

**Payne County Board of Commissioners**  
**Regular Meeting, April 11, 2016, 9:00 a.m.**  
Payne County Administration Building; 315 W. 6th Avenue  
Gloria Hesser Commissioners' Meeting Room, Suite 200/201

**AGENDA**

- I. Meeting called to order by Chairman
- II. Invocation and Flag Salute
- III. Minutes
  - A. Approval of April 4, 2016
- IV. Miscellaneous Items from the Audience (no action will be taken)
- V. Discussion and Possible Action on Bid Openings- 9:30 A.M.
- VI. Discussion and Possible Action on Evaluations
  
- VII. Discussion and Possible Action on Reports from Officers and Boards
  - A. Tabled- Contract Bid# 2016-50 Phase II McVey Arena- Expo Center
  - B. Approval of housing addition Roka Hidden Lake w/ Keystone Engineering- D-3
  - C. Acknowledgment of Court Case No. CJ-2016-122
  - D. Request for Traffic Control Signs
  - E. Ingress and Egress Agreements
  - F. Removal of Equipment Items from Inventory
  - G. Appointment of Requisitioning and Receiving Officers
  
- VIII. Discussion and Possible Action on Financials
  - A. Cash Appropriations
  - B. Transfer of Appropriations
  - C. Purchase Orders; List of the purchase orders will be available at the meeting, or from the County Clerk
    - 1. New
    - 2. Blanket
    - 3. Tabled
    - 4. Disallowed
    - 5. Payroll/Longevity
  - D. Monthly Reports of Officers
    - 1. Cost of food for the jail for the month of March was \$17258.69- Sheriff  
\$11,096.77 Sysco Foods, \$3,563.83 Ben E. Keith Foods, \$2,598.09 Earthgrains
    - 2. March 2016- PCEE
    - 3. March 2016 3/8 Sales Tax- County
  
- IX. Discussion and Possible Action on
  - A. Telephone and Utility Permits
  - B. Road Crossing
  
- X. Public Announcements from the Board (no action will be taken)
  
- XI. New Business
- XII. Adjournment

PAYNE COUNTY  
GLENN CRAIG  
COUNTY CLERK

2016 APR - 11 P 3:28

**Official Minutes of  
PAYNE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

The Payne County Board of County Commissioners met in a rescheduled meeting of the board in the Commissioner's Conference Room at 9:00 a.m. on **Monday, April 4, 2016** at the Payne County Administration Building located in Stillwater, Oklahoma.

**Chairman called the meeting to order:** at 9:00 a.m.

**The following members were present:** Chairman- Kent Bradley District 3, Vice-Chair-Chris Reding, District 2, Zach Cavett, District 1, Glenna Craig-County Clerk. Invocation by Glenna Craig and Flag Salute to our country by Dewey Clapp.

**Approve minutes of the previous meeting of the board:** Clerk presented the minutes of the March 29<sup>th</sup> meeting. Motion by Reding to accept the minutes as presented, second by Cavett. Roll Call Vote: Bradley-Yes, Reding-Yes, Cavett-Yes.

**Miscellaneous items from the audience:** None

**Discussion/Possible Action of Bid Openings-9:30 A.M:** None presented at this time.

**Discussion/Possible Action on Evaluations:** None presented at this time.

**Discussion/Possible Action on Reports from Officers and Board:**

- **Invoice for payment STP project Huitt Zollars-D1:** Cavett presented the invoice for the STP project on Fairgrounds Road for the acceptance for plan in hand plans. Motion by Cavett to approve the payment for \$4207.50 to Huitt Zollars for the acceptance of plan in hand plan, second by Reding. Roll Call Vote: Reding-Yes, Cavett-Yes Bradley-Yes.
- **Resolution 2016-05 Insure Oklahoma application and contract-Commissioners:** Craig presented the resolution and application for contract for Insure Oklahoma which was approved by Assistant District Attorney Lowell Barto. This is per the request from the Budget Board to submit the application for acceptance into the Insure Oklahoma program.

Whereas, the Insure Oklahoma Program is a Program administered by the Oklahoma Health Care Authority to establish access to affordable health insurance coverage for low-income working adults and their dependents in compliance with applicable federal and state regulations; and Whereas, based on information and belief, Payne County is an employer eligible to participate in the Insure Oklahoma Program and through such program provide a benefit to eligible employees of Payne County; and Whereas, the Board of County Commissioners of Payne County has determined that it is in the best interest of Payne County and its employees to apply for and participate in the Insure Oklahoma Program, and to appoint an Agent of Record pertaining to its anticipated participation in said Program. Now, therefore be it resolved by the Board of County Commissioners of Payne County, Oklahoma: Section 1: That Payne County shall make application to participate in, and upon approval of said application, participate in the Insure Oklahoma Program. Section 2: That the Chairman of the Board of County Commissioners of Payne County be and he is hereby authorized to execute, on behalf of Payne County, any and all documents necessary or required to apply for and participate in the Insure Oklahoma Program. Section 3: That Dana Neighbors, of Premier Consulting Partners, be and she is hereby appointed as the Agent of Record for Payne County with regard to the Insure Oklahoma Program. Passed, approved, and adopted this 4<sup>th</sup> day of April, 2016.

Motion by Reding to accept the resolution, second by Cavett. Roll Call Vote: Cavett-Yes, Bradley-Yes, Reding-Yes.

- **Agreement Bid #2016-05 Phase II McVey Arena-Expo Center:** Colin Campbell, Expo Center Director requested the board table this item. Motion by Cavett to table item C, second by Reding. Roll Call Vote: Bradley-Yes, Reding-Yes, Cavett-Yes.
- **Tower Lease Agreement (American Tower)-Commissioners:** Reding stated he had been in contact with American Tower about their tower located at the Fairgrounds and he presented three different lease options from American Tower. The first option is a perpetual easement, the second option is a 10 year lease, and the third is a 5 year lease with a 5 year extension for seven times. Reding recommended option 1. Bradley stated he had a problem with the perpetual agreement and having no time limit. Cavett asked Assistant District Attorney if he had a preference. Barto stated don't give them a perpetual easement unless the county wants to give up the right to ease that forever. When the county gives an easement with the lease it is temporary, set in time with a certain beginning and ending date. Barto said that is what he would recommend over a perpetual easement. Motion by

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Cavett to have Option 3 presented, second by Reding. Roll Call Vote: Reding-Yes, Cavett- Reding-Yes, Cavett-Yes, Bradley-Yes.

- **Road Name Request D-1 and D3:** The following Road Name requests were presented: D-1 Dale Roden-Mady Circle, located at NE/4 of 29-19N-R3E, Dale Roden-Jenna Lane, located at NE/4 of 29-19N-R3E and D-3 Carey Nicholas-Cades Lane, located S4/4 22-20N-R2E. All have been recommended for approval by the Assessor's office. Motion by Bradley to approve the Road Name requests and no maintenance by the county, second by Cavett. Roll Call Vote: Cavett-Yes, Bradley-Yes, Reding-Yes.
- **Request for Traffic Control Signs:** None presented at this time.
- **Ingress and Egress Agreement:** None presented at this time.
- **Removal of Equipment items from Inventory:** None presented at this time.
- **Appointment of Requisitioning and Receiving Officers:** None presented at this time.

**Discussion and Possible Action on Financials:**

- **Cash Appropriations:** None presented at this time.
- **Transfer of Appropriations:** The following transfer was presented; Sheriff-Jail Operations Repairs \$43.55, Jail Operations Capital Outlay \$172.51, Jail Operations Travel Reimbursements \$5000.00 transferred to Jail Operation Salary account. Motion by Cavett to approve transfer at presented, second by Reding. Roll Call Vote: Reding-Yes, Cavett-Yes, Bradley-Yes.
- **Purchase Orders: New:** The following Purchase Orders were presented; FY 2014-15 \$5,381.33 FY 2015-16 \$51,678.58. 2014-2015 HEALTH DEPARTMENT: 569, DIVISION OF CAPITAL ASSETS MANG CONSTRUCTION & PR, 5111.33, ADMINISTRATION FEES; 570, STILLWATER MEDICAL CENTER, 180.00, JANUARY BLANKET; 571, STILLWATER MEDICAL CENTER, 90.00, MAY BLANKET; 2015-2016 COUNTY GENERAL: 3983, STEWART STONE, INC., 763.61, GRAVEL; 3984, WALKER COMPANIES, 92.50, NOTARY; 3985, BOB HOWARD DODGE, 3946.04, REPAIRS; 3986, LASER SOLUTIONS, 315.00, TONER; 3987, BEASLEYS TECHNOLOGY, INC., 375.00, SONIC FIREWALL; 3988, THOMSON REUTERS - WEST, PAYMENT CENTER, 888.00, OKLAHOMA STATUTES; 3989, RETAIL FINANCE CREDIT SERVICES, ATTN: DONNA PRING, 13.12, CLEANER; 3990, HOTSY OF OKLAHOMA, INC., 210.51, REPAIRS TO WASH BAY; 3991, REED, KEITH, 50.66, TRAVEL; 3992, BEASLEYS TECHNOLOGY, INC., 250.00, HARDWARE; 3993, A T & T MOBILITY, 170.30, UTILITY BILL; 3994, DEARINGER PRINTING & TROPHY, 5.50, ENGRAVING; 3995, STILLWATER NEWSPRESS, 628.06, PUBLICATIONS; 3996, DELPHIA PUBLISHING,LLC, 423.34, PUBLICATIONS; 3997, PERKINS JOURNAL, 115.50, PUBLICATIONS; 3998, COOPERS LOCKSMITH LLC, 2.00, MARCH BLANKET; 3999, B & L HEATING & AIR, 75.00, MARCH BLANKET; 4000, GRIMSLEYS, INC., 572.70, MARCH BLANKET; 4001, GRIMSLEYS, INC., 497.46, MARCH BLANKET; 4002, INDUSTRIAL CHEMIST, INC., 450.00, MARCH BLANKET; 4003, QUALITY WATER SERVICES, 35.00, MARCH BLANKET; 4004, COOPERS LOCKSMITH LLC, 1105.00, PIN LOCKS; 4005, CUSHING CITIZEN, 50.00, SUBSCRIPTION RENEWAL; 4006, CUSHING CITIZEN, 346.54, PUBLICATIONS; 4007, NAPA AUTO PARTS, 2675.21, DIAGNOSTIC MACHINE; 4008, CITY CARBONICS, 740.80, TESTING AIR BOTTLES; 4009, R D SIMPSON, 12300.00, BUILDING; 4010, CHICKASAW, 2568.34, UTILITIES; 4011, CPR-CELL PHONE REPAIR STILLWATER, 144.00, REPAIR PHONE; 4012, KINNUNEN SALES & RENTALS,, 304.58, CONCRETE; 4013, RAILROAD YARD, 433.52, TUBING; 4014, RAILROAD YARD, 1952.40, TUBING; 4015, DIRECT DISCOUNT TIRE OF, 825.34, TIRES; 4016, STC/BUSINESS WORLD, 396.98, TONER; 4017, FENTON OFFICE MART, 101.04, MARCH BLANKET; 4018, THE MEADOWS, 45.00, MARCH BLANKET; 4019, ADVANTAGE PLUMBING HEATING AND COOLING, 150.98, LEAK INVESTIGATION; HIGHWAY CASH: 1370, BEASLEYS TECHNOLOGY, INC., 375.00, SONIC FIREWALL; 1371, ASSOC. OF COUNTY, 165.00, CONFERENCE; 1372, MERRIFIELD OFFICE SUPPLY, 7.99, MARCH BLANKET; 1373, UNIFIRST, 883.24, MARCH BLANKET; HEALTH DEPARTMENT: 392, PEAK PEST SERVICES LLC, 200.00, FEBRUARY BLANKET; 393, OTIS ELEVATOR COMPANY, 103.26, EQUIPMENMAINTENANCE; 394, A AND M STORAGE LLC, 70.00, STORAGE; 395, FALCO ALARM CO., INC., 183.00, MONITORING SERVICES; 396, A T & T MOBILITY, 1003.71, UTILITY BILL; 397, OKLA. NATURAL GAS, 199.23, UTILITIES; 398, A T & T, 1210.20, UTILITY BILL; 399, BIRCHCOMMUNICATIONS, INC., 477.80, UTILITY BILL; 400, CITY OF STILLWATER, 1781.63, UTILITIES; 401, BAJKO, EMILY, 289.44, TRAVEL; 402, MILLER ROXANNE, 151.20, TRAVEL; 403, ROSE COURTNEY, 70.74, TRAVEL; 404, BLAKE, LINDA, 207.36, TRAVEMECHANIC LIEN FEE; 71, QUALITY WATER SERVICES, 35.00, APRIL BLANKET; JAIL OPERATION & MAINTENANCE: 534, GRIMSLEYS, INC., 451.61, SUPPLIES; 535, BEN E. KEITH OKLAHOMA, 1029.02, FOOD ANDSUPPLIES; SOLID WASTE: 29, EWING ELECTRIC COMPANY LLC, 89.00, WINCH MOTOR; 30, OAKES SERVICE CENTER, 85.36, FUEL; 31, JOHN DEERE FINANCIAL, 100.99, SUPPLIES; 32, STAPLES, 105.26, SUPPLIES; 33, NAPA AUTO PARTS, 203.48, SUPPLIES; 34, STILLWATERSTEEL AND, 381.03, SUPPLIES; COURTHOUSE SECURITY: 15, WATCHDOG AUTOMATION SYSTEMS LLC, 7800.00, BLOCK OF TIME;
- **Blanket:** Ripley Fire Department, April Blankets totaling \$7500.00.

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- **Tabled:** None presented at this time.
- **Disallowed:** None presented at this time.
- **Payroll/Longevity:** None presented at this time.  
Motion by Cavett to approve Purchase Orders upon signature, second by Reding. Roll Call Vote: Cavett-Yes, Bradley-Yes, Reding-Yes.
- **Monthly Report of Officers:** Bradley presented the Highway Cash report for D-1 and D-3 for the month of March. Gross Production is down 49%, the previous month total is down 19% and down overall 5% from the previous year.

**Discussion and Possible Action on**

- **Telephone and Utility Permits:** None presented at this time.
- **Road Crossing:** The following road crossing permits were presented; District 1, Permit #16-010, Oklahoma Natural Gas Company. Motion by Cavett to approve road crossing permits as presented, second by Reding. Roll Call Vote: Cavett-Yes, Bradley-Yes, Reding-Yes.

**Public Announcements from the Board (no action will be taken):** Reding announced a PCEA meeting on April 18<sup>th</sup> at 9:30 a.m. to hear results of the TEFRA meeting. Bradley reported updates on the ACCO meeting.

**New Business:** None presented at this time.

**Adjournment:** Motion by Cavett to adjourn, second by Reding. Roll Call Vote: Bradley-Yes, Reding-Yes, Cavett-Yes.

**Minutes of the Board attested to**

By \_\_\_\_\_  
Glenna Craig, Payne County Clerk  
Seal of office

**Approved by the Board of Commissioners**

On the \_\_\_\_ day of \_\_\_\_\_ 2016

**Chairman** \_\_\_\_\_

**Commissioner** \_\_\_\_\_

**Commissioner** \_\_\_\_\_


**AIA® Document A101™ – 2007**
**Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the Twenty First day of March in the year Twenty Sixteen  
(In words, indicate day, month and year.)

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

Payne County, Oklahoma  
Payne County Commissioners  
315 West Sixth Street, Suite 202  
Stillwater, Oklahoma 74074

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

Alexander Construction Company  
221 E 9th  
Stillwater, Oklahoma 74074  
405-624-2500

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

Payne County Expo Center, McVey Arena  
Capital Improvements Phase II  
4518 Expo Circle, East  
Stillwater, Oklahoma 74074

The project will be the renovation of the 26,291 sf McVey Arena. The existing dirt floor will be replaced with a new concrete floor. Insulation and interior metal panels will be added to the exterior walls. New wall louvers and fan will be installed as well as additional large ceiling fan and radiant heaters.

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

McFarland Architects, P.C.  
9 East 4<sup>th</sup> Street, Suite 500  
Tulsa, Oklahoma 74103  
918-749-8100

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

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

Init.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner. (Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The Date of Commencement will be fixed in a Notice to Proceed letter.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

N/A

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

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than: October 19, 2016 (Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

(Table deleted)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

Init.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

If Contractor neglects, fails or refuses to complete work within time specified or within any proper extension granted by Owner, the Contractor does hereby agree, as a consideration for awarding this contract, to pay Owner the amount of One Hundred and Fifty Dollars (\$150.00) per day, not as a penalty but as liquidated damages for such breach of contract as herein set forth for each and every calendar day that the contractor is in default after time stipulated in the contract for completing work. Said amount is fixed and agreed upon by and between Contractor and Owner because of the damages Owner would in such event sustain, and said amount is agreed to be the amount of damages which Owner would sustain.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Eight Hundred Sixty Nine Thousand Three Hundred Sixty Eight Dollars (\$ 869,368.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

Add Alternate No. 1 – Replace Overhead Doors for the Sum of Fourteen Thousand Seven Hundred and Eight Dollars (\$14,708.00).

Add Alternate No. 2 – Replace Existing Exterior Metal Siding Panels for the Sum of Ninety Nine Thousand Dollars (\$99,000.00).

Add Alternate No. 3 – Install Bird Netting Mesh on Underside of the Entire Roof for the Sum of Thirty-One Thousand Three Hundred Dollars (\$31,100.00).

Add Alternate No. 4 – Upsize Drain Piping from 4 inches to 6 inches for the Sum of Two Thousand Two Hundred and Sixty Dollars (\$2,260.00)

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
1. Electrical Duplex Receptacles: Add price to furnish additional electrical duplex receptacles, including box, conduit, up to 50 feet of wiring, installation of labor and 20-amp receptacles with device plate.	Each	\$285.00
2. Replacement of Exterior Wall Panels: Replace exterior wall panels, including replacing any structurally unsound girts, all required attachments and trim.	Per 100 Square Foot	\$856.00
3. Concrete Slab on Grade: Add/Deduct price for concrete slab on grade.	Per Cubic Yard	Add \$331.00 Deduct \$331.00

§ 4.4 Allowances included in the Contract Sum, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

*(Table deleted)*

N/A

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## ARTICLE 5 PAYMENTS

### § 5.1 PROGRESS PAYMENTS

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Twenty Fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Twenty Fifth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty ( 30 ) days after the Architect receives the Application for Payment.

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent ( 5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent ( 5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

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

N/A

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

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**§ 5.2 FINAL PAYMENT**

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 6.2 BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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

*(Paragraph deleted)*

Init.

§ 8.3 The Owner's representative:  
(Name, address and other information)

Colin Campbell  
Payne County Expo Center  
4518 Expo Circle, East  
Stillwater, Oklahoma 74074  
405-377-1275

§ 8.4 The Contractor's representative:  
(Name, address and other information)

Ken Alexander  
Alexander Construction Company  
221 E 9<sup>th</sup>  
Stillwater, Oklahoma 74074  
405-624-2500

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
000700	General Conditions	February 15, 2016	000700-1 thru 000700-1
000800	Supplementary Conditions	February 15, 2016	000800-1 thru 000800-7
00810	Special Supplementary General Conditions	February 15, 2016	00810-1 thru 00810-6

§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)  
(Table deleted)

Title of Specification Exhibit: Exhibit "A"

§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)  
(Table deleted)

Title of Drawings Exhibit: Exhibit "B"

§ 9.1.6 The Addenda, if any:

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Number	Date	Pages
Addendum Number One	February 26, 2016	10 (8.5x11) and 1 (24x36) - Revised Sheet M1.1
Addendum Number Two	March 1, 2016	1 (8.5x11) and 1 (24x36) - Added Sheet G1.00
Addendum Number Three	March 4, 2016	1 (8.5x11)

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

**§ 9.1.7** Additional documents, if any, forming part of the Contract Documents:

.1  
*(Paragraphs deleted)*

Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007 and Article 11 of Section 00800 Supplementary Conditions.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

*(Table deleted)*

*(Paragraph deleted)*

*(Table deleted)*

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

**OWNER:**

Board of County Commissioners of Payne County,  
Oklahoma

\_\_\_\_\_  
Kent Bradley, Chairman

\_\_\_\_\_  
Zach Cavett, Member

\_\_\_\_\_  
Chris Reding, Member

ATTEST:

(SEAL)

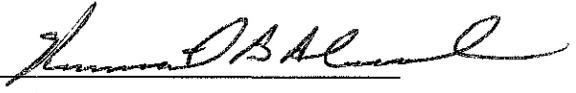
\_\_\_\_\_  
Glenna Craig, Payne County Clerk

Approved as to form and legality:

\_\_\_\_\_  
Assistant District Attorney

**CONTRACTOR:**

Alexander Construction Company

By:   
KENNETH H. B. ALEXANDER  
(Printed name and title)  
President

# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Payne County Expo Center, McVey Arena  
Capital Improvements Phase II  
4518 Expo Circle, East  
Stillwater, Oklahoma 74074

### THE OWNER:

*(Name, legal status and address)*

Payne County, Oklahoma  
Payne County Commissioners  
315 West Sixth Street, Suite 202  
Stillwater, Oklahoma 74074

### THE ARCHITECT:

*(Name, legal status and address)*

McFarland Architects, P.C.  
9 East 4<sup>th</sup> Street, Suite 500  
Tulsa, Oklahoma 74103  
918-749-8100

### ADDITIONS AND DELETIONS:

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

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

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

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

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

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

#### § 1.1.8 INITIAL DECISION MAKER

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

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

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

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

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

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

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

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

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

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

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

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### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

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

#### § 3.5 WARRANTY

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

#### § 3.6 TAXES

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

#### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- 1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- 3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

### § 3.9 SUPERINTENDENT

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

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

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

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

**§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and

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completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

#### § 3.13 USE OF SITE

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

#### § 3.14 CUTTING AND PATCHING

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

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

#### § 3.15 CLEANING UP

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

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

#### § 3.16 ACCESS TO WORK

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

#### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

#### § 3.18 INDEMNIFICATION

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

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

#### ARTICLE 4 ARCHITECT

##### § 4.1 GENERAL

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

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

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

##### § 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

##### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

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

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

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

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

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

**§ 5.3 SUBCONTRACTUAL RELATIONS**

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

**§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

### § 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

### § 7.2 CHANGE ORDERS

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

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

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount

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for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

#### § 7.4 MINOR CHANGES IN THE WORK

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

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

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

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

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

#### § 8.2 PROGRESS AND COMPLETION

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

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

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

### § 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

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

### § 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or

encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

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

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

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

#### § 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

#### § 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

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

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

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

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

**§ 10.3 HAZARDOUS MATERIALS**

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

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

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

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

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

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

## § 10.4 EMERGENCIES

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

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

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

### § 11.2 OWNER'S LIABILITY INSURANCE

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

### § 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

### § 11.3.2 BOILER AND MACHINERY INSURANCE

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

### § 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

#### § 11.3.7 WAIVERS OF SUBROGATION

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

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

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

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

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

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## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

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

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

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

#### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

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

### § 13.2 SUCCESSORS AND ASSIGNS

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

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

### § 13.3 WRITTEN NOTICE

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

### § 13.4 RIGHTS AND REMEDIES

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

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

### § 13.5 TESTS AND INSPECTIONS

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

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

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such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

#### § 13.6 INTEREST

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

#### § 13.7 TIME LIMITS ON CLAIMS

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

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

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

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

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§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

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

#### § 15.1.2 NOTICE OF CLAIMS

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

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

- 1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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

### § 15.2 INITIAL DECISION

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

Int.

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

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

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

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

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

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

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

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

### § 15.3 MEDIATION

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

Int.

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

#### § 15.4 ARBITRATION

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

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

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

Exhibit A

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McVey Arena, Capital Improvements II  
4518 Expo Circle, East  
Stillwater, Oklahoma 74076**

**Project No. 74076.10  
February 15, 2016**

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**PAYNE COUNTY EXPO CENTER  
McVey Arena, Capital Improvements II  
4518 Expo Circle, East  
Stillwater, Oklahoma 74076**

**Project No. 74076.10  
February 15, 2016**

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**END OF DOCUMENT**

Bond No. 09114421

### Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Alexander Construction Company  
PO Box 1631  
Stillwater, OK 74076

**SURETY:** Fidelity & Deposit Company of Maryland

PO Box 1227, Baltimore, MD 21203

**OWNER (Name and Address):**

Payne County Commissioners  
315 W 6th St, Ste. 202  
Stillwater, OK 74074

**CONSTRUCTION CONTRACT**

Date: 3/21/2016

Amount: \$ 869,368.00----- Eight hundred sixty nine thousand three hundred sixty eight & 00/100----- DOLLARS

Description (Name and Location): Payne County Expo Center, McVey Arena. Capital Improvements Phase II.  
Stillwater, Oklahoma.

**BOND**

Date (Not earlier than Construction Contract Date): 3/25/2016

Amount: \$ 869,368.00----- Eight hundred sixty nine thousand three hundred sixty eight & 00/100----- DOLLARS

Modifications to this Bond:

X None       See Page 3

**CONTRACTOR AS PRINCIPAL**

Company: Alexander Construction Company

**SURETY**

Company: Fidelity & Deposit Company of Maryland

Signature:  Corporate Seal

Signature:  Corporate Seal

Name and Title: Kenneth B. Alexander, President

Name and Title: Don C. Croka, Attorney-In-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

**AGENT or BROKER:**

Messer Bowers Company  
Stillwater Branch  
PO Box 9  
Stillwater, OK 74076  
405-372-1238

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

Printed in cooperation with the American Institute of Architects (AIA) by Fidelity & Deposit Company of Maryland

PO Box 1227, Baltimore, MD 21203

vouches that the language in the document conforms exactly to the

language used in AIA Document A-312, December 1984 Edition.

PRF76002Z0601f

Without Modifications

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it

may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contractors, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction

shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the

Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page).

CONTRACTOR AS PRINCIPAL  
Company: (Corporate Seal)

SURETY:  
Company: (Corporate Seal)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title:

Name and Title:

Address:

Address:

Bond No. 09114421

### Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):  
Alexander Construction Company  
PO Box 1631  
Stillwater, OK 74076

SURETY:  
Fidelity & Deposit Company of Maryland  
PO Box 1227, Baltimore, MD 21203

OWNER (Name and Address):  
Payne County Commissioners  
315 W 6th St, Ste. 202  
Stillwater, OK 74074

CONSTRUCTION CONTRACT  
Date: 3/21/2016

Amount: 869,368.00----- Eight hundred sixty nine thousand three hundred sixty eight & 00/100----- DOLLARS

Description (Name and Location): Payne County Expo Center, McVey Arena. Capital Improvements Phase II.  
Stillwater, Oklahoma.

#### BOND

Date (Not earlier than Construction Contract Date): 3/25/2016  
Amount: \$ 869,368.00----- Eight hundred sixty nine thousand three hundred sixty eight & 00/100----- DOLLARS

Modifications to this Bond:

None  See Page 3

#### CONTRACTOR AS PRINCIPAL

Company: Alexander Construction Company

Signature: *Kenneth B. Alexander*  
Name and Title: Kenneth B. Alexander, President

Corporate Seal

#### SURETY

Company: Fidelity & Deposit Company of Maryland

Signature: *Don C. Croka*  
Name and Title: Don C. Croka, Attorney-in-Fact

Corporate Seal

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:  
Messer Bowers Company

Stillwater Branch  
PO Box 9  
Stillwater, OK 74076  
405-372-1238

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Printed in cooperation with The American Institute of Architects (AIA) by Fidelity & Deposit Company of Maryland  
PO Box 1227, Baltimore, MD 21203  
the language used in AIA Document A-312, December 1984 EDITION.

PAY76001ZZ0409f  
With Modifications

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**15 DEFINITIONS**

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services

required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

Paragraph 4 is amended to insert sub-paragraph 4.3, which states:

4.3 Claimants have furnished to Surety proof of claim duly sworn to by Claimants with adequate supporting documentation proving the amount claimed is due and payable.

Paragraph 5 shall be amended to delete the word "or" and insert the word "and" in its place.

Paragraph 6 and its sub-paragraphs 6.1 and 6.2 shall be deleted in their entirety and replaced with the following:  
When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall, within 90 days of the date when claimant finally completed its satisfactions of the conditions of Paragraph 4 notify the Claimant of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Surety shall pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Surety to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Surety as to such claim or otherwise constitute a waiver of the Contractor's or Surety's defenses to, or right to dispute, such claim. Rather, the Claimant's sole remedy shall be the immediate right, without further notice, to bring suit against the Surety to enforce any remedy available to it under this Bond.

Paragraph 12 shall be amended to add the following paragraph:  
CLAIM NOTICE for the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND INSURANCE COMPANY and/or AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY must be sent to the following address: Contract Surety Bond Claims, c/o ZURICH, 1400 American Lane, Schaumburg, IL 60196.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL (Corporate Seal)  
Company:  
Signature: \_\_\_\_\_  
Name and Title:  
Address:

SURETY: (Corporate Seal)  
Company:  
Signature: \_\_\_\_\_  
Name and Title:  
Address:

Bond No: 09114421

### Maintenance Bond

KNOW ALL MEN BY THESE PRESENTS, that we

Alexander Construction Company, PO Box 1631, Stillwater, OK 74076 hereinafter

called Principal, as Principal, and Fidelity & Deposit Company of Maryland, PO Box 1227, Baltimore, MD 21203,  
a corporation of the State of Maryland, hereinafter called Surety, as Surety,

are held and firmly bound unto

Payne County Commissioners, 315 W 6th St, Ste. 202, Stillwater, OK 74074

hereinafter called Oblige in the sum of eight hundred sixty nine thousand three hundred sixty eight & 00/100  
DOLLARS, lawful money of the United States of America, to be paid to the said Oblige, or its successors or assigns, to  
the payment of which sum well and truly to be made, we do bind ourselves, our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

SIGNED, sealed and dated this 25th day of March, 2016

WHEREAS, the Principal entered into a contract with the said Oblige, dated 3/21/2016,

for

Payne County Expo Center, McVey Arena. Capital Improvements Phase II. Stillwater, Oklahoma.

and,

WHEREAS, the Oblige requires that these presents be executed on or before the final completion and acceptance of said  
contract and

WHEREAS, said contract was completed and accepted on the \_\_\_\_\_ day of \_\_\_\_\_,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall remedy, without  
cost to the Oblige, any defects which may develop during a period of One (1)  
from the date of completion and acceptance of the work performed under the contract, caused by defective or inferior  
materials or workmanship, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

ATTEST

Penny M. Rush

Alexander Construction Company, PO Box 1631, Stillwat

By: Kenneth B. Alexander  
Kenneth B. Alexander President

Melisa Johnston

Fidelity & Deposit Company of Maryland, PO Box 1227, B

By: Don C. Croka  
Don C. Croka, Attorney-in-Fact

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Don C. CROKA, Chris WELLS and Max GLASSON**, all of Stillwater, Oklahoma, **EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 17th day of February, A.D. 2015.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Eric D. Barnes*

By: \_\_\_\_\_

Secretary  
Eric D. Barnes

*Michael Bond*

Vice President  
Michael Bond

State of Maryland  
County of Baltimore

On this 17th day of February, A.D. 2015, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President**, and **ERIC D. BARNES, Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

*Maria D. Adamski*

Maria D. Adamski, Notary Public  
My Commission Expires: July 8, 2015





# CERTIFICATE OF LIABILITY INSURANCE

ALEXCON-01 MJOHNSTON

DATE (MM/DD/YYYY)  
3/30/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Messer-Bowers Company 730 S Western Stillwater, OK 74074	CONTACT NAME:	
	PHONE (A/C, No, Ext): (405) 372-1238	FAX (A/C, No): (405) 372-1942
	E-MAIL ADDRESS: info@messerbowers.com	
INSURED  Alexander Construction Company P. O. Box 1631 Stillwater, OK 74076	INSURER(S) AFFORDING COVERAGE	
	INSURER A: American Fire & Casualty Co	NAIC # 24066
	INSURER B: The Ohio Casualty Insurance Co	
	INSURER C:	
	INSURER D:	
	INSURER E:	

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		BKA52714104	04/15/2015	04/15/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS HIRED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	BAO52714104	04/15/2015	04/15/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE		USO52714104	04/15/2015	04/15/2016	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 DED <input checked="" type="checkbox"/> RETENTION \$ 10,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N / A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Leased/Rented Equip		BKA52714104	04/15/2015	04/15/2016	50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
General Contractor. State of Oklahoma.

Project: Payne County Expo Center, McVey Arena. Capital Improvements Phase II. Stillwater, Oklahoma. Additional insured regarding the general liability is:  
McFarland Architects  
9 E. 4th St, Ste. 500  
Tulsa, OK 74103-5111

**CERTIFICATE HOLDER**

Payne County Commissioners  
315 W 6th St, Ste. 202  
Stillwater, OK 74074

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*John Louie*

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## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/5/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Messer-Bowers Company 730 S Western Stillwater, OK 74074	CONTACT NAME:	PHONE (A/C, No, Ext): (405) 372-1238	FAX (A/C, No): (405) 372-1942
	E-MAIL ADDRESS: info@messerbowers.com		
INSURED  Alexander Construction Company P. O. Box 1631 Stillwater, OK 74076	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: American Fire & Casualty Co		24066
	INSURER B: The Ohio Casualty Insurance Co		
	INSURER C:		
	INSURER D:		
INSURER E:			
INSURER F:			

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		BKA52714104	04/15/2016	04/15/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		BAO52714104	04/15/2016	04/15/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		USO52714104	04/15/2016	04/15/2017	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Leased/Rented Equip		BKA52714104	04/15/2016	04/15/2017	50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
General Contractor. State of Oklahoma.

Project: Payne County Expo Center, McVey Arena. Capital Improvements Phase II. Stillwater, Oklahoma. Additional Insured regarding the general liability is:  
McFarland Architects  
9 E. 4th St, Ste. 500  
Tulsa, OK 74103-5111

## CERTIFICATE HOLDER

Payne County Commissioners  
315 W 6th St, Ste. 202  
Stillwater, OK 74074

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

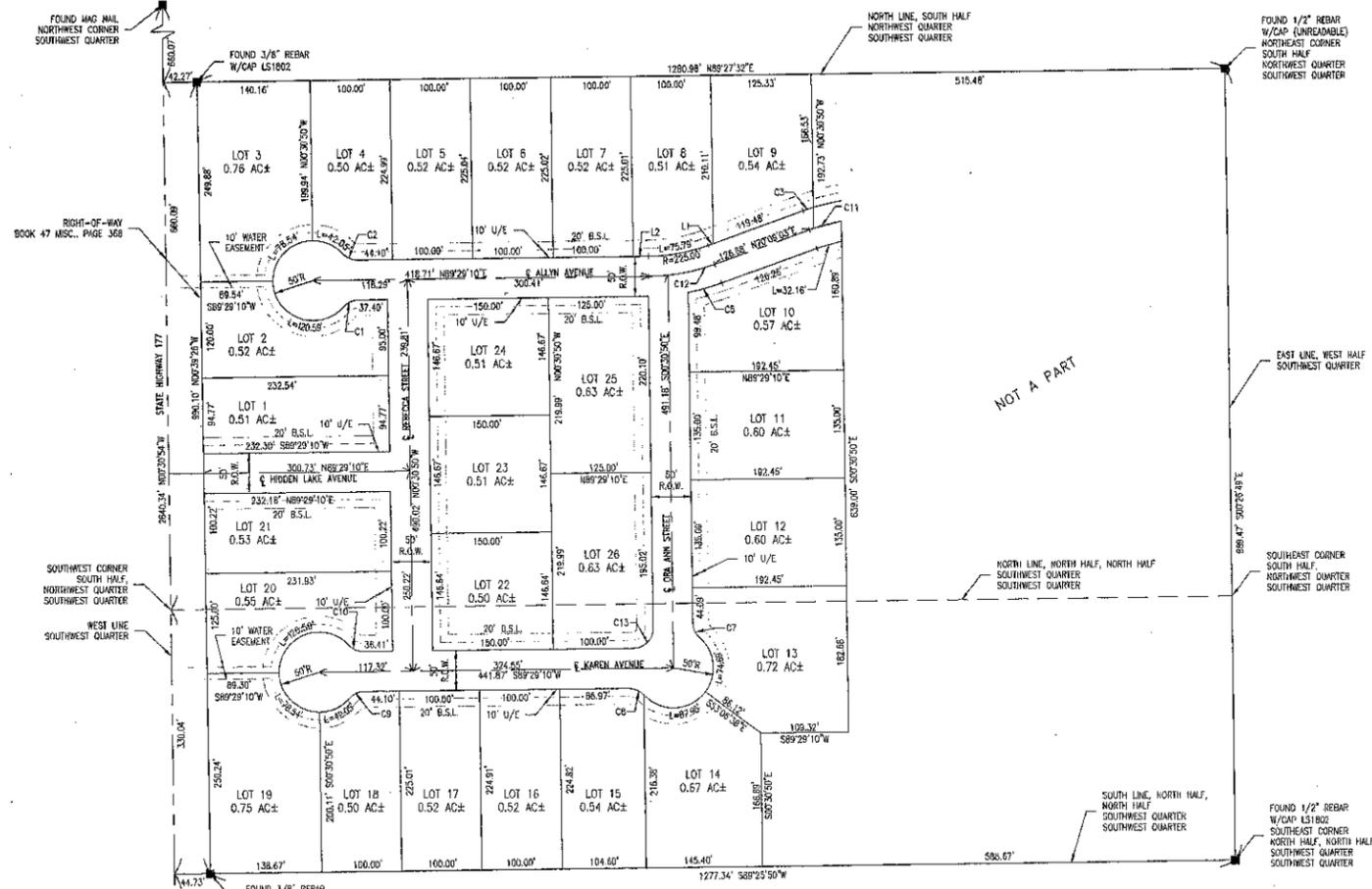
AUTHORIZED REPRESENTATIVE

*John K. ...*

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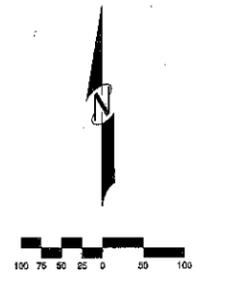
# ROKA HIDDEN LAKE FINAL PLAT

A PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 14,  
TOWNSHIP 20 NORTH, RANGE 2 EAST, OF THE INDIAN MERIDIAN,  
PAYNE COUNTY, STATE OF OKLAHOMA



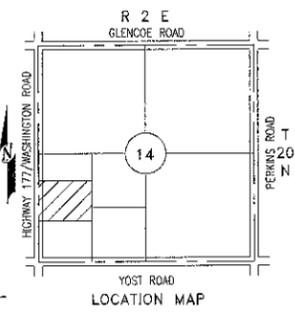
CURVE TABLE					
CURVE #	ARC LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD DISTANCE
C1	21.03'	25.00'	048°11'23"	N65°23'28"E	20.41'
C2	21.03'	25.00'	048°11'23"	N66°25'08"W	20.41'
C3	13.23'	275.00'	002°45'25"	S71°31'45"W	13.23'
C4	43.80'	275.00'	009°07'34"	N74°42'50"E	43.76'
C5	21.03'	25.00'	048°11'23"	N24°36'32"W	20.41'
C6	21.03'	25.00'	048°11'23"	S86°25'08"E	20.41'
C7	21.03'	25.00'	048°11'23"	N65°23'28"E	20.41'
C8	21.03'	25.00'	048°11'23"	N66°25'08"W	20.41'
C9	40.68'	250.00'	009°18'50"	N74°48'32"E	40.60'
C10	84.37'	250.00'	018°20'07"	N78°49'06"E	83.07'
C11	39.27'	25.00'	057°00'00"	S44°29'10"W	35.38'

LINE TABLE		
LINE #	LENGTH	BEARING
L1	6.77'	S70°09'03"W
L2	19.28'	S89°26'58"W



- SURVEY LEGEND**
- SET 1/2" IRON PIN W/ CAP "045877" UNLESS NOTED
  - FOUND MONUMENT AS NOTED
  - (R) RECORD CALL
  - (M) MEASURED CALL
  - B.S.L. BUILDING SETBACK LINE
  - U/E UTILITY EASEMENT
  - R.O.W. RIGHT OF WAY

**BEARING BASIS:**  
The West line of the Southwest Quarter on a bearing of S07°50'54"E.



**OWNER'S CERTIFICATE AND DEDICATION**  
STATE OF OKLAHOMA } SS  
COUNTY OF PAYNE

Know all men by these presents, that Darrel W. Overholt, hereby certify that he is the owner and has all rights, title and interest in and to a tract of land in the West Half of the Southwest Quarter of Section 14, Township 20 North, Range 2 East of the Indian Meridian, Payne County, State of Oklahoma, more particularly described as follows:

The tract of land shown on this plat being the same tract described in a QUA Claim Deed filed at Book 2059, Page 942, in the office of the Payne County Clerk, said description being reproduced below, to-wit:

The South Half (S/2) of the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) and the North Half (N/2) of the North Half (N/2) of the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4) of Section Fourteen (14) Township Twenty (20) North, Range Two (2) East of the Indian Meridian, Payne County, State of Oklahoma.

The owner certifies that it has caused said tract of land to be surveyed and has caused the attached Plat to be made showing accurate dimensions of blocks, lots, and setback lines, rights-of-way, and easements. The owner further designates said tract of land as ROKA HIDDEN LAKE, and hereby dedicates to public use all the rights-of-way within the subdivision and grants for installation and maintenance of UTILITIES, all easements, and rights-of-way as shown on the attached Plat free and clear of all encumbrances.

Subscribed this 6 day of April, 2016  
*Darrel W. Overholt*  
Overholt, Darrel W. Trustee

STATE OF OKLAHOMA } SS  
COUNTY OF PAYNE

On this 6 day of April, 2016, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Darrel W. Overholt, to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its Owner and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

*Elizabeth A. Jones*  
Notary Public  
My Commission Expires: 10/20/16  
My Commission Number: 12016-16

**STATE DEPARTMENT OF ENVIRONMENTAL QUALITY APPROVAL**

The Stillwater Office of the Department of Environmental Quality has approved this plat for the use of Public water systems and On-site sewer systems on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Environmental Program Specialist Department of Environmental Quality

- Note:**
- All lot areas shown are 0.50 acres or larger excluding the road easement.
  - All lots shall utilize aerobic sewage systems in accordance with Oklahoma Department of Environmental Quality guidelines.
  - All Lots shall utilize city or rural water lines.

**SURVEYOR'S CERTIFICATE**  
STATE OF OKLAHOMA } SS  
COUNTY OF PAYNE

I, CAREY E. HARRIS, an Oklahoma Professional Land Surveyor, do hereby certify that at the request of the owner mentioned hereon, made the above described survey and that the attached plat is a correct representation of said tract as surveyed and subdivided by me.

Witness my hand and seal this  
6 day of Apr, 2016  
*Carey E. Harris*  
CAREY E. HARRIS, Oklahoma Professional Land Surveyor, No. 1719

**SURVEYOR'S NOTARY**  
STATE OF OKLAHOMA } SS  
COUNTY OF PAYNE

Before me, the undersigned, a Notary Public in and for the State of Oklahoma, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared CAREY E. HARRIS, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes herein set forth.

Witness my hand and seal the day and year last above written.

Notary Public  
My Commission Expires: \_\_\_\_\_  
My Commission Number: \_\_\_\_\_

**COUNTY TREASURER'S CERTIFICATE**

I, the undersigned do hereby certify that I am the duly elected, qualified, and acting County Treasurer of Payne County, State of Oklahoma, that the tax record of said county shows all taxes are paid for the year of 20\_\_\_\_ and all prior years on the land shown on the plat of ROKA HIDDEN LAKE in Payne County, Oklahoma, and required statutory security has been deposited in the office of the County Treasurer guaranteeing payment of the current year's taxes.

In witness thereof, said Treasurer has caused this instrument to be executed at Stillwater, Oklahoma, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

County Treasurer \_\_\_\_\_

**ACCEPTANCE OF DEDICATION,**  
COUNTY OF PAYNE

BE IT RESOLVED by the Board of Commissioners of the County of Payne that dedications shown on the attached plat of ROKA HIDDEN LAKE are hereby accepted.

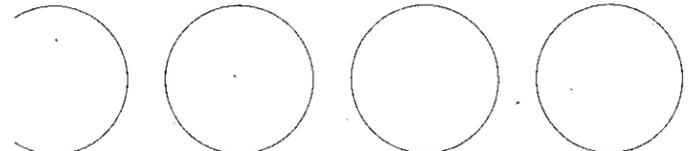
Accepted by the Board of Commissioners, County of Payne, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

County Assessor \_\_\_\_\_ ATTEST  
County Clerk \_\_\_\_\_

Commissioner \_\_\_\_\_

**Note:**  
1. Public streets shall be maintained by the Homeowners Association. Maintenance not provided by Payne County.

SURVEYOR SURVEYOR'S NOTARY COUNTY CLERK COUNTY TREASURER



File: C:\Cell 3D Projects\Overholt\_108544\03\_DWG\01\_Sheets\054\01.dwg Sheet: 4/6/2016 8:38 AM By: CHARRIS

**SURVEYOR:**  
KEYSTONE ENGINEERING AND LAND SURVEYING, INC.  
P.O. BOX 436  
STILLWATER, OK 74075  
CA #5877 Exp: 6/30/2017

**OWNERS:**  
DARREL W. OVERHOLT  
4901 CRESTVIEW AVENUE  
STILLWATER, OKLAHOMA 74074

This plat meets The Oklahoma Minimum Standards for the Practice of Land Surveying as adopted by The Oklahoma State Board of Registration for Professional Engineers and Land Surveyors.

VII. C.

IN THE DISTRICT COURT OF  
Payne County, Oklahoma  
FILED

MAR 25 2016

By: LORI ALLEN, Court Clerk  
Deputy

IN THE DISTRICT COURT OF PAYNE COUNTY  
STATE OF OKLAHOMA

DITECH FINANCIAL LLC,  
Plaintiff,

v.

BILLIE J. HONEA, DECEASED; GLORY I. HONEA; SPOUSE,  
IF ANY, OF GLORY I. HONEA; JOHN DOE, OCCUPANT; TD  
AUTO FINANCE, LLC F/K/A CHRYSLER FINANCIAL;  
UNKNOWN HEIRS, SUCCESSORS AND ASSIGNS OF  
BILLIE J. HONEA, DECEASED; AND COUNTY  
TREASURER AND BOARD OF COUNTY COMMISSIONERS  
Defendant(s).

Case No.

05-2016-122

**SUMMONS**

Board of County Commissioners  
Payne County Courthouse  
Stillwater, OK 74074

To the above named Defendant(s):

You have been sued by the above-named plaintiff, and you are directed to file a written answer to the petition with the court within twenty (20) after service of this summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff.

Unless you answer the petition within the time stated, Judgment will be rendered against you with costs of the action.

Issued this 25 day of March 2016.

COURT CLERK

(Seal)

BY: Teri M. Sahs  
Deputy Court Clerk



SHAPIRO & CEJDA, LLC  
770 NE 63rd St  
Oklahoma City, OK 73105-6431  
(405)848-1819  
Attorney(s) for Plaintiff(s)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

File No. 16-126275



said mortgagee all of the following-described real estate situated in Payne County, State of Oklahoma, to-wit:

A TRACT OF LAND IN THE NORTHEAST QUARTER (NE/4) OF SECTION TEN (10), TOWNSHIP TWENTY (20) NORTH, RANGE FOUR (4) EAST OF THE INDIAN MERIDIAN, PAYNE COUNTY, OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER (NW/COR) OF THE NORTHEAST QUARTER (NE/4) OF SECTION TEN (10), THENCE SOUTH ALONG THE WEST LINE OF SAID NORTHEAST QUARTER (NE/4) A DISTANCE OF 1117 FEET, THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST QUARTER (NE/4) A DISTANCE OF 390 FEET, THENCE NORTH 1117 FEET, THENCE WEST ALONG THE NORTH LINE 390 FEET TO THE POINT OF BEGINNING.

That there is attached to the real property a certain mobile/manufactured home, to wit: a 2006 (Year), FLEETW REST (Make and Model), XFL612AB47314FE12 (VIN/Serial number), 723006199081 (Title Number).

PROPERTY ADDRESS: 13613 E. Lone Chimney Road, Glencoe, OK 74032

together with all buildings, improvements, fixtures, appurtenances and hereditaments appertaining or belonging thereto.

3. That on May 19, 2006, the said purchase money mortgage was filed of record, with mortgage tax paid thereon, in the office of the county clerk of Payne County, Oklahoma, in Book 1640 Page 951, a true and correct copy of which is attached hereto, marked Exhibit "2" and made a part hereof.

4. That on March 24, 2016, the said purchase money mortgage was assigned to the Plaintiff by that certain assignment which has been sent for recording, records of said county and state, a copy of which is attached hereto, marked Exhibit "3" and made a part hereof.

5. The mobile/manufactured home was part and parcel of the loan transaction and is a fixture of appurtenance to the real property being herein foreclosed and title to the mobile home

should be vested in Plaintiff, and the Court should so determine and that upon completion of this action, Plaintiff will seek from the Oklahoma Tax Commission a repossession certificate of title identifying the Plaintiff, its successors and assigns, as the owner of the manufactured home, pursuant to 47 O.S. § 1118(D).

6. That the property address contained in the subject mortgage recorded in book 1640, page 951, and in the assignment of mortgage, states, in part, as follows:

"13717 E. Lone Chimney Road"

when in fact, said property address of said real estate should read as more particularly set forth herein, and that said property address should be reformed accordingly.

7. That Billie J. Honea is deceased as evidenced by the certificate of death which is attached hereto and marked Exhibit "4".

8. That default has occurred in that the monthly payment due for September 1, 2015 and thereafter has not been made as provided in the note and purchase money mortgage; that the Plaintiff hereby declares the whole of said indebtedness due and payable, and elects to have the purchase money mortgage foreclosed and the mortgaged premises sold to satisfy said indebtedness; and that the option to waive or not waive appraisal of said premises will be exercised at the time of foreclosure judgment.

9. That there is due and owing on said note and purchase money mortgage the principal sum of \$118,471.90, with interest thereon at the rate of 7% per annum from August 1, 2015, until paid, together with a reasonable attorney's fee, abstracting cost of \$990.00, late charges, all advances for taxes, insurance premiums, property preservation expenses, and costs of this action.

10. That the following defendant(s) may claim an interest in the subject property, the exact nature of which is unknown except as hereinafter stated, but that any such interest is junior and inferior to the first mortgage lien of the Plaintiff, to-wit:

John Doe, occupant, by reason of occupancy, or otherwise.

Spouse, if any, of Glory I. Honea by reason of a possible homestead interest, or otherwise.

TD Auto Finance, LLC f/k/a Chrysler Financial by reason of that certain pending case number CJ-2015-106, records of said county and state, which is incorporated herein by reference, or otherwise.

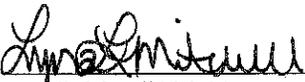
Unknown Heirs, Successors and Assigns of Billie J. Honea, whose exact interest, if any, is unknown.

Payne County Treasurer and Board of County Commissioners by reason of possible property tax lien(s), or otherwise.

WHEREFORE, Plaintiff prays that it recover a judgment in rem against the defendant, Billie J. Honea and further recover a judgment against the defendant, Glory I. Honea, in the principal sum of \$118,471.90, with interest thereon at the rate of 7% percent per annum from August 1, 2015, until paid, together with a reasonable attorney's fee, abstracting cost of \$990.00, late charges, all advances for taxes, insurance premiums, property preservation expenses, and costs of this action; that it further recover a judgment of foreclosure against all defendants decreeing its purchase money mortgage to be a valid and subsisting first lien on the real estate herein described for the full amount of the judgment; that said purchase money mortgage be foreclosed, and that said property be sold at sheriff's sale to satisfy the indebtedness secured thereby; that all defendants, and each of them, and all those claiming by, through or under them since the commencement of this action, be forever barred, foreclosed, and enjoined from

asserting or claiming any right, title, interest, or estate in or to the said premises; and that it recover such other and further relief as may be just and equitable.

SHAPIRO & CEJDA, LLC

By:  \_\_\_\_\_

Kirk J. Cejda #12241

Mike Templeton #10143

Lesli Peterson #14177

Ken Hemry #4073

~~Lyna L. Mitchell #30177~~

Gina D. Knight #12996

770 NE 63rd St

Oklahoma City, OK 73105-6431

(405)848-1819

Attorneys for Plaintiff

File no. 16-126275

MIN No.: [REDACTED] Loan No.: [REDACTED]

# NOTE

FHA CASE NO. [REDACTED]

May 12, 2006

13717 E. Lone Chimney Road  
Glencoe, OK 74032  
(Property Address)

## 1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means Irwin Mortgage Corporation and its successors and assigns.

## 2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of One Hundred Seventy-Three Thousand Seven Hundred Thirty-Five Dollars (U.S. \$173,735.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of Seven and One Half percent ( 7.500% ) per year until the full amount of principal has been paid.

## 3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

## 4. MANNER OF PAYMENT

### (A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on December 01, 2006. Any principal and interest remaining on the first day of November, 2036, will be due on that date, which is called the "Maturity Date."

### (B) Place

Payment shall be made at

Irwin Mortgage Corporation  
10500 Kincaid Drive  
Fishers, IN 46037

, or at such other place as Lender may designate in writing by notice to Borrower.

### (C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$1,214.79. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

### (D) Allonge to this Note for Payment Adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. (Check applicable box.)

- Growing Equity Allonge
- Other [specify]
- Graduated Payment Allonge

## 5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

## 6. BORROWER'S FAILURE TO PAY

### (A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of Four percent ( 4.000% ) of the overdue amount of each payment.

**EXHIBIT "1"**

**(B) Default**

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

**(C) Payment of Costs and Expenses**

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

**7. WAIVERS**

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

**8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

MIN No. [Redacted] Loan No. [Redacted]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

Billie H. Honea (Seal)  
-Borrower  
Billie H. Honea  
Social Security Number [Redacted]

Glory H. Honea (Seal)  
-Borrower  
Glory H. Honea  
Social Security Number [Redacted]  
GM

[Sign Original Only]

PAY TO THE ORDER OF \_\_\_\_\_  
WITHOUT RECOURSE  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_  
IRWIN MORTGAGE CORPORATION

Debra Saviola  
DEBRA SAVIOLA FIRST VICE PRESIDENT

### CONSTRUCTION LOAN RIDER TO NOTE

THIS CONSTRUCTION LOAN RIDER (the "Rider") is made this Twelfth day of May, 2006, and is incorporated into and shall be deemed to amend and supplement the note made by the undersigned Borrower ("I", "me", "my") to evidence my indebtedness ("Loan") to Irwin Mortgage Corporation and its successors and assigns ("Note Holder") and dated the same date as this Rider ("Note"). The Note is secured by a security instrument, as modified or amended, in favor of the Lender dated the same date as this Rider ("Security Instrument"). All terms defined in the Note shall have the same meaning in this Rider.

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Note, Note Holder and I further covenant and agree as follows:

1. **CONSTRUCTION/PERMANENT LOAN.** The Note, as amended by this Rider, is for a construction loan and a permanent mortgage loan. During the Construction Phase of the Loan, Note Holder will advance funds in accordance with the Construction Loan Agreement dated the same date as this Rider ("Construction Loan Agreement"). The "Construction Phase" is the period beginning on the date the Loan consummates ("Closing Date") until the Completion Date specified in the Construction Loan Agreement. The Completion Date is October 13, 2006. The "Permanent Phase" is the period beginning on the first day following the Completion Date specified in the Construction Loan Agreement. On the first day following the Completion Date ("Permanent Mortgage Date"), the Loan will be a permanent mortgage loan. The Permanent Mortgage Date for my Loan is October 14, 2006. My first payment of principal and interest during the Permanent Phase will be due on December 01, 2006, as stated in the Note.

2. **INTEREST AND PAYMENTS.**

(A) **Construction Phase Interest Rate.**

During the Construction Phase of the Loan, I will pay interest only on the amount of the Loan proceeds Lender disburses under the Construction Loan Agreement (each, an "Advance"). I will pay interest:  
*Check only one applicable box:*

at the rate stated in Section 2 of the Note ("Note Rate")

at an adjustable rate, as described below:

(i) **Promise to Pay**

I will pay interest by making a payment every month. I will make my monthly payment on the first day of each month beginning on N/A. I will make these payments every month until the Permanent Mortgage Date. Each monthly payment will be applied as of its scheduled due date.

(ii) **Interest**

Interest will be charged on unpaid principal outstanding from time to time. I will pay my first monthly payment of interest at a yearly rate of N/A. The interest rate I will pay will change in accordance with Section 2(A)(iv) of this Rider. The interest rate required by this Section 2(A)(ii) and Section 2(A)(iv) of this Rider is the rate I will pay both before and after any default described in the Note.

(iii) **Monthly Payments**

Each month during the Construction Phase of the Loan, Lender shall send me a bill for interest due for the prior month. Each payment of Construction Phase Interest is due by the eighth (8<sup>th</sup>) day of each month. Late payments are subject to a late charge as provided in the Note. Changes in my monthly payment will reflect changes in the unpaid principal of my Loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 2(A)(iv) of this Rider.

(iv) **Interest Rate And Monthly Payment Changes**

(a) **Change Dates**

The interest rate I will pay may change. Each date on which my interest rate could change is called a "Change Date."

(b) **The Index**

Beginning with the Closing Date, my interest rate will be based on an Index. The "Index" is the highest Prime Rate most recently published in the Money Rates section of *The Wall Street Journal (Eastern Edition)* on each day it is published. The most recent Index figure available as of each Change Date is called the "Current Index." If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(c) **Calculation of Changes**

On each Change Date, the Note Holder will calculate my new interest rate by adding N/A to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 2(A)(iv)(d) below, this rounded amount will be my new interest rate until the next Change Date.

(d) **Limits on Interest Rate Changes**

My interest rate will never be greater than eighteen percent (18%). To the extent the adjustable rate based upon the Index would exceed the Highest Lawful Rate permitted under applicable law, then the rate of this Note shall be limited to such Highest Lawful Rate. The term "Highest Lawful Rate" as used herein shall mean the maximum nonusurious interest rate per annum permitted by applicable United States federal law or applicable state laws, including any amendments thereto as may be permitted by such applicable laws or any new laws which may be applicable hereto, to the extent such laws permit a higher rate of interest.

*(e) Effective Date of Changes*

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

*(f) Notice of Changes*

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

**(B) Construction Phase Interest Only Payments.**

Interest on Advances shall be calculated from the date each Advance is made.

**(C) Principal Prepayments; Permanent Phase Interest and Principal Payments.**

Any portion of a payment Note Holder receives in excess of the interest due during the Construction Phase or any funds Note Holder does not advance under the Construction Loan Agreement may, at Note Holder's option, be used to pay costs associated with the Construction Phase or may be credited as a partial prepayment of the Principal amount of the Loan. The partial prepayment will reduce the amount of my monthly payments.

Upon the Permanent Mortgage Date, the Loan shall, without the necessity of further documentation, except as may be provided for herein, become a permanent loan in accordance with the loan program terms for which the Borrower has been approved, subject to the Borrowers' qualification therefor.

Beginning on the Permanent Mortgage Date, principal and interest will be due and payable as set forth in the Note.

**(D) Permanent Phase Rate.**

During the Permanent Phase, I will pay interest ("Permanent Phase Rate") at the rate as described in this Section 2(D):  
*Check applicable box:*

My Permanent Phase Rate is stated in Section 2 of the Note ("Note Rate").

I selected a "Floating Rate Option."

if my Note states a fixed rate, my Permanent Phase Rate will be the Note Holder's rate for standard conventional sixty (60) day par yield fixed-rate mortgages five (5) business days before the Permanent Mortgage Date, adjusted for discount points I paid, if any;

if my Note states an adjustable rate, my Permanent Phase Rate will be based on the "Current Index" five (5) business days before the Permanent Mortgage Date.

My Permanent Phase Rate is locked at the rate stated in Section 2 of the Note ("Note Rate"). If my rate lock expires before the Permanent Mortgage Date, Note Holder will set my Permanent Phase Rate using the "Floating Rate Option."

3. **DEFAULT.** If I default on the Loan Agreement, I automatically will be in default under the Note and the Security Instrument.
4. **PREPAYMENT.** During the Construction Phase, if I make a partial prepayment of principal in an amount greater than thirty percent (30%) of the outstanding principal balance of the Loan, I will pay Note Holder a prepayment fee equal to 1% of the then outstanding principal balance of the Loan.
5. **MODIFICATION AGREEMENT.** If Note Holder requests, I will sign a "Modification Agreement" if (i) I selected a "Floating Rate Option" for my Permanent Phase Rate, (ii) my Rate Lock Option expires before the Permanent Mortgage Date, (iii) I prepaid principal during the Construction Phase, (iv) Note Holder changed the Completion Date, the Permanent Mortgage Date or the Maturity Date for my Loan, or (v) if I do not achieve "Substantial Completion" on or before the Completion Date as provided in my Construction Loan Agreement. The Modification Agreement will restate the terms of the Permanent Phase of my Loan.

6. NOTICE OF NO ORAL AGREEMENT. THE NOTE, THIS RIDER, THE CONSTRUCTION LOAN AGREEMENT, THE RATE LOCK AGREEMENT, IF ANY, AND THE SECURITY INSTRUMENT, AS AMENDED, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND TO THE EXTENT PERMITTED BY LAW, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

BY SIGNING BELOW, I accept and agree to the terms and covenants contained in this Rider.

IN WITNESS WHEREOF, the Borrower has caused this Construction Rider to Note to be duly executed as of the date above set forth.

Billie J. Honea Date 5/12/06  
Borrower: Billie J. Honea Date

Gloryl. Honea Date 5-12-4  
Borrower: Gloryl. Honea Date  
I.  
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1640 0951

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1-2006-007170 05/19/2006 9:09 am  
Book 1840 Page(s) 0951-0965  
Fee: \$ 41.00 Doc: \$ 0.00  
Sheri Schletter - Payne County Clerk  
State of Oklahoma

**AFTER RECORDED RETURN TO:**

Irwin Mortgage Corporation  
ATTN: Construction Lending First Documents  
10500 Kincaid Drive  
Fishers, IN 46037

Community Escrow & Title Co.  
111 823 S. Lewis  
Stillwater, OK 74074  
405-780-7195



(Space Above This Line For Recording Data)

**MORTGAGE**

MIN No. [Redacted]  
Loan No. [Redacted]  
FHA CASE NO. [Redacted]

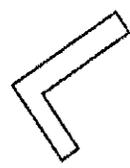
THIS MORTGAGE ("Security Instrument") is given on May 12, 2006. The mortgagor is Billie J. Honea and Glory I. Honea, husband and wife ("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as beneficiary. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. Irwin Mortgage Corporation ("Lender") is organized and existing under the laws of the State of Indiana, and has an address of 10500 Kincaid Drive, Fishers, IN 46037. Borrower owes Lender the principal sum of One Hundred Seventy Three Thousand Seven Hundred Thirty-Five Dollars (U.S. \$173,735.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on November 01, 2036. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in Payne County, Oklahoma:

See Exhibit "A" attached hereto and made a part hereof for all purposes.

which has the address of 13717 E. Lone Chimney Road, Glencoe, OK 74032 ("Property Address");

Grantor covenants and agrees that among the real property and certain improvements conveyed by this instrument is a manufactured home described as YEAR: 2006; MAKE: FLEETWOOD; MODEL: FESTIVAL 0764E; SERIAL NUMBER: [Redacted], which is affixed and attached to the land and is part of the real property and shall remain attached to and shall not be removed from said land until the indebtedness secured hereby is paid in full.

**TREASURER ENDORSEMENT**  
I hereby certify that I have received \$ 173,800 and issued receipt No. 6201 on [Redacted] day of May 2006.  
By BONITA SPADLER  
County Treasurer, Payne County, Okla.  
Deputy



5/26

**EXHIBIT "2"**

1640 0952

TOGETHER WITH the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance, and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

**FIRST**, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

**SECOND**, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

**THIRD**, to interest due under the Note;

**FOURTH**, to amortization of the principal of the Note; and

**FIFTH**, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

1640 0953

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

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(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j - 3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does not occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 90 days from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 90 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding; (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence,

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use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. **Foreclosure Procedure.** If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give notice in the manner required by applicable law to Borrower and any other persons prescribed by applicable law. Lender shall also publish the notice of sale, and the Property shall be sold, as prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the manner prescribed by applicable law.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this paragraph 18 or applicable law.

19. **Release.** Upon payment and discharge of all sums secured by this Security Instrument, this Security Instrument shall become null and void and Lender shall release this Security Instrument with charge to Borrower. Borrower shall pay any recordation costs.

20. **Waiver of Appraisal.** Appraisal of the Property is waived or not waived at Lender's option, which shall be exercised before or at the time judgment is entered in any foreclosure.

21. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ N/A

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable boxes).

Construction Loan Rider

Manufactured Home Rider

#### NOTICE TO BORROWER

A power of sale has been granted in this Security Instrument. A power of sale may allow the Lender to take the Property and sell it without going to court in a foreclosure action upon default by Borrower under this Security Instrument.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any riders) executed by Borrower and recorded with it.

Billie J. Honea (Seal)  
Billie J. Honea -Borrower

Glory L. Honea (Seal)  
Glory L. Honea -Borrower

STATE OF OKLAHOMA, Payne County

This instrument was acknowledged before me on May 12, 2006 by Billie J. Honea and Glory L. Honea, husband and wife

[Signature]  
Notary Public

Debra Krusek  
Name and title

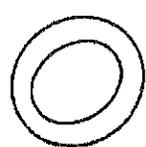
My commission expires:



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Loan No. [REDACTED]

EXHIBIT "A"

A tract of land in the Northeast Quarter (NE/4) of Section Ten (10), Township Twenty (20) North, Range Four (4) East of the Indian Meridian, Payne County, Oklahoma, according to the U.S. Government Survey thereof, more particularly described as follows: Beginning at the Northwest corner (NW/oor) of the Northeast Quarter (NE/4) of Section Ten (10), THENCE South along the West line of said Northeast Quarter (NE/4) a distance of 1117 feet, THENCE East parallel with the North line of said Northeast Quarter (NE/4) a distance of 390 feet, THENCE North 1117 feet, THENCE West along the North line 390 feet to the point of beginning

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**CONSTRUCTION LOAN RIDER TO SECURITY INSTRUMENT  
(INCLUDING SECURITY AGREEMENT)  
(To be Recorded with the Security Instrument)**

LENDER: Irwin Mortgage Corporation  
OWNER: Billie J. Honea and Glory J. Honea, husband and wife  
PROPERTY: 13717 E. Lone Chimney Road  
Glencoe, OK 74032

**THIS CONSTRUCTION LOAN RIDER TO SECURITY INSTRUMENT** (the "Rider") shall be deemed to amend and supplement the Mortgage, Open-End Mortgage, Deed of Trust, Credit Line Deed of Trust, and any and all riders or amendments thereto (the "Security Instrument") of the same date, to which this Rider is attached, given by the undersigned (the "Borrower") to secure Borrower's Promissory Note to Lender of the same date (the "Note") and covering the property (the "Property") described in this Security Instrument. All terms defined in the Note and elsewhere in this Security Instrument shall have the same meaning in this Rider.

**AMENDED AND ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in this Security Instrument, Borrower and Lender further covenant and agree as follows:

- 1. Construction Loan Agreement.** Borrower's Note evidences Borrower's promise to pay Lender the aggregate amount of all advances made and distributed by Lender under the terms and conditions of a Construction Loan Agreement between Lender and Borrower dated the same date as the Note (the "Loan Agreement"). The Loan Agreement provides for construction of certain improvements (the "Improvements") on the Property. Borrower agrees to comply with the covenants and conditions of the Loan Agreement. This Security Instrument secures to Lender (a) the repayment of the debt evidenced by the Note, including the aggregate amount of all advances made by Lender from time to time under the terms of the Loan Agreement, with interest at the Construction Phase Note Rate, and all renewals, extensions, and modifications of the Note, (b) the performance of all of Borrower's covenants and agreements under the Note, this Security Instrument, and the Loan Agreement (the "Loan Documents"), and (c) the payment of all other sums, with interest at the Note Rate, advanced by Lender to protect the security of this Security Instrument, or to perform any of Borrower's obligations under the Loan Documents. Upon the failure of Borrower to keep and perform all the covenants, conditions and agreements of the Loan Agreement, the principal and all interest and other charges provided for in the Loan Documents and secured hereby shall, at the option of the Lender, become immediately due and payable in full.
- 2. Future Advances.** During the construction of the Improvements (the "Construction Phase"), interest will accrue on the outstanding Principal according to the terms set forth in the Note and the Construction Loan Rider To Note. Provided there has been no default as defined in the Note, the Loan Agreement, or this Security Instrument, Lender is legally obligated to make advances of principal upon application therefor by the Borrower in accordance with the provisions of the Note and Loan Agreement up to a maximum Principal amount (including present and future obligations), which is equal to the amount of the Note as set forth in the Security Instrument. Such advances shall be evidenced by the Note, made under the terms of the Loan Agreement and secured by this Security Instrument and may occur for a period up to the end of the Construction Phase.
- 3. Assignment of Rights or Claims.** From time to time as Lender deems necessary to protect Lender's interest, Borrower shall, upon request of Lender, execute, acknowledge before a notary, and deliver to Lender, assignments of any and all rights or claims which relate to the construction on the Property.
- 4. Breach by Borrower.** In case of breach by Borrower of the covenants and conditions of the Loan Agreement, subject to any right of Borrower to cure Borrower's default, Lender, at Lender's option, with

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or without entry upon the Property (a) may invoke any of the rights or remedies provided in the Loan Agreement, (b) may accelerate the sums secured by this Security Instrument and invoke any of the remedies provided in this Security Instrument, or (c) may do both. Lender's failure to exercise any of its rights and remedies at any one time shall not constitute a waiver by Lender of its right to exercise that right or remedy, or any other right or remedy, in the future.

5. **Permanent Mortgage Date.** On the day the Construction Phase ends, the loan evidenced by the Note will be a permanent mortgage loan ("Permanent Mortgage Date"). Beginning on the Permanent Mortgage Date, interest shall accrue as stated in the Note and monthly payments of principal and interest shall be due and payable as set forth in the Note.
6. **Security Agreement and Financing Statement.** The property covered by this Security Instrument includes the Property previously described or referred to in this Security Instrument, together with the following, all of which are referred to as the "Property." The portion of the Property that constitutes real property is sometimes referred to as the "Real Property." The portion of the Property which constitutes personal property is sometimes referred to as the "Personal Property," and is described as follows: (i) Borrower's right to possession of the Property; (ii) any and all fixtures, machinery, equipment, building materials, appliances, and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property or the improvements, and all replacements of and accessions to those goods; and (iii) proceeds and products of the Personal Property. Despite any other provision of this Rider or any other Loan Document, however, Lender is not granted, and will not have, a non-purchase money security interest in household goods, to the extent that such a security interest would be prohibited by applicable law.

This Security Instrument is and shall be a security agreement granting Lender a first and prior security interest in all of Borrower's right, title and interest in and to the Personal Property, under and within the meaning of applicable state laws, as well as a document granting a lien upon and against the Real Property. In the event of any foreclosure sale, whether made by Trustee or under judgment of a court, all of the Real Property and Personal Property may, at the option of Lender, be sold as a whole or in parcels. It shall not be necessary to have present at the place of such sale the Personal Property or any part thereof. Lender, as well as Trustee on Lender's behalf, shall have all the rights, remedies and recourse with respect to the Personal Property afforded to a "Secured Party" by applicable state laws in addition to and not in limitation of the other rights and remedies afforded Lender and/or Trustee under this Security Instrument. Borrower shall, upon demand, pay to Lender the amount of any and all expenses, including the fees and disbursements of Lender's legal counsel and of any experts and agents, which Lender may incur in connection with: (i) the making and/or administration of this Security Instrument; (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon any Property, real and/or personal, described in this Security Instrument; (iii) the exercise or enforcement of any of the rights of Lender under this Security Instrument; or (iv) the failure by Borrower to perform or observe any of the provisions or covenants in this Security Instrument.

Lender may, at its election, at any time after the delivery of this Security Instrument, sign one or more copies of this Security Instrument in order that such copies may be used as a financing statement under applicable state laws. Lender's signature need not be acknowledged, and is not necessary to the effectiveness hereof as a deed of trust, a security agreement, or (unless otherwise required by applicable law) a financing statement.

Borrower also authorizes Lender to sign and file, without Borrower's signature, such financing and continuation statements, amendments, and supplements thereto, and other documents that Lender may from time to time deem necessary to perfect, preserve and protect Lender's security interest in the Property. If any other documents are necessary to protect Lender's interest in the Property, Borrower agrees to sign these documents whenever Lender asks. Borrower also gives Lender permission to sign these documents for Borrower.

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- 7. **Invalid Provisions.** If any provision of this Security Instrument is declared invalid, illegal, or unenforceable by a court of competent jurisdiction, then such invalid, illegal or unenforceable provision shall be severed from this Security Instrument and the remainder enforced as if such invalid, illegal or unenforceable provision is not a part of this Security Instrument.
- 8. **Relation to Loan Agreement.** This Security Instrument is subject to all of the applicable terms and conditions contained in the Loan Agreement. If Borrower fails to keep any of the promises Borrower makes in the Loan Agreement, Lender may require that the entire balance of Borrower's debt to Lender be paid immediately. The terms and conditions of this Rider shall survive the termination of the Loan Agreement and the repayment of the Loan.
- 9. **Paragraph 6 of the Security Instrument.** The first sentence of Paragraph 6 of the Security Instrument is hereby modified to read as follows:

Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty (60) days after the end of the Construction Phase and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

All other provisions in Paragraph 6 of this Security Instrument remain unchanged.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Rider.

Billie J. Honea 5/12/06  
 Billie J. Honea Date

Glory J. Honea 5-12-06  
 Glory J. Honea Date  
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**ATTENTION COUNTY CLERK.** This instrument covers goods that are or are to become fixtures on the Property described herein and is to be filed for record in the records where Security Instruments on real estate are recorded. Additionally, this instrument should be appropriately indexed, not only as a Security Instrument but also as a financing statement covering goods that are or are to become fixtures on the Property described herein. The mailing address of the Borrower (Debtor) and Lender (Secured Party) are set forth in this Security Instrument.

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**MANUFACTURED HOME RIDER TO SECURITY INSTRUMENT**

**THIS MANUFACTURED HOME RIDER TO SECURITY INSTRUMENT** is made this Twelfth day of May, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Open-End Mortgage, Deed of Trust or Credit Line Deed of Trust of the same date, to which this Rider is attached, given by the undersigned to secure Borrower's Promissory Note and Security Agreement to Irwin Mortgage Corporation of the same date and covering the property described in the Security Instrument located at 13717 E. Lone Chimney Road, Glencoe, OK 74032 ("Property Address")

1. **Meaning of Some Words.** As used in this Rider, the term "Security Instrument" means the Mortgage, Open-End Mortgage, Deed of Trust or Credit Line Deed of Trust, or Trust Indenture which is dated with the same date as this Rider and to which this Rider is attached. As used in this Rider and in the Security Instrument, the term "Note" means the Promissory Note which is dated with the same date as the Security Instrument. As used in this Rider, the term "Loan Documents" means the Note, the Security Agreement and the Construction Loan Agreement. As used in this Rider, the term "Lender" means Irwin Mortgage Corporation and any subsequent holder of the Note and the Security Instrument, the term "Borrower" means anyone signing the Note or the Security Instrument as a Borrower and the term "Property" includes the Manufactured Home, as that term is defined in the Note, to the extent it constitutes real property or a fixture. All terms defined in the Note shall have the same meaning in this Rider.
2. **Purpose and Effect of Rider.** IF THERE IS A CONFLICT BETWEEN THE PROVISIONS IN THIS RIDER AND THOSE IN THE SECURITY INSTRUMENT OR THE NOTE, THE PROVISIONS IN THIS RIDER SHALL CONTROL. THE CONFLICTING PROVISIONS IN THE SECURITY INSTRUMENT AND THE NOTE WILL BE ELIMINATED OR MODIFIED AS MUCH AS IS NECESSARY TO MAKE ALL OF THE CONFLICTING TERMS AGREE WITH THIS RIDER.
3. **Lender's Security Interest.** All of Borrower's obligations secured by the Security Instrument also shall be secured by the Manufactured Home:

**YEAR: 2006 ; MAKE: FLEETWOOD ; MODEL: FESTIVAL 0764F; SERIAL NUMBER:**

- (a) Borrower covenants and agrees to permanently affix the Manufactured Home to the real property, and that Borrower will comply with all State and local laws, and regulations regarding the affixation of the Manufactured Home to the real property described in the Security Instrument including, but not limited to, surrendering the Certificate of Title (if required) and obtaining the requisite governmental approval and accompanying documentation necessary to classify the Manufactured Home as real property under State and local law.
- (b) Borrower covenants that affixing the Manufactured Home to the real property legally described herein does not violate any zoning laws or other local requirements applicable to manufactured homes.

4. **Charges; Liens.** Section 4, Paragraph 1 of the Security Instrument is amended to read:
  4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property. Borrower shall pay these obligations on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph and receipts evidencing the payments.

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5. **Property Insurance.** Section 4, Paragraph 1 of the Security Instrument is amended to add a new second sentence to read:

Whenever the Manufactured Home is transported on the highway, it must be covered by trip insurance.

Section 5, Paragraph 4 of the Security Instrument is amended to add a new fifth sentence to read:

Borrower authorizes any insurer to pay Lender directly.

6. **Notices.** The second sentence of Section 15 of the Security Instrument is amended by inserting the words "unless otherwise required by law" at the end.

Section 15 of the Security Instrument is amended to add a new second paragraph to read:

If Borrower is in default under the Loan Documents or if Borrower is in default under any other instrument secured by this Property, Lender has all of the remedies provided by law and the Loan Documents. Before using a remedy, Lender will send Borrower any notice required by law, and wait for any cure period that the law may require for that remedy.

7. **Additional Rights of Lender in Event of Foreclosure and Sale.** In addition to those rights granted in the Note and Security Instrument, Lender shall have the following rights in the event Lender starts foreclosure proceedings for the foreclosure and sale of the Property.

- (a.) All reasonable sums paid by Lender in starting and carrying on the foreclosure proceedings, including reasonable attorney's fees and all costs allowed by law, together with interest on all of these sums at the Note Rate, shall be paid by Borrower or added to the principal Borrower owes the Lender.
- (b.) Lender, in any action to foreclose this Security Instrument shall be entitled to appointment of a receiver without any special notice to Borrower. Lender may have a receiver appointed as a matter of right regardless of the balance Borrower owes to Lender, and regardless of the solvency of the Borrower or the value or adequacy of the Property.
- (c.) At Lender's option, to the extent permitted by law, Lender may elect to treat the Manufactured Home as personal property (the "Personal Property Collateral"). Lender may repossess the Personal Property Collateral without giving Borrower any further notice. Lender may repossess peacefully from the place where the Personal Property Collateral is located without Borrower's permission. Lender also may require Borrower to make the Personal Property Collateral available to Lender at a place Lender designates that is reasonably convenient to Lender and Borrower. At Lender's option, to the extent permitted by law, Lender may detach and remove Personal Property Collateral from the real property on which it is located, or Lender may take possession of it and leave it on the real property. Borrower agrees to cooperate with Lender if Lender exercises these rights.
- (d.) After Lender repossesses, Lender may sell Personal Property Collateral and apply the sale to Lender's reasonable repossession, repair, storage, and sale expenses, and then toward any other amounts Borrower owes under the Loan Documents.
- (e.) In the event of any foreclosure sale, whether made by Trustee, or under judgment of a court, all of the real and Personal Property Collateral may, at the option of Lender, be sold as a whole or in parcels. It shall not be necessary to have present at the place of such sale the Personal Property or any part thereof. Lender, as well as Trustee on Lender's behalf, shall have all the rights, remedies and recourse with respect to the Personal Property afforded to a "Secured Party" by applicable state laws in addition to, and not in limitation of, the other rights and recourse afforded Lender and/or Trustee under the Security Instrument.

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- 8. **Additional Events of Default.** Borrower will be in default under the Note and the Security Instrument:
  - (a.) if any structure on the Property shall be removed, demolished, or substantially altered;
  - (b.) if Borrower fails to comply with any requirement of federal, state or local governmental authorities (the Lender, however, may comply and add the expense to the principal balance Borrower owes to Lender); or
  - (c.) if Borrower grants or permits any lien on the Property other than Lender's lien, or liens for taxes and assessments that are not yet due and payable.
- 9. **Prior Notice and Opportunity to Correct Broken Promise.** Lender will give Borrower any prior notice and an opportunity to make up a missed payment or correct a broken promise as required by applicable law.

BY SIGNING BELOW, Borrower agrees to the terms and covenants contained in this Rider.

Billie J. Honea 5/12/06  
 Billie J. Honea Date

Glory J. Honea 5-12-06  
 Glory J. Honea Date

**For Persons with No Personal Liability on the Loan**

You are signing this Rider only to give us a security interest in the Collateral. You agree to all of the terms and conditions of this Rider. You also are waiving any homestead rights to the extent permitted by law. However, you have no personal obligation to pay the Loan.

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**ATTENTION COUNTY CLERK:** This instrument covers goods that are or are to become fixtures on the Property described herein and is to be filed for record in the records where Security Instruments on real property on real estate are recorded. Additionally, this instrument should be appropriately indexed, not only as a Security Instrument but also as a financing statement covering goods that are or are to become fixtures on the Property described herein. The mailing address of the Borrower (Debtor) and Lender (Secured Party) are set forth in the Security Instrument.

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RETURN TO:  
SHAPIRO & CEJDA, LLC  
770 NE 63rd St  
Oklahoma City, OK 73105-6431  
(405)848-1819  
MIN: [REDACTED]  
MERS: 888-679-6377

**ASSIGNMENT OF MORTGAGE OF REAL ESTATE**

FOR VALUE RECEIVED, the undersigned corporation, does hereby assign, transfer and set over, to Ditech Financial LLC, and future assigns, all its right, title and interest in and to that certain real estate mortgage, executed by Billie J. Honea and Glory I. Honea, Husband and Wife, to Mortgage Electronic Registration Systems, Inc. dated May 12, 2006, and recorded in Book 1640 Page 951 of the records of Payne County, Oklahoma, debts and claims secured thereby, covering the following described real estate in said County, to-wit:

A TRACT OF LAND IN THE NORTHEAST QUARTER (NE/4) OF SECTION TEN (10), TOWNSHIP TWENTY (20) NORTH, RANGE FOUR (4) EAST OF THE INDIAN MERIDIAN, PAYNE COUNTY, OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER (NW/00R) OF THE NORTHEAST QUARTER (NE/4) OF SECTION TEN (10), THENCE SOUTH ALONG THE WEST LINE OF SAID NORTHEAST QUARTER (NE/4) A DISTANCE OF 1117 FEET, THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST QUARTER (NE/4) A DISTANCE OF 390 FEET, THENCE NORTH 1117 FEET, THENCE WEST ALONG THE NORTH LINE 390 FEET TO THE POINT OF BEGINNING.

That there is attached to the real property a certain mobile/manufactured home, to wit: a 2006 (Year), FLEETW REST (Make and Model), XFL612AB47314FB12 (VIN/Serial number), 723006199081 (Title Number).

File No. 16-126275

**EXHIBIT "3"**

STATE OF OKLAHOMA  
CERTIFICATE OF DEATH

STATE FILE NUMBER

1. DECEDENT'S LEGAL NAME (First, Middle, Last, Suffix) **BILLIE JOE-ALTON HONEA** 1a. LAST NAME PRIOR TO FIRST MARRIAGE 2. SEX

3. SOCIAL SECURITY NUMBER 4. EVER IN US ARMED FORCES? **NO** 5a. AGE - Last birthday (years) 5b. UNDER 1 YEAR Months Days 5c. UNDER 1 DAY Hours Minutes 6. DATE OF BIRTH (Mo/Day/Yr)

7. BIRTHPLACE (City and State or Foreign Country) **GARDEN GROVE, CALIFORNIA** 8a. RESIDENCE - State **OKLAHOMA** 8b. RESIDENCE - County **PAYNE** 8c. RESIDENCE - City or Town **GLENCOE**

8d. RESIDENCE - Zip Code **74032** 8e. RESIDENCE - Inside City Limits? **NO** 8f. RESIDENCE - Street and Number **13613 EAST LONE CHIMNEY ROAD** 8g. RESIDENCE - Apt. Number

9. MARITAL STATUS AT TIME OF DEATH  Married  Never Married  Widowed  Divorced  Married, but separated  Unknown 10. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage)

11. FATHER'S NAME (First, Middle, Last) 12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last)

13. DECEDENT OF HISPANIC ORIGIN? 14. DECEDENT'S RACE 15. DECEDENT'S EDUCATION

16. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE RETIRED) **AGENCY COMPANION** 17. KIND OF BUSINESS / INDUSTRY **STATE OF OKLAHOMA**

18a. INFORMANT'S NAME 18b. RELATIONSHIP TO DECEDENT 18c. MAILING ADDRESS (Street and Number, City, State, Zip Code)

19. METHOD OF DISPOSITION:  Burial  Cremation  Donation  Entombment  Removal from state  Other (specify) 20. PLACE OF DISPOSITION (Name of cemetery, crematory, other place) **UNION CEMETERY** 21. LOCATION - City, Town and State **GLENCOE, OKLAHOMA**

22. NAME AND COMPLETE ADDRESS OF FUNERAL FACILITY **POTEET FUNERAL HOME AND CREMATION SERVICE, INC.  
600 ILLINOIS ST., PAWNEE, OKLAHOMA 74058** 23. FUNERAL HOME DIRECTOR OR FAMILY MEMBER ACTING AS SUCH **MARK KEVIN SUITER**

24. FH ESTABLISHMENT LICENSE # **1693CS**

25. PLACE OF DEATH (Check only one - see instructions)

IF DEATH OCCURRED IN A HOSPITAL:  Inpatient  Emergency Room/Outpatient  Dead on Arrival IF DEATH OCCURRED OTHER THAN IN A HOSPITAL:  Hospice Facility  Nursing home/Long term care facility  Decedent's home  Other (specify)

26. FACILITY NAME (If not institution, give street & number) **13613 EAST LONE CHIMNEY ROAD** 27. CITY OR TOWN, STATE AND ZIP CODE OF LOCATION OF DEATH **GLENCOE, OKLAHOMA, 74032** 28. COUNTY OF DEATH **PAYNE**

29. DATE OF DEATH (Mo/Day/Yr) **JULY 24, 2015** 30. TIME OF DEATH **23:59** 31. WAS MEDICAL EXAMINER CONTACTED? **NO** 32. WAS AN AUTOPSY PERFORMED? **NO** 33. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?

34. PART I. Enter the chain of events - diseases, injuries or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on 1 line. Add additional lines if necessary.

IMMEDIATE CAUSE (Final disease or condition resulting in death) → a. **[REDACTED]** Due to (or as a consequence of) **[REDACTED]**

Sequentially list conditions, if any, leading to the cause listed on line a. b. **[REDACTED]** Due to (or as a consequence of) **[REDACTED]**

Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST. c. **[REDACTED]** Due to (or as a consequence of) **[REDACTED]**

d. **[REDACTED]** Due to (or as a consequence of) **[REDACTED]**

35. PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I. Approximate interval: Onset to death

36. MANNER OF DEATH 37. IF FEMALE:  Not pregnant within past year  Pregnant at time of death  Not pregnant, but pregnant within 42 days of death.  Not pregnant, but pregnant 43 days to 1 year before death  Unknown if pregnant within the past year 38. DID TOBACCO USE CONTRIBUTE TO DEATH?  Yes  No  Probably  Unknown

39. DATE OF INJURY (Mo/Day/Yr) 40. TIME OF INJURY 41. PLACE OF INJURY (e.g., Decedent's home; construction site; wooded area) 42. DESCRIBE HOW INJURY OCCURRED 43. INJURY AT WORK?

44. LOCATION OF INJURY: State: City or Town: Zip Code: Apartment Number: 45. IF TRANSPORTATION INJURY, SPECIFY:  Driver/Operator  Passenger  Pedestrian  Other (specify)

46. CERTIFIER (Check only one)  ATTENDING PHYSICIAN:  Physician in charge of the patient's care  Physician in attendance at time of death only. To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.  MEDICAL EXAMINER: On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner as stated. Certifier: **G E EMDE, MD**

47. NAME, ADDRESS AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 34) **G E EMDE, MD  
821 S. WALNUT  
STILLWATER, OKLAHOMA  
74074** 48. LICENSE NUMBER **15365** 49. DATE DEATH CERTIFIED (Mo/Day/Yr) **AUGUST 17, 2015**

50. REGISTRAR'S SIGNATURE **[Signature]** 52. DATE RECEIVED BY STATE REGISTRAR (Mo/Day/Yr) **AUGUST 21, 2015**

**EXHIBIT "4"**

Friday, February 12, 2016 9:49:16 AM

VOID WITHOUT WATERMARK OR IF ALTERED OR ERASED

VOID WITHOUT WATERMARK OR IF ALTERED OR ERASED

Expense verification report

VIII. C. I.  
 Batch Number: 097

PP	PO #	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
	005545	004020	01944005ST-1/		LINE X OF STILLWATER	2,800.00	2,800.00	0.00	INVOICE NO. 000040		FUEL SENSOR
	005546	004021	01944005ST-1/		LINE X OF STILLWATER	5,800.00	5,800.00	0.00	INVOICE NO. 000039		DUMP VALVE
	005204	004022	01944005ST-1/		SOUTHERN STONE COUNTY	7,500.00	7,500.00	0.00	INVOICE NO. RIPLEY FIRE DEPT BILL OF SALE VIN NO. 1GDM7D1Y3DV519 847		WATER TANKER
	005540	004023	01944005ST-3/		PERKINS BUILDERS SUPPLY, INC.	271.20	271.20	0.00	INVOICE NO. 203629 RIPLEY FIRE DEPT		DOW BOARD
	005544	004024	01944005ST-1/		STRANO ENTERPRISES LLC	5,500.00	5,500.00	0.00	INVOICE NO. 2396		DELIVERY SERVICES
	005578	004025	01202580		A T & T MOBILITY	25.28	25.28	0.00	ACCOUNT NO. 287250539580		UTILITY BILL
	005579	004026	01362005		A T & T MOBILITY	224.34	224.34	0.00	ACCOUNT NO. 287250539580 SOLID WASTE 405 334-3728 PC GOV 405 714-2995 SOLID WASTE 405 742-8089		UTILITY BILL
	005557	004027	01091310ST		FITZPATRICK SHELLY	71.28	71.28	0.00	***DO NOT MAIL***		TRAVEL
	005565	004028	01203941		COMMUNITY WORKS	97.36	97.36	0.00	JUVENILE DETENTION INVOICE: MARCH 2016 "MS" 3/28/16 - 3/31/16		DETENTION SERVICES
	005566	004029	01342005		A T & T MOBILITY	194.79	194.79	0.00	ACCOUNT NO. 287263641417		UTILITY BILL

Date: 7/27/2016  
 Time: 8:33:36AM

Expense verification report

Batch Number: 097

PP	PO #	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
	005567	004030	01203941		COMMUNITY WORKS	1,411.72	1,411.72	0.00	JUVENILE DETENTION INVOICE: MARCH 2016 "TW" 3/10/16 - 3/28/16 "LW" 3/01/16 - 3/31/16 "DW" 3/24/16 - 3/31/16		JUVENILE DET
	005570	004031	01042005		PAYNE CO. DISTRICT 3	25.17	25.17	0.00	INVOICE NO. 2016-04 PAYNE COUNTY SHERIFF		DIESEL & FUEL
	005574	004032	01042005		A T & T MOBILITY	2,473.68	2,473.68	0.00	ACCOUNT NO. 827840780		UTILITY BILL
	005014	004033	01944005ST-1/		MAVERIC MINI MART	2,000.00	825.11	-1,174.89	\$181.43 - INVOICE NO. 151741; 151714; 151720; 153564; 153589; \$353.90 - INVOICE NO. 146537; 146518; 146511; 153599; 157113; 157117; 157120; \$163.99 - INVOICE NO. 146994; 146982; 146974; 146944; 146937 \$204.80 - INVOICE NO. 156550; 156522; 156521; 156531; 156529; 156578; 151710 RIPLEY FIRE DEPT PO# 5014		MARCH BLANKET
	005517	004034	01202580		OME CORPORATION	167.00	167.00	0.00	INVOICE NO. 186738 ACCOUNT NO. 2080		INK CARTRIDGES

EXPENSE VERIFICATION REPORT

Batch Number: 097

PP	PO#	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
	004851	004035	01172005		FLEETCOR TECHNOLOGIES	500.00	18.14	-481.86	ACCOUNT NO. BG1467363 PAYNE CO ASSESSOR		MARCH BLANKET
	004905	004036	01202580		CENTRAL LAWN AND LANDSCAPE	900.00	195.00	-705.00	INVOICE NO. CLIP24500 PAYNE CO COURTHOUSE		MARCH BLANKET
	004895	004037	01202005		CENTRAL LAWN AND LANDSCAPE	950.00	570.00	-380.00	INVOICE NO. CLIP24484 PAYNE CO COURTHOUSE		MARCH BLANKET
	005534	004038	01202580		CHICKASAW	1,423.13	1,423.13	0.00	INVOICE NO. 10339159 ACCOUNT NO. 00056263-4		UTILITY BILL
	005538	004039	01091310ST		ANDERSON NATHAN	675.00	675.00	0.00	***DO NOT MAIL***		TRAVEL
	005537	004040	01091310ST		BARTA, SUZETTE D.	42.12	42.12	0.00	***DO NOT MAIL***		TRAVEL
	005604	004041	01042005		BARRY SANDERS SUPERCENTER	72.00	72.00	0.00	CUSTOMER NO. 11557 INVOICE NO. 11943 PAYNE CO SHERIFF		OIL
	004921	004042	01022005		WALKER COMPANIES	77.50	77.50	0.00	INVOICE NO. 22051 PAYNE CO DIST ATTY		NOTARY
	004824	004043	01042005		AAP FINANCIAL SERVICES	1,250.00	153.98	-1,096.02	ACCOUNT NO. 1872576885 INVOICE NO. 8423606477556; 8423606477569; 8423607184791; 8423607433674; ; 8423607733879; 8423608577847; 8423608584855 CREDIT INVOICE NO. 8423607477723		MARCH BLANKET

Expense Verification Report

Batch Number: 097

PP	PO #	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
	005257	004044	01022005		STC/BUSINESS WORLD	150.00	125.43	-24.57	INVOICE NO. 654922 PAYNE CO DIST ATTY		MAINTENANC E
	005256	004045	01022005		STC/BUSINESS WORLD	125.00	58.98	-66.02	INVOICE NO. 655126 PAYNE CO DIST ATTY		MAINTENANC E
	005255	004046	01022005		STC/BUSINESS WORLD	75.00	85.29	10.29	INVOICE NO. 654921 PAYNE CO DIST ATTY		MAINTENANC E
	005224	004047	01162005		PITNEY BOWES, INC.	340.99	265.15	-75.84	ACCT# 2220-1582-86-7 INVOICE NO. 594975 PAYNE CO ASSESSOR		INK CARTRIDGES
	004855	004048	01022005		QUALITY WATER SERVICES	200.00	174.15	-25.85	ACCOUNT ID NO. 300021 INVOICE NO. 1301228; 1301229; 1299829; 1299829; 1299832; 1298025; 12980261295053; 1295054		MARCH BLANKET
	004665	004049	01023030		THOMSON REUTERS - WEST, PAYMENT CENTER	1,596.00	1,640.00	44.00	INVOICE NO. 833763340 ACCOUNT NO. 1000156005		WESTLAW CHARGES
	004825	004050	01042005		B & C BUSINESS PRODUCTS, INC.	600.00	506.54	-93.46	ACCOUNT NO. PSO101-0 INVOICE NO. 0458665-001; 0458987-001; 0459021-001; 0459259-001		MARCH BLANKET
	004822	004051	01042005		A & B ECO-SAFE	50.00	50.00	0.00	INVOICE NO. 54554		MARCH BLANKET

Expense verification report

Batch Number: 097

PP	PO #	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
	004959	004052	01202005		M POWER INC.	75.00	75.00	0.00	INVOICE NO. 17504		JANITORIAL SERVICES
	004960	004053	01202580		M POWER INC.	150.00	150.00	0.00	INVOICE NO. 17498		JANITORIAL SERVICES
	004837	004054	01042005		LOWE S COMPANIES, INC.	1,000.00	653.07	-346.93	INVOICE NO. 945949; 912483; 945694; 945018; 911573; 938817; 953601; 945666; 912804; ACCOUNT NO. 9900 052119 7		MARCH BLANKET
	005013	004055	01944005ST-1/		NAPA AUTO PARTS	2,000.00	2,134.28	134.28	RIPLEY FIRE DEPT INVOICE NO. 057780; 060666; 060496; 060102; 060101; 060100; 059761; 059602; 059540; 057152; 055277; 056771; 055124		MARCH BLANKET
	005568	004056	01042005		BEASLEYS TECHNOLOGY, INC.	3,400.00	3,400.00	0.00	INVOICE NO. 130713		BLOCK OF TIME
	005603	004057	01042005		MILAS FABRICS	99.00	99.00	0.00	INVOICE NO. 22-33-34		ALTERATIONS SERVICES
	005605	004058	01042005		SIMONS TOWING	137.50	137.50	0.00	INVOICE NO. 32952 PAYNE COUNTY SHERIFF		TOW
<b>Totals for COUNTY GENERAL</b>						<u>\$44,450.06</u>	<u>\$40,168.19</u>	<u>-4,281.87</u>			
	004792	001374	02802003		OAKES SERVICE CENTER	200.00	10.00	-190.00	INVOICE NO. 34049		MARCH BLANKET
	004798	001375	02802003		RETAIL FINANCE CREDIT SERVICES, ATTN: DONNA PRING	300.00	105.46	-194.54	PAYNE CO DIST 3 ACCOUNT NO. 6032 2020 0001 5413 INVOICE NO. 06954 3/9/16		MARCH BLANKET

**Expense Verification Report**

Batch Number: 097

PP	PO #	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
	004793	001376	02802003		O REILLY AUTOMOTIVE, INC.	200.00	56.99	-143.01	PAYNE CO DIST 3 INVOICE NO. 0164 249806		MARCH BLANKET
	004796	001377	02802003		STILLWATER STEEL AND	400.00	69.79	-330.21	PAYNE CO DIST 3 INVOICE NO. 133288; 133334; 133675		MARCH BLANKET
	004800	001378	02802003		CINTAS CORP	200.00	96.14	-103.86	INVOICE NO. 5004583346		MARCH BLANKET
	004791	001379	02802003		NAPA AUTO PARTS	2,500.00	450.59	-2,049.41	PAYNE CO DIST 3 ACCOUNT NO. 25127 INVOICE NO. 061042; 061018; 060935; 059765; 059548; 058896; 058623; 057353; 056213; 056141; 055873; 053964		MARCH BLANKET
	005580	001380	02802001		A T & T MOBILITY	59.02	59.02	0.00	PAYNE CO DIST 3 ACCOUNT NO. 287246433415		UTILITY BILL
	005504	001381	02802003		P & K EQUIPMENT, INC.	1,700.00	1,558.25	-141.75	INVOICE NO. 2161600 PAYNE CO DIST 3		WINDSHIELD
<b>Totals for HIGHWAY CASH</b>						<u>\$5,559.02</u>	<u>\$2,406.24</u>	<u>-3,152.78</u>			
	005569	000032	05043910		CIMARRON MEDICAL SUPPLY	100.00	100.00	0.00	INVOICE NO. 211971 JAMES WORKMAN PAYNE COUNTY SHERIFF		OXYGEN CONCENTRAT OR

Date: 4/6/2010  
 Time: 8:33:36AM

**Expense Verification Report**

Batch Number: 097

<u>PP</u>	<u>PO #</u>	<u>War #</u>	<u>Account</u>	<u>Dist</u>	<u>Vendor</u>	<u>Encumbered</u>	<u>Pay Amount</u>	<u>Adjustment</u>	<u>Comments</u>	<u>Invoices</u>	<u>Purpose</u>
	004833	000033	05043910		EARTHGRAINS BAKING CO. INC.	2,800.00	2,598.09	-201.91	INVOICE NO. 54347909070; 54347909026; 54347908991; 54347908949; 54347908918; 54374908843; 54347908797; 54347908763; 54347908876		MARCH BLANKET
<b>Totals for BOARD OF PRISONERS</b>						<u>\$2,900.00</u>	<u>\$2,698.09</u>	<u>-201.91</u>			
	005199	000405	08882005		ALLIANCE MAINTENANCE, INC.	1,975.00	1,975.00	0.00	INVOICE NO. 80254 PAYNE CO HEALTH DEPT		JANITORIAL SERVICES
	004813	000406	08882005		SHRED-IT	500.00	310.04	-189.96	ACCOUNT NO. 13455807 INVOICE NO. 9409975449; 9409774175; 9409774183 PAYNE CO HEALTH DEPT		MARCH BLANKET
	005597	000407	08881310		MELOY, CURTIS	348.84	348.84	0.00	***DO NOT MAIL***		TRAVEL
	005598	000408	08881310		BLOOM, BARBARA J.	333.72	333.72	0.00	***DO NOT MAIL***		TRAVEL
	005599	000409	08882005		CITY OF CUSHING	552.62	552.62	0.00	ACCOUNT NO. 18-3572-01; 50-0230-01		UTILITIES
	005600	000410	08882005		STC/BUSINESS WORLD	518.15	518.15	0.00	INVOICE NO. 654302; 654144; 654923; 654924; 654925		MAINTENANC E
<b>Totals for HEALTH DEPARTMENT</b>						<u>\$4,228.33</u>	<u>\$4,038.37</u>	<u>-189.96</u>			

Date: 4/9/2010  
 Time: 8:33:36AM

**Expense verification report**

Batch Number: 097

PP	PO #	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
	004827	000308	09043910		BOB HOWARD DODGE	1,000.00	989.05	-10.95	PAYNE COUNTY SHERIFF INVOICE NO. 4223162; 4228484; 4227758; 4237079; 4238195; 4224094		MARCH BLANKET
	004844	000309	09043910		STILLWATER MILL AGRI CENTER	500.00	306.30	-193.70	CUSTOMER NO. 2880 INVOICE NO. 218254; 218450; 218501; 218690		MARCH BLANKET
	004842	000310	09043910		STAPLES	800.00	111.22	-688.78	INVOICE NO. 01581 ACCOUNT NO. 6035 5178 2010 4049		MARCH BLANKET
<b>Totals for SHERIFF SERVICE FEE</b>						<u>\$2,300.00</u>	<u>\$1,406.57</u>	<u>-893.43</u>			
	004821	000012	11063910		QUALITY WATER SERVICES	30.00	8.20	-21.80	ACCOUNT ID NO. 301953 INVOICE NO. 1299480 PAYNE CO TREASURERS		MARCH BLANKET
<b>Totals for MORTGAGE CERTIFICATION TAX</b>						<u>\$30.00</u>	<u>\$8.20</u>	<u>-21.80</u>			
	005318	000072	13103910		BEASLEYS TECHNOLOGY, INC.	47.14	47.14	0.00	INVOICE NO. 130723		HARDWARE WARRANTY
	003862	000073	13103910		HOLIDAY INN EXPRESS & SUITES	378.00	178.00	-200.00	PAYNE COUNTY GUEST: G CRAIG ROOM NO. 305; 306 DATES: 2/10 - 2/11, 16 CONFERENCE NO. 67476022		CODA CONFERENCE
	005585	000074	13103910		FENTON OFFICE MART	103.98	103.98	0.00	INVOICE NO. 323286-0 PAYNE COUNTY CLERK		EMPLOYEE FILE FOLDERS

**Expense Verification Report**

Batch Number: 097

<u>PP</u>	<u>PO #</u>	<u>War #</u>	<u>Account</u>	<u>Dist</u>	<u>Vendor</u>	<u>Encumbered</u>	<u>Pay Amount</u>	<u>Adjustment</u>	<u>Comments</u>	<u>Invoices</u>	<u>Purpose</u>
Totals for MECHANIC LIEN FEE						<u>\$529.12</u>	<u>\$329.12</u>	<u>-200.00</u>			
005542	000240	22842005			ADVANTAGE PLUMBING HEATING AND COOLING	1,341.07	1,341.07	0.00	INVOICE NO. 46276		REPAIRED BROKEN WATER LINE
Totals for FAIRBOARD CASH						<u>\$1,341.07</u>	<u>\$1,341.07</u>	<u>0.00</u>			
005064	000536	30044005			CDW GOVERNMENT, INC.	2,603.93	2,976.00	372.07	INVOICE NO. CNZ1937 CUSTOMER NO. 10642559		CISCO CAT
***Account is out of money!!!***											
005233	000537	30042005			A PLUS AUTO GLASS	200.00	379.65	179.65	INVOICE NO. 1650		REPLACE BACK GLASS
005571	000538	30042005			FIFTY ONE EAST WATER DISTRICT	56.55	56.55	0.00	ACCOUNT NO. 134251		WATER USAGE
005575	000539	30042005			A T & T MOBILITY	1,062.82	1,062.82	0.00	ACCOUNT NO. 287231955096		UTILITY BILL
005581	000540	30042005			GRIMSLEYS, INC.	284.19	277.49	-6.70	INVOICE NO. 245856 PAYNE CO SHERIFF		SUPPLIES
004834	000541	30042005			FASTENAL COMPANY	400.00	41.03	-358.97	INVOICE NO. OKSTL163948; OKSTL163273		MARCH BLANKET

Expense verification report

Batch Number: 097

PP	PO#	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
	004845	000542	30042005		SYSCO FOOD, INC.	23,000.00	1,096.77	-21,903.23	PAYNE COUNTY SHERIFF CREDIT INVOICE NO. 200052003; INVOICE NO. 612100447; 612170554; 612170651; 612253092; 612253874; 612292243; 612344752; 612345129; 612382307; 612434269		MARCH BLANKET
<b>Totals for JAIL OPERATION &amp; MAINTENANCE</b>						<u>\$27,607.49</u>	<u>\$5,890.31</u>	<u>-21,717.18</u>			
004926	000035	36042005			OAKES SERVICE CENTER	800.00	26.00	-418.69	PARTIAL PYMT: 3/31/16 INVOICE NO. 33982; 33994; 34011; 34008; 34027; 34040; 34046; 34050; 34069; 34070; PARTIAL PYMT: 4/4/16 INVOICE NO. 34112; 34111 FINAL PYMT: 4/11/16 INVOICE NO. 34118		FUEL
005146	000036	36042005			TAPCO	918.00	919.68	1.68	INVOICE NO. I 521470		REFLECTIVE DECALS
<b>Totals for SOLID WASTE</b>						<u>\$1,718.00</u>	<u>\$945.68</u>	<u>-417.01</u>			
005202	000085	49103910			BEASLEYS TECHNOLOGY, INC.	77.05	77.05	0.00	INVOICE NO. 130724		SONIC FIREWALL
004456	000086	49103910			BEASLEYS TECHNOLOGY, INC.	156.48	156.48	0.00	INVOICE NO. 130725		ANTIVIRUS

**Expense verification report**

Batch Number: 097

PP	PO #	War #	Account	Dist	Vendor	Encumbered	Pay Amount	Adjustment	Comments	Invoices	Purpose
<b>Totals for CLERK R M &amp; P</b>						<b>\$233.53</b>	<b>\$233.53</b>	<b>0.00</b>			
005577	000072	51203100			A T & T	565.22	565.22	0.00	ACCOUNT NO. 410 072 1909 909		UTILITY BILL
005583	000073	51203100			PUBLIC SAFETY GROUP	6,300.00	6,300.00	0.00	INVOICE NO. 2733 DISPATCHER TRAINING		TRAINING
005584	000074	51203100			CITY OF STILLWATER	38,000.00	38,000.00	0.00	E911 COMMUNICA TIONS ANNUAL SERVICES BY STILLWATER POLICE DEPT--ONE POSITION FY16		REIMBURSEM ENT
005564	000075	51203100			A T & T	352.92	352.92	0.00	ACCOUNT NO. 405 103-0000 876 0		UTILITY BILL
005576	000076	51203100			PIONEER TELEPHONE COOPERATIVE	67.43	67.43	0.00	ACCOUNT NO. PTCS000932 3		UTILITY BILL
005595	000077	51203100			A T & T	565.22	565.22	0.00	ACCOUNT NO. 410 072 1912 912 INVOICE NO. 0721912912-032516		UTILITY BILL
005594	000078	51203100			A T & T	565.22	565.22	0.00	INVOICE NO. 0721913913-032516 ACCOUNT NO. 410 072 1913 913		UTILITY BILL
<b>Totals for E 911</b>						<b>\$46,416.01</b>	<b>\$46,416.01</b>	<b>0.00</b>			
<b>Grand Totals:</b>						<b>\$137,312.63</b>	<b>\$105,881.38</b>	<b>-31,075.94</b>			

VIII. D. 1.



**Payne County Sheriff's Office**  
**Sheriff R.B. Hauf**

606 S. Husband, Room 106  
Stillwater, OK 74074

Phone: 405-372-4522 Fax: 405-372-1440

4/1/2016

Dear Payne County Commissioners,

I would like to provide you with the following information:

Cost of food for the jail for the month of **March**  
Was **\$17,258.69**

\$11,096.77 Sysco Foods  
\$3,563.83 Ben E. Keith Foods  
\$ 2,598.09 Earthgrains

Please contact me with any questions the Commission may have.

Sincerely,

A handwritten signature in cursive script that reads "R. B. Hauf".

R.B. Hauf, Sheriff

Weekly / Monthly / Yearly Report: (PCEE)

Page 1 of 2

Month of: March, Year 2016, Officer Derrell Varnell, Date 04/01/2016

Date Beginning Tuesday, 03/01/2016 to Thursday, 03/31/2016

Dumps Investigated 67, Dumps Cleaned 67, Charges Filed 2, # of People Charged 3,  
Warnings 1, Total Clean up Fee's \$ 417.68, Total Fines? = (D.A. has Statistic's)

07-01-2015 To Date

Week Number	1	2	3	4	5	6	Monthly Totals	Month	Year
							TC#1 TC#2 TC#3	<u>March - 2016</u>	

[Calls for Service]

Maintenance hours-Office-

Shop -Field							<u>184</u>	<u>184</u>	<u>184</u>	<u>552</u>	<u>4543 1/2</u>
CSW Hours							<u>8</u>	<u>52</u>	<u>139</u>	<u>199</u>	<u>1003 1/2</u>

[SIGNS FOUND]

Street							<u>0</u>	<u>4</u>	<u>4</u>	<u>8</u>	<u>187</u>
Stop							<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>17</u>
Other							<u>0</u>	<u>0</u>	<u>7</u>	<u>7</u>	<u>18</u>
Poles							<u>0</u>	<u>2</u>	<u>17</u>	<u>19</u>	<u>147</u>
[SIGNS MADE]							<u>0</u>	<u>0</u>	<u>6</u>	<u>6</u>	<u>301</u>

[SIGNS INSTALLED]

Street							<u>0</u>	<u>0</u>	<u>8</u>	<u>8</u>	<u>373</u>
Stop							<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>9</u>
Other							<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>9</u>
Poles							<u>0</u>	<u>0</u>	<u>5</u>	<u>5</u>	<u>210</u>
Bridge Markers							<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>32</u>

[DUMPS]

Investigated							<u>26</u>	<u>18</u>	<u>67</u>	<u>111</u>	<u>701</u>
Cleaned							<u>26</u>	<u>18</u>	<u>67</u>	<u>111</u>	<u>701</u>

[LOADS OF]

H.H. Trash							<u>2</u>	<u>3</u>	<u>6 1/4</u>	<u>11 1/4</u>	<u>77 3/4</u>
Car Parts/Tires							<u>112</u>	<u>314</u>	<u>1 1/2</u>	<u>2314</u>	<u>7 3/4</u>
Scrap Metals							<u>114</u>	<u>314</u>	<u>1</u>	<u>2</u>	<u>5 1/2</u>
Brush/Wood							<u>112</u>	<u>114</u>	<u>0</u>	<u>314</u>	<u>11 1/4</u>
Poly & Debris							<u>10 FT.</u>	<u>0</u>	<u>66 FT.</u>	<u>178 FT.</u>	<u>36,103 FT.</u>

[VIOLATIONS]

Charges							<u>1</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>11</u>
#-People Charged							<u>1</u>	<u>0</u>	<u>2</u>	<u>3</u>	<u>12</u>
Warnings							<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>5</u>
Clean up Fee's							<u>\$ 191.49</u>	<u>0</u>	<u>226.20</u>	<u>\$ 417.68</u>	<u>\$ 3984.26</u>

[OTHER "CFS"]

Follow up							<u>257</u>	<u>400</u>	<u>379</u>	<u>1030</u>	<u>9968</u>
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Revised 01/14/2014

Weekly / Monthly / Yearly Reports (Continued)

Week Number	1	2	3	4	5	6	TC#1	TC#2	TC#3	07-01-2015 To Present		
										Month	Year	
Officer Initiated							894	214	219	1327	9457	
Training Hours							0	0	29	29	838	
Agency Assists							7	1	13	21	458	
Trim Bridges, etc.							3	2	3	8	90	
Trim Intersections							1	0	0	1	43	
Road Hazards Fixed							6	1	9	16	338	
[HOURS: MOW, TRIM, CLEAN]												
Expo Center							2	0	2 1/2	4 1/2	57 1/4	
D-1 Dump Station							0	0	0	0	1 1/2	
D-3 Dump Station							1	1/2	0	1 1/2	7 1/4 = lots of clean up	
[REPORTS WRITTEN]												
Other							133	155	80	368	2517	
Criminal							9	0	15	24	52	
Affidavit							1	0	3	4	12	
Officer Information							9	1	1	11	38	
Calls for Service							1065	606	626	2297	19,424	
TOTAL CALLS for SERVICE											2297	

Claims: Week-1-\$ \_\_\_\_\_, 2-\$ \_\_\_\_\_, 3-\$ \_\_\_\_\_, 4-\$ \_\_\_\_\_, 5-\$ \_\_\_\_\_, 6-\$ \_\_\_\_\_ = Weekly Claim Total: \$ 1135.09

[This Month Claims Filed]	[Yearly Total to Date]
Crim. Clean up Fee \$ <u>417.68</u>	\$ <u>1505.14</u>
ACCO Dumps \$ <u>1135.09</u>	\$ <u>6324.67</u>
Oil-Poly/Aluminum \$ <u>0</u>	\$ <u>0</u>
Road Sign Damage \$ <u>0</u>	\$ <u>631.18</u>
Other Claim \$ <u>0</u>	= Claim Type <u>0</u>
CLAIM TOTALS \$ <u>1552.77</u>	TOTALS \$ <u>8460.99</u>

Comments:

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PCEE Officer Dorell B. Sorell Date 01/10/2016  
 Revised: 01/14/2014

Sales Tax : 3/8 cent Effective 1-1-04 expires 12-31-08				RENEWED - EXPIRES 12-31-2018						
2015-2016	HIGHWAY	EXTENSION	FAIRBOARD	GENERAL	Fire	Total	RECEIPT			
								Compared		
								to Prior FY		
								to Prior FY		
Collections reported	53%	7%	20%	15%	5%	100%				
July Collection Receipt 63	\$ 211,973.09	\$ 27,996.45	\$ 79,989.85	\$ 59,992.38	\$ 19,997.46	\$ 399,949.23	\$ 399,949.23	\$ 487,403.45	-18%	
August Collection Receipt 218	\$ 193,615.56	\$ 25,571.87	\$ 73,062.47	\$ 54,796.86	\$ 18,265.62	\$ 365,312.37	\$ 365,312.37	\$ 426,539.90	-14%	
Sep-15	\$ 193,039.73	\$ 25,495.81	\$ 72,845.18	\$ 54,633.89	\$ 18,211.30	\$ 364,225.91	\$ 364,225.91	\$ 409,202.89	-11%	
Oct-15	\$ 228,480.68	\$ 30,176.69	\$ 86,219.12	\$ 64,664.34	\$ 21,554.78	\$ 431,095.62	\$ 431,095.62	\$ 475,287.17	-9%	
Nov-15	\$ 205,007.29	\$ 27,076.43	\$ 77,361.24	\$ 58,020.93	\$ 19,340.31	\$ 386,806.20	\$ 386,806.20	\$ 421,931.74	-8%	
Dec-15	\$ 213,549.56	\$ 28,204.66	\$ 80,584.74	\$ 60,438.55	\$ 20,146.18	\$ 402,923.69	\$ 402,923.69	\$ 457,684.44	-12%	
Jan-16	\$ 206,399.26	\$ 27,260.28	\$ 77,886.51	\$ 58,414.88	\$ 19,471.63	\$ 389,432.56	\$ 389,432.56	\$ 421,029.92	-8%	
Feb-16	\$ 187,174.25	\$ 24,721.13	\$ 70,631.79	\$ 52,973.85	\$ 17,657.95	\$ 353,158.97	\$ 353,158.97	\$ 441,997.11	-20%	
Mar-16	\$ 190,237.01	\$ 25,125.64	\$ 71,787.55	\$ 53,840.66	\$ 17,946.89	\$ 358,937.75	\$ 358,937.75	\$ 413,020.05	-13%	
Apr-16	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 357,650.27	-100%	
May-16	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 368,633.80	-100%	
Jun-16	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 368,692.35	-100%	
Collection to date	\$ 1,829,476.42	\$ 241,628.96	\$ 690,368.46	\$ 517,776.35	\$ 172,592.12	\$ 3,451,842.30	\$ 3,451,842.30	\$ 5,049,073.09	-32%	
Warrants Issued	\$ 573,144.67	\$ 206,129.96	\$ 465,838.55	\$ -	\$ 502,075.16	\$ -				
Outstanding P.O's	\$ -	\$ 26,862.50	\$ 51,915.95	\$ -	\$ 280,012.86	\$ -				
Transfers										
Jul-15										
Aug-15										
Sep-15										
Oct-15			\$ -							
Nov-15			\$ -							
Dec-15		\$ -								
Jan-16		\$ -								
Feb-16										
Mar-16										
Apr-16										
May-16					\$ -					
Jun-16										
Transfers	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -				
Cash Balance	\$ 1,256,331.75	\$ 8,636.50	\$ 172,613.96	\$ 517,776.35	\$ (609,495.91)	\$ 3,451,842.30				
Does not include Carryover	Does not include	Does not include	Does not include	Does not include	Does not include	Does not include	Carryover			