knowing this, and the possibly likelihood of a state supporting the AAA Arbitration & venue forum clause, the psychology of another party initiating such a challenge may be less likely to occur. That is the rationale. Once again, the law is a malleable thing, and different legal minds interpret issues differently. So while there is no guarantee that these clauses will be enforced, there is certainly greater likelihood of them being beneficial, than if they did not exist, once all parties agree to them.

G. MODIFICATIONS:

As a matter of fact, it is suggested that no one be given the idea that any of the clauses are modifiable, but rather that this is the standard form of agreement (which it is), and that this is how you and your Client conduct your business. The entire agreement is an inter-linked series of paragraphs that depend on each other, so do not take modifying this agreement lightly. This agreement also inter-links to other ArCH forms of Agreement, like the AOA (Architect-Owner Agreement).

H. DISPUTE RESOLUTION PROCESS INDICATED ON THIS FORM:

This is near the top of Page 1, because other Counsel indicated that in some states, in order to be recognized and enforceable, it needed to be located there, especially when involving Binding Arbitration. Whether or not it needs to be there in the State of the project, remains to be seen, and is a matter for your Client’s Attorney(s) to review, verify and adjust, if necessary. Also: the initials of the signing parties need to be next to the clause (in at least one state). What makes this so important: if you don’t have this clause in the correct location in the agreement and without the initial blanks where they are required to be by that state’s contract laws, it could be declared invalid, if one party wished to challenge it. You & your Client (Owner) want binding arbitration and the declared venue forum location. Binding arbitration, according to other counsel’s advice, will often resolve matters more readily than legal court proceedings, and having matters resolved quickly is in everyone’s best interests and relieves an over-burdened justice system from having to deal with highly technical matters, with which it does not fare well. It is crucial in any arbitration, to have a person(s) with construction and design knowledge that will be sympathetic to your situation and circumstances, so: you and your Client’s counsel need to exercise your rights to select a hearing party that can best understand construction and provide good decisions. Another Architect, perhaps, might make a reasonable choice, but those must be your Client’s decisions and those of your Client’s counsel in such situations.

I. LOCATION OF CLAUSES/ SIGNATURE BLANKS, INITIAL BLANKS:

It may be that the Dispute Resolution Process may be the primary clause that is required to be in a specific location on an agreement in particular states, however, your Client’s Attorney(s) should carefully review the entire agreement and make sure that any clauses that need to be in a certain location to be legal in that state should be moved to be where that state’s laws require them to be located. Furthermore, in at least one state where some of our ArCH members are practicing, there needs to be initial blanks for the parties signing the agreement, directly next to certain clauses, such as the Dispute Resolution paragraph. Therefore, your Client’s Attorney(s) should carefully review, edit and revise this as required, to be legal in the state(s) of project location.

J. YOUR CLIENT’S (OWNER’S) ATTORNEY(s):

Suggest that your Client engage a highly experienced Construction Contracts Lawyer in the state of the project.

L. MERCHANTABILITY:

ArCH does not warrant the usefulness of this form for any particular purpose. You & your Client (Owner) and their Attorney will decide what use you & they may wish to make of it.

M. YOU & YOUR CLIENT ARE RESPONSIBLE FOR THE PURPOSE(s) USED:

By using this form, you and your Client are agreeing that ArCH, its members, founders, officers, consultants, and others associated with ArCH have no responsibility for whatever use you make of this form.

N. YOUR PRACTICE:
Modify the various clauses to reflect how you conduct your business. Fill in the blanks to reflect project items, as applicable, and heed the Red notes.

O. DELETE ALL RED NOTES:

Delete all the red notes before printing or sending or transmitting this form to anyone, as instructions regarding how to fill out this form, with the red notes in place will only confuse the agreement from its intended final form.

P. SOFTWARE:

This form is made available in MS Word. Intentions at this point are for version(s) 2013. This will no doubt be updated from time to time. It is intended that you be allowed to use and edit this agreement in this native software for your ease of use. There are no special software complications that you may have found in other agreements from other parties of this type. It is fully editable, as you and your Client’s counsel deem fit. Know that this allows you to damage the form and to remove inter-dependent clauses. It will be up to you and your Client’s counsel to familiarize yourselves with this form (and others to which it may refer and relate to, such as, but not limited to: other ArCH forms, including AOA (Architect Owner Agreement), and for you to understand these inter-dependencies. Especially heed the paragraph numbers referenced, whenever you delete other paragraphs, as this could change the referenced paragraph numbers. We recommend that you NOT change paragraph numbers: simply have non-sequential numbering. You will need to update those if you do modify the paragraph numbers. Be careful.

S. LIMITS OF LIABILITY ON THE FORM:
Have the Client’s (Owner’s) Attorney review this carefully, and adjust to suit the enforceable laws and practices in the place of the Project.

T. RESPONSIBILITY FOR CONSTRUCTION ON THE FORM:

You are the Architect, not the Builder. You provide professional services, the Contractor provides the physical product: the house. Do nothing to modify any provisions stating otherwise. Do not allow any Attorneys or others to attempt to make you, the Architect, in any manner or form, responsible for the built project.

U. OTHER CLAUSES:
These are self-explanatory. Read them and understand them. This agreement was created to result in a fair arrangement for all parties.

W. INITIAL BLANKS, SIGNATURE BLANKS:

Your Clients (the Owner(s)) and the General Contractor are requested to sign the agreement in the signature blanks, and to also initial ALL of the initial blanks wherever they exist throughout the agreement. The Client (Owner(s)) signing and initialing blanks have been color coded for each of 2 possible clients (such as a man & wife), and to call attention to them. The General Contractor’s blanks have also been color coded.

If anyone ever misses any of these, politely request that they fill them in, if you happen to be involved in this process. There does not exist a complete agreement until The Parties sign and initial all of the blanks.

Z. DATE OF AGREEMENT:

According to some Attorneys who write agreements for large companies, nationwide, the ArCH agreement uses the practice of indicating the Date of Agreement at the top of the form, on Page 1. This makes this a single, enforceable date, rather than when the parties signed the agreement (which can be on different dates). Make sure that the Date of Agreement is acceptable to your Client (Owner) and the General Contractor before forwarding the agreement to them (of course, after your Client’s Attorney has edited it).

AA. PROJECT LOCATION:
In part of the agreement, you will notice both an address location and Latitude & Longitude. It is quite common for project sites to not have a 911 address before something is built on that property. If you do have a street address, use it. However, you may also want to indicate the Latitude & Longitude to remove any doubt as to the location of the project, particularly where no address exists as yet.

BB. FORM OF AGREEMENT LENGTH:

It is highly recommended that you endeavor to keep this agreement as short as possible. It should be about 18 face pages when the red notes are removed. Print it out double-sided. That = about 9 physical pages, which is much shorter than some other organization’s larger agreements. This has as much to do with psychology as anything else, but making this any longer than necessary will not help reach agreement. In other words: avoid the temptation to reformat and provide lots of white space. That may make it look graphically more pleasant, but the sheer added size will become a possible issue. Also, do not shrink the font any more. Most of it is in 10 point Arial. Any less and it could become more difficult to read. It is suggested that you keep the Arial font, as it is well-regarded for legibility and nearly universal printer & computer recognition (although you should only email PDFs of the agreement to others, never the original native software, as others could alter your agreement).

DD. EXHIBIT A:
If your Client’s Attorney has a Construction Lien Release form, it would be good to include it as an attachment.

FF. CLIENT CHANGES:
Beware of making Client-demanded changes that you know can cause problems. Even though it might seem politically expedient to do whatever the Client says, there are clauses in this agreement that allows you to exercise your professional judgment. Making a change that results in future problems can only come back to haunt you and your Client, so be careful of what you agree to modify, if it contradicts what you know is the correct thing to do.

GG. LIEN RELEASES:
It is beyond us why this has not been addressed as well in other agreements of this type. There are specific attached Lien Releases at the end of this form, each with a specific purpose for certain critical events in the course of the project. These lien releases are linked by text references to the GC’s Pay Request procedure in the agreement, as a condition of payment. Absolutely essential to avoid having your Client pay for something and not have the GC and GC’s subcontractors and suppliers indicate that they have been paid in full to that point in time. Do Not remove. However, the Client’s (Owner’s) Attorney may want/need to alter some phrasing of the Lien Release forms themselves to insure that they are properly phrased for the State of the Project.