

**COMMENTARY TO OWNER'S RIDER TO
STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND CONTRACTOR (AIA DOCUMENT A107 – 2007)**

INTRODUCTION

1. The Owner's Rider.

Several organizations produce forms of Owner-Contractor agreements. Because the forms drafted by the American Institute of Architects ("AIA") are the forms most commonly used in construction projects in New York, the NYSBA Real Property Law Section ("RPLS") has drafted an owner-oriented form rider (the "Owner's Rider") for use with AIA Form A107 – 2007 form of construction contract ("AIA Form A107").

The RPLS recommends that an attorney specializing in construction law be involved in the negotiation of agreements for major construction projects and also for small projects where the need exists. Nevertheless, real estate attorneys are often asked by their owner clients (who may include house owners, cooperative corporations, condominiums, and/or apartment owners) to review construction contracts for projects that, although significant for the owner, are not major projects. Because architects and contractors often submit to owners AIA agreements and those agreements are often reviewed by the owner's real estate lawyer, the RPLS saw a need for the development of the Owner's Rider in order to (a) make the review process more efficient and cost effective and (b) close some gaps in AIA form and address certain issues in a manner that more realistically reflects common practice.

2. AIA Forms – In General

AIA has drafted a variety of forms to govern the construction process, including several forms of architect agreements, general contractor and construction manager agreements, and other construction agreements. Forms can be accessed on-line by buying an annual license from AIA to use its forms. The license, however, may be too expensive for a small firm. Individual forms can be purchased at the AIA New York Chapter Center for Architecture. The contact information for the Chapter Center is as follows:

AIA New York Chapter Center for Architecture
536 LaGuardia Place
New York, NY 10012
212-358-6113
212-696-5022 fax
info@aiany.org
www.aiany.org

With respect to owner/contractor agreements, the AIA has promulgated the following forms (among others):

A105-2007 Standard Form of Agreement between Owner and Contractor for Residential or Small Commercial Project
A107-2007 Abbreviated Owner-Contractor Agreement Form for Construction Projects of Limited Scope – Stipulated Sum
A101 – 2007 Standard Form of Agreement for Owner and Contractor – Stipulated Sum
A102 – 2007 Standard Form of Agreement for Owner and Contractor – Cost Plus fee with GMP
A103 – 2007 Standard Form of Agreement for Owner and Contractor Where the Basis of Payment is Cost Plus fee without GMP
A201-2007 General Conditions of Construction (for use with A101-2007, A102-2007, and A103-2007).

A105 is a bare bones agreement intended for the smallest of projects. The RPLS does not recommend its use except for very small projects and even then the Owner's attorney should consider attaching a rider.

AIA Form A107 is commonly used for construction projects that may range up to several million dollars; and it is AIA Form A107 – 2007 to which the Owner's Rider is intended to be appended.

A101, 102, and 103 forms are generally used for major projects, although some contractors and architects use those forms for all projects. A201 provides the so-called "General Conditions" for those form agreements. By contrast, AIA Form A107 is self-contained; that is, its General Conditions are included in the form itself.

3. Governing Statute.

Article 35-E of the General Business Law (the "Prompt Payment Act") (NY GBL §756 *et seq*) applies to construction contracts in which the aggregate cost of the project (including labor, services, materials and

equipment) equals or exceeds \$150,000. Exceptions include contracts for the alteration of a one, two or three family residential dwelling, for a residential tract development of one hundred or less one or two family dwellings, any residential construction project where the aggregate size of the project is 4,500 sf or less, and certain low income residential projects. The Prompt Payment Act provides, among other things, that:

- A. Notices under the Prompt Payment Act must be given by facsimile and reputable overnight courier.
- B. If the contract does not specify a billing cycle, payments are to be made on a calendar month cycle.
- C. Upon delivery of an invoice and all contractually required documentation, the Owner is required to approve or disapprove all or a portion of the invoice *within 12 business days*. The Owner's approval cannot be unreasonably withheld. If the Owner refuses to approve an invoice or any part thereof, it must give the Contractor a written statement describing the items of the invoice that aren't approved within such 12 business day period. An Owner may refuse to approve an invoice for:
 - a. Unsatisfactory or disputed work progress;
 - b. Defective construction work or material not remedied;
 - c. Disputed work materials;
 - d. Failure to comply with other material provisions of the construction contract;
 - e. Failure of the Contractor to make timely payments for labor, including collectively bargained fringe benefit contributions, payroll taxes and insurance, equipment and materials; damage to the Owner; or reasonable evidence that the construction contract cannot be completed for the unpaid balance of the contract sum;
 - f. Failure of the Architect to certify payment for any of the foregoing reasons (so long as the reasons are specified);
- D. The Contractors, in turn, are given 12 business days to approve or disapprove invoices from the Subcontractors.
- E. The Owner must pay any interim or final invoice within 30 days after approval of the invoice.

The Prompt Payment Act, by its specific terms, voids certain provisions, including (a) a provision subjecting a construction contract to another state's law, (b) a provision that prohibits a party (e.g., the Contractor) from suspending performance if the other party fails to make prompt payment, (c) a provision prohibiting expedited arbitration where required by 756(b), and (d) payment provisions

differing from those set out in 756(b). Other provisions of the Prompt Payment Act should be subject to modification (e.g., the circumstances under which an Owner may withhold payment).

The Owner's Rider is just that – a form. It should not be used unless reviewed by the Owner's attorney and modified as needed. The blanks in the AIA form itself must also be properly completed and refer to all of the plans, specifications, drawings, proposals and other instruments that completely describe the construction project. The provisions of the Owner's Rider generally refer to the corresponding provisions of AIA Form A107 that are intended to be modified or supplemented. Therefore, the provisions of the Owner's Rider are generally ordered in the same sequence as the provisions of AIA Form A107 that are intended to be so modified or supplemented.

The Owner's attorneys should note that the Owner's Rider does not address in any way a most important part of the contract -- the description of the work to be performed. If AIA Form A107 does not refer to all of the plans and specifications, or if those plans and specifications do not adequately describe the work to be performed by the Contractor, there will be a large gap in the contract that will not be covered by the Owner's Rider.

ADDITIONS TO AIA FORM A107

1. Add a reference to the Owner's Rider in Section 6.1.6 of AIA Form A107.
2. Make sure AIA Form A107 is properly filled out, including by setting out the retainage in Section 4.1.4 of AIA Form A107. A 10% retainage is customary, but a different percentage may be appropriate in some cases. In large projects and new building construction, it is customary for the Contractor to request that the retainage be reduced after Substantial Completion to an amount equal to a percentage of the estimated cost of performing the final punch list. If such a request is made, the Owner should consult with the Architect as to the reasonableness of the request (given the nature of the project and the reputation of the Contractor), but it is generally recommended that the retainage be reduced to no less than 150% or 200% of the estimated cost of performing the final punch list work.

COMMENTARY TO OWNER'S RIDER

1. Inconsistencies. The contract, as a whole, is comprised of AIA Form A107, the documents listed in AIA Form A107 (project manual, specifications, drawings, etc.), and the Owner's Rider. Collectively, the agreements are referred to variously as the "Contract" or the "Agreement." Because the documents may conflict with one another (for example, the project manual may contain insurance requirements that differ from the requirements set out in the Owner's Rider), to prevent later questions and avoid ambiguity Owner's Rider Par. 1(a) provides that if there is a conflict between the documents, the higher standard or the more restrictive requirement for the benefit of the Owner, controls.

2. Construction Supervision and Procedures. Par. 4 of the Owner's Rider deals with supervisory and procedural aspects of the construction project that have occasionally proved troublesome to building owners. First, owners should be able to reach the construction foreman at all times and be able to communicate with the foreman. Accordingly, the Owner's Rider requires the foreman to speak English and requires the Contractor to provide the Owner with the foreman's contact information. If the building in question is Spanish speaking or dominated by another language, the rider provision should be appropriately revised.

In addition, there are several reasons why the Owner should be allowed some control over the personnel that the Contractor uses for the project. First, construction projects are run by people, not inanimate corporate beings. For that reason, the Owner has a vested interest in seeing that the personnel assigned to its project are up to the task and also that they remain with the project throughout its course, for continuity's sake. In addition, if the Owner has dealt with a particular person or group at the construction company prior to contract execution, it may want to require that person or group to supervise the project. Under such circumstances, the desired personnel should be listed in Exhibit 1 to the Owner's Rider. If not, Paragraph 4 of the Owner's Rider should be modified to delete the reference to Section 9.2.5.

It is not uncommon for the Owner, the Architect or the Contractor to call for a site meeting to review progress of the construction. Such meetings are common and, in garden variety construction projects, should generally be conducted without additional fee. Section 9.2.4, as set out in Owner's Rider Paragraph 4, states specifically that there

shall be no additional charge for on-site meetings. The Owner's Rider provides for weekly meetings and such additional meetings as are reasonably requested by the Owner or the Architect. In some circumstances it may be appropriate to specify a different frequency or to set out a schedule for meetings (e.g., 1 pm on each Monday) – especially if there an urgent need for the construction to be completed quickly.

3. Warranties. Section 9.4 of AIA Form A107 includes a warranty that the materials used in the Work will be new and that the Work will conform to Contract requirements and be free of defects. Paragraph 7 of the Owner's Rider slightly expands the provision to include an additional warranty that the Work will be free of materials prohibited by law (building on the Contractor's agreement in AIA Form A107 Section 9.6.2 to correct work if the Contractor performs work knowing it to be unlawful) and that the Work will be performed in a good and workmanlike manner (which has been disfavored in recent AIA Forms). Although AIA Form A107 requires the Contractor to perform the work in accordance with Contract requirements and to use its best skill and attention in performing the work (see Sections 9.2.1 and 9.4 of AIA Form A107), the consensus of the drafting committee was that the "good and workmanlike manner" standard was appropriate to assure a reasonable quality of performance.

Under Sections 15.4.3 and 18.2 of AIA Form A107, contract warranties commence on the date of Substantial Completion (unless otherwise provided in the Architect's Certificate of Substantial Completion); the Contractor agrees to correct work not in accordance with the Contract Documents for a period of one year after Substantial Completion and to perform the corrective work within a reasonable period after notice; and, if the Owner fails to give the Contractor notice during the one-year period and to give the Contractor an opportunity to correct the defects, the Owner waives the right to require the Contractor to correct and to make a claim for breach of warranty (Section 18.2). The warranty limitation is not intended to prevent the Owner from suing for defects in the Work after the expiration of the one-year period (see Section 19.4 of AIA Form A107); and the Owner's Rider makes that clear in Paragraph 7(c), which restates Section 18.5 of AIA Form A107. During the warranty period, however, the Contractor agrees to correct all Work itself to the extent the Work doesn't comply with contract requirements. Of course, if the quality of the Contractor's Work has been generally unacceptable, the Owner may not wish to have the Contractor correct the Work. For that reason, Owner's Rider Paragraph 7(b) gives the Owner the right to perform the corrective

work if the Contractor's work has been unsatisfactory. The Owner's Rider also extends the one-year warranty period if corrective work is performed after Substantial Completion, by restarting the warranty period after warranty work is performed (Paragraph 7(c), restating Section 18.5 of AIA Form A107).

Note that AIA Form A107 is not the only source of warranties. The specifications for the project may include other warranties; and there may be manufacturer warranties, which often cover equipment for longer periods than AIA Form A107 warranty, but are usually limited to replacement of parts, materials or equipment exclusive of labor costs.

The Committee considered modifying Section 9.4 of AIA Form A107 to have the warranty run from the date of Final Completion rather than Substantial Completion. The thought was not incorporated in the Owner's Rider because the work and installations are essentially finished upon Substantial Completion, except for minor punch list items, and the Owners often occupy premises and/or use equipment when construction reaches the Substantial Completion stage. Accordingly, Substantial Completion seems the appropriate trigger for the warranty period.

4. Indemnity (Owner's Rider Paragraph 10); Consequential Damages. AIA Form A107 Section 9.15.1 includes an indemnity (including against attorneys' fees) in favor of the Owner that essentially covers insurable claims (i.e., claims attributable to bodily injury, sickness, disease, death, and damage to tangible property, other than the Work itself) to the extent the claim arises from the negligent acts or omissions or the Contractor, its Subcontractors or anyone for whose acts they may be liable (which presumably includes employees), even if the indemnified party caused part of the loss. The Contractor's liability is not limited by any statutory limitation of the Contractor's liability (see Section 9.15.2) under workers compensation and similar statutes. What the Section does not cover is (a) losses incurred by the Owner in connection with the Contractor's breach of contract, which might include legal fees and bonding costs incurred in connection with unlawful mechanic's liens and fines and penalties for violations issued against the Building, (b) misconduct by the Contractor Parties, and (c) claims by the Contractor's employees against the Owner where the Contractor was not negligent, but neither was the Owner. Owner's Rider Paragraph 10 expands the indemnity to cover such claims.

The Contractors engaged in major construction may object to an indemnification that extends beyond the Contractor's insurance coverage. There are several compromises, including (a) limiting the indemnification to the amount of the Contract Sum, and (b) limiting the additional Rider indemnification to specific areas of concern (e.g., mechanics liens and violations).

Note that the Owner and the Contractor each waive claims for consequential damages under Section 21.8 of AIA Form A107. The Owner's Rider does not modify that waiver. Accordingly, if the Owner may incur specific consequential damages by reason of the Contractor's default and desires to make the Contractor liable, it should address that issue directly in the Owner's Rider.

5. Wrongful Filing of Mechanics Liens (Owner's Rider Paragraph 11). Section 9 of the New York Lien Law permits a Contractor to file a lien for the agreed amount or value of labor performed and materials installed or manufactured. Section 39 of the Lien Law provides that if the Court finds that the lien amount has been willfully exaggerated, the Court shall declare the lien void and the Contractor may not file another lien covering the claim. Section 39-A further provides that if a Court declares that a lien has been willfully exaggerated, the Owner shall be entitled to recover its legal fees, bonding costs, and an amount equal to the difference between the claimed amount of the lien and the amount permitted by statute. Perhaps because of the seriousness of the consequences, courts are generally reluctant to find that a Contractor has willfully exaggerated the lien amount, making Sections 39 and 39-A of limited utility.

Consequently, if a dispute develops between an Owner and Contractor, the reality is that the Contractor often files a lien even if it is not entitled to payment and, in addition, often files a lien for an amount that bears no relation to the amount permitted under the Lien Law. The Committee's goal was to find some way, within the limits imposed by the New York Lien Law, to compensate the Owners for costs incurred when the Contractors adopt a "kitchen sink" approach. Accordingly, the Rider:

- a. Prohibits the Contractor from filing a lien once (1) "Final Payment" has been made, or (2) the Contract has been terminated early and all amounts due from the Owner have been paid;

- b. Requires the Contractor to amend an overstated lien to the proper amount within 10 days after receipt of a request from the Owner; and
- c. Provides that a lien shall be deemed willfully exaggerated if the lien amount includes “lost profits” or consequential damages.

With respect to clauses a. and b., a breach of those provisions (which merely require the Contractor to comply with law) would trigger the general indemnity clause, allowing the Owner to recover its losses, including reasonable attorneys’ fees. Section c. is intended to both remind that the Contractor that lost profits and consequential damages may not be included in the lien amount and help the courts make a determination of willful exaggeration where the Contractor includes such damages in the lien amount.

6. The Contractor’s Time to Perform (Owner’s Rider Paragraph 13). Owner’s Rider Paragraph 13 modifies Article 2 of AIA Form A107, which sets out the Contractor’s time to perform, and Article 14 of AIA Form A107, which makes time of the essence. The Owner’s Rider forces the Contractor to take action when the Owner or the Architect finds that the Contractor has fallen behind schedule, by requiring the Contractor to take such action, including working additional shifts, as is required to complete the Work on time. The Owner may also consider negotiating a per diem charge (so-called “liquidated damages”) for late performance or a bonus for early completion; but the Contractor is likely to resist imposition of any liquidated damages charge unless the performance period is so extended, or the liquidated damages charge is so low, as to make the charge almost meaningless. One of the reasons contractors resist liquidated damage clauses is that if the job takes longer than anticipated, the Contractor is already incurring losses from having to staff the project for a longer period than anticipated, so paying liquidated damages may be viewed as adding insult to injury. Liquidated damages may, however, be appropriate in specific situations, especially where failure to make a particular deadline may cause hardship to the Owner. Take note that the time within which the Contractor is required to complete the job may be extended by Change Order for *force majeure*, which may provide the Contractor with a defense to a liquidated damages claim or a portion thereof.
7. Applications for Payment; Releases of Lien (Owner’s Rider Paragraph 14). Owner’s Rider Paragraph 14 supplements Articles 4 and 15 of AIA Form A107, which govern applications for payment. For a very

small job there may simply be one or two payments. For most jobs, however, payments are spread over time. Under AIA Form A107, the Contractor proposes a Schedule of Values, which allocates the Contract Sum to various portions of the Work. See AIA Form A107 Section 15.1.1. When submitted by the Contractor, and if the Architect does not object, the Schedule of Values establishes the payment schedule. If appropriate, one thing for the Owner to consider is incorporating a specific payment schedule into Owner's Rider Paragraph 14(a)(ii).

Paragraph 14 of the Owner's Rider provides that any contract deposit shall be applied against the first payment(s) due under the contract, which is what the Owners typically require. Conversely, the Contractors often ask for the deposit to be applied against their final requisitions for payment, but such an arrangement would, as a practical matter, vitiate the utility of the retainage requirement.

AIA Form A107 requires the Contractor to submit applications for payment to the Architect, who determines whether or not payment is due and is permitted to withhold approval of the payment application under specified conditions (e.g., defective work not remedied). Accordingly, AIA Form A107 effectively makes the Architect the "arbiter" of whether or not payment is due. Owner's Rider Paragraph 14 alters that structure by giving the Owner the right to refuse payment if the Contractor has engaged in one of the enumerated "bad acts" (e.g., defective work, liens filed against building although payment has been made, etc.) and expands the list of "bad acts" (to include, for example, failure to discharge a mechanics lien filed with respect to work for which payment has been made).

Applications for payment are generally submitted on AIA Form G702.

Owner's Rider Paragraph 14 requires the Contractor to submit with each application for payment a lien waiver in the form included in Exhibit 2 to the Rider. It is intended that Exhibit 2 will consist of progress and final lien waivers for both the Contractor and its Subcontractors. The Committee has posted on the Committee web page (www.nysba.org/construction) suggested forms suitable for stipulated sum and cost plus contracts. While the lien waivers are the same for the Contractor regardless of the pricing method, the Subcontractor forms differ in that, on a stipulated sum contract, only percentages of completion are shown on the Subcontractor waiver, whereas on a cost plus contract, the waiver contains full disclosure of all subcontract costs. All lien waivers are effective as of the pending application for payment and are conditioned upon the receipt of

payment and clearance of funds. The Lien Law invalidates any unconditional lien waiver executed prior to payment. NY Lien Law Section 34.

As noted above, the Prompt Payment Act requires the Owner to approve or disapprove a Contractor's invoice within 12 business days after receipt of the invoice and all required contract documentation. Any disapproval must be accompanied by an explanation. Payment of an approved invoice must be made within 30 days of approval. See GBL Section 756-a. The Owner's Rider instead provides that payment of any approved invoice will be made within 30 days of the Owner's receipt of the Contractor's Application for Payment (for a small project, it may be appropriate for the Contractor to be paid more quickly). If the Prompt Payment Act applies, the Owner should take care to provide a timely explanation for any disapproved invoice.

With respect to payment for materials, if the Owner does not wish the Contractor to store, or to pay the Contractor for, quantities of materials and equipment at the site (at which point payment is due for the materials under AIA Form A107 Section 15.1.3), the Owner should delete Section 15.1.3 and instead provide that payment shall be made with respect to materials only when such materials have been actually used in the Work and/or incorporated in the Building.

8. Final Payment. The Owner's Rider conditions Final Payment on, among other things, delivery of lien waivers and releases (included in Exhibit 2) to the Owner from each Subcontractor, supplier and materialman, as well as the Contractor.
9. Waiver of Post-Completion Claims by the Owner. The Committee considered deleting Section 15.5.3 of AIA Form A107, which provides that upon making final payment, the Owner waives all claims against the Contractor except for (a) claims based on unsettled liens, claims, security interests and encumbrances (which should include mechanics liens filed after final payment), (b) failure of the Work to comply with the requirements of the Contract Documents, and (c) terms of special warranties. There is a reciprocal provision in Section 15.5.4 protecting the Owner from claims by the Contractor made after acceptance of final payment except for claims previously made in writing and unsettled.

However, there is a strong preference in the construction industry for closure upon final payment (much as real estate attorneys have a strong preference to have the parties to a sale walk away from a

closing without surviving liabilities). Accordingly, the Committee instead expanded the Owner's post-closing rights by adding to the list of non-waived items claims for personal injury, death and property damage, mechanic's lien claims, and violations issued against the Building or the Owner (see Owner's Rider Paragraph 14(c)).

10. The Owner Direct Payment of the Subcontractors. To protect against the possibility that the Contractor may become financially unstable or otherwise fail to pay its Subcontractors, the Owner may wish to consider adding a provision to Owner's Rider Paragraph 14 allowing the Owner, at its election, to issue checks jointly to the Contractor and its Subcontractors; and allowing the Owner to include on the check the endorsement set out below. If included, the provision should further provide that the Contractor and the Subcontractor are conclusively bound by such endorsement if they submit the check for payment.

Draft Provision.

The Owner may, in its sole and absolute discretion, issue checks payable to the joint order of the Contractor and any Subcontractor performing portions of the Work for which an Application for Payment is submitted by the Contractor. In addition, without limiting or waiving any rights the Owner may have at law, in equity and hereunder, the Contractor and all the Subcontractors shall be conclusively bound by the following endorsement which may appear on the back of any check or instrument to be issued by or on behalf of the Owner:

“EACH ENDORSER HEREBY RELEASES ALL CONSTRUCTION LIENS, STOP NOTICES, AND CLAIMS WITH RESPECT TO _____’S PREMISES LOCATED AT _____, NEW YORK, NEW YORK TO THE EXTENT OF THE FACE AMOUNT OF THIS CHECK. EACH ENDORSER ACKNOWLEDGES PAYMENT OF THE FACE AMOUNT OF THIS CHECK FOR LABOR PERFORMED OR MATERIALS FURNISHED FOR SUCH JOB.”

Failure of such endorsement to so appear on any check or other instrument shall not constitute a limitation of or waiver of the Owner's rights and/or remedies hereunder, nor in any way limit or modify the Contractor's liabilities and obligations hereunder.

The provision and endorsement were not included in the Owner's Rider because it was felt to be unduly cumbersome and likely to be ignored by both parties.

11. Termination for Convenience (Owner's Rider Paragraph 20). The Owner's Rider Paragraph 20 amends AIA Form 107 Section 20.3, which gives the Owner the right to terminate the construction contract for "convenience," to set out more specifically the payment due if the Owner terminates for convenience, by eliminating the reference to profit and instead allowing the Contractor to recover for the Work performed, the retainage allocable to that Work, and the Contractor's demobilization costs. Owners should understand that if a construction contract is terminated for convenience, the Owner essentially waives the right to sue the Contractor for damages it might incur if it has to pay more money to hire another Contractor to finish the project. Owners typically require this provision in case they lose their financing for the project or their applied-for zoning does not materialize. There is an additional, practical reason for having this provision – a Contractor may not be performing up to the Owner's expectations but the Owner may not want to risk litigating a "for cause" termination. Instead, the Owner can simply terminate for "convenience," pay the Contractor the amounts called for and thereby minimize further proceedings and litigation exposure.

12. Insurance; Builder's Risk Coverage.

(a) Owner's Rider Paragraph 19 refers the parties to Exhibit 3 for a description of the insurance required to be carried by the Contractor. The Owner should consult with its insurance agent as to the required insurance, which may vary depending on the nature of the job. The attorney should endeavor to ensure that any insurance requirements set out in the Project Manual (prepared by the Architect) conform to the insurance requirements of the Rider (or vice versa), although Exhibit 3 provides a fail-safe in that it provides that the broader requirement controls.

(b) Section 17.3.1 of AIA Form A107 requires the Owner to carry builder's risk insurance. That requirement is an attempt to simplify risk of loss issues by making the Owner responsible for carrying builder's risk insurance, which covers loss that occurs to the construction project during the course of the project. However, builder's risk insurance is expensive and may or may not be appropriate for a particular construction job. Generally, it is appropriate where a new building is under construction, a building addition is being constructed, and/or a "gut" renovation is planned. For ordinary alterations, the Owner's existing property insurance is likely to cover damage to newly installed alterations, although certain kinds of damage (e.g., water damage) may not be covered. Accordingly,

Section 17.3.1 is amended and restated, and Sections 17.3.2 and 17.3.4, are deleted; thereby eliminating the requirement that the Owner carry builder's risk insurance. However, the Owner always should discuss with its insurance consultant the adequacy of the building's existing insurance with respect to the proposed construction project, including whether or not builder's risk insurance is appropriate. If builder's risk is appropriate, the Owner needs to determine whether the Owner or the Contractor should obtain the coverage. If the former, the Owner will pay directly for the coverage; if the latter, the Contract Sum is likely to be adjusted to reflect the additional cost to the Contractor to obtain such insurance.

(c) When a casualty destroys materials that are in transit or that have been stored at (but not incorporated in) the Building, multiple issues arise, including the following:

i. The Owner's insurance may (or may not) cover loss of materials in transit or stored at the Building, but such insurance will definitely not cover loss to the materials before they become the Owner's property.

ii. Under the common law, risk of loss passes from the Contractor to the Owner once title passes to the Owner. In this regard, Section 15.1.3 of AIA Form A107 requires the Owner to pay for materials delivered to and suitably stored at the site for subsequent incorporation; and Section 15.1.4 provides that the Contractor warrants that title to materials will pass to the Owner no later than the date of payment. Such provisions do not entirely clarify when title and risk of loss passes, although it seems clear that title and risk of loss pass no later than the date of payment.

iii. The Owner's casualty insurance may not cover certain categories of risk, including some kinds of water damage.

Bearing in mind all of the above, the Owner should consult with its insurance agent as to what insurance should be carried by the Owner and by the Contractor and at what point the Owner's policy kicks in to cover loss.

13. Indemnification against Hazardous Substances. The Committee elected to delete Section 16.2.2, which requires the Owner to indemnify the Contractor, the Architect and their employees against claims arising out of performance of the Work in areas in which there are

hazardous substances that haven't been rendered harmless. Since construction sites are normally investigated for the presence of known hazardous substances (and, indeed, the Contractor is required to report the presence of any hazardous substances it encounters to the Owner), the Committee was concerned that the Section could be construed to make the Owner liable for (a) claims based on exposure to hazardous substances that were not known to be hazardous at the time the Work was performed or (b) damage arising from Work that causes the release of hazardous substances into the environment (for example, the Contractor breaches a fuel line). The Committee felt that the Owner, which is often the party least likely to have actual knowledge of the environmental risks, should not be required to indemnify. This may be a serious issue for some contractors if their insurance does not cover loss or liability arising from hazardous substances, which is frequently the case. However, the Owner's insurance is also likely to exclude such loss and liability. A possible compromise is to modify the clause to limit the Owner's liability to damages arising from the presence of hazardous substances of which the Owner has knowledge where the Contractor has complied with its obligations under Section 16.2.

14. Exculpation. To eliminate any ambiguity, Owner's Rider Paragraph 23 makes it clear that if work is being performed for a condominium, the unit owners and the members of the board of managers are not personally liable. A similar provision was added confirming that, with respect to cooperatives, board members and shareholders also are not personally liable, although, as to cooperatives, such a provision is not needed because of the Owner's corporate structure.
15. Miscellaneous Provisions Omitted. The Owner's Rider does not contain the provisions set out below, although they are normally included in long term agreements (such as leases) and contracts of sale. Such provisions are sometimes included in contracts for the construction of a new building or similar significant construction contracts (for which AIA Form 101 is more likely to be used), but are usually not added to AIA Form A107 contracts.

(a) Any notice provided for in this Agreement, other than billing, shall be in writing and sent by (i) registered or certified mail, return receipt requested, or (ii) by personal delivery, or (iii) by recognized overnight courier for next business day delivery, and shall be addressed to the Contractor or the Owner at the address indicated at the beginning of this Agreement, and if to the Owner, with an additional copy to _____, Esq.,

_____, _____, _____, New York _____.

Except as expressly otherwise noted in this Agreement, each such notice shall be deemed to have been given (i) if notice is sent by registered or certified mail, 5 business days after notice is sent, (ii) if notice is given by personal delivery, on the date such notice is delivered, provided delivery is between 9 am and 5 pm on a weekday that is not a federal, state or banking holiday, and (iii) if notice is given by overnight courier service, on the date delivery is made or attempted to be made. Any notices may be given by a party's attorneys. Either party may change its address for notices by notice given to the other party in accordance with the provisions of this subparagraph.

(b) No waiver of any provision of the Contract Documents shall be deemed to be a continuing waiver thereof or a waiver of another provision of any of the Contract Documents. The failure of either party at any time to require performance by the other party of a provision hereunder shall in no way affect the right of that party thereafter to enforce the same in the future or to enforce any of the other provisions in this Agreement; nor shall the waiver by either party of the breach of any provision hereof be taken or held to be a waiver of the provision itself.

(c) Except as may be otherwise specifically provided in this Agreement, this Agreement may not be orally cancelled, changed, modified or amended, and no cancellation, change, modification or amendment shall be effective or binding, unless in writing and signed by the party(ies) affected thereby.

(d) Each party hereto shall cooperate and shall take such further actions and shall execute and deliver such further documents as may be reasonably requested by any other party in order to carry out the provisions and purposes of this Agreement.

(e) This Agreement and the Contract Documents represents the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements relating to the subject matter hereof, written or oral, are nullified and superseded hereby.

The Owner's counsel can decide whether or not to include such provisions, which are likely to be non-controversial; but which are not typically used in contracts for small projects.

Conclusion

The Owner's Rider is intended to provide a more uniform approach to the review and negotiation of AIA Form A107 construction contracts; and it is the Committee's hope that the Owner's Rider will serve that function, making construction contracts easier and more efficient to negotiate. Naturally, each attorney using the form must review the Owner's Rider, determine if its provisions are appropriate for the project, and make appropriate modifications.

April 2012

New York State Bar
Association Real Property Law
Section, Real Estate
Construction Law Committee

Kenneth M. Block
Brian G. Lustbader
David Pieterse

Co-Chairs

Nancy A. Connery, Chair,
Contracts Subcommittee

**Prepared by the Real Estate Construction Law Committee of the Real
Property Law Section of the New York State Bar Association**

Instruction: Add a reference to this Owner's Rider in Section 6.1.6 of the AIA Form A107.

**OWNER'S RIDER TO
STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND CONTRACTOR (AIA DOCUMENT A107-2007)**

DATE: _____
OWNER: _____
CONTRACTOR: _____
BUILDING: _____
INDEMNIFIED PARTIES _____

[Identify Owner, Architect, Managing Agent, Mortgagee, etc.] their officers, directors, and employees, and, if the Building is a condominium, the members of the Board of Managers and the persons and entities who own condominium units in the Building

ADDITIONAL INSURED: _____

[Identify Owner, Architect, Managing Agent, etc.] their officers, directors, and employees, and, if the Building is a condominium, the members of the Board of Managers and the persons and entities who own condominium units in the Building

**AMOUNT OF
CONTRACT DEPOSIT:** _____
**CHANGE ORDER
PROFIT MARKUP:** _____% of the Actual Cost to Contractor
**CHANGE ORDER
OVERHEAD MARKUP:** _____% of the Actual Cost to Contractor

1. General.

(a) If any of the provisions of this Rider conflict or are otherwise inconsistent with the AIA Standard Form of Agreement between Owner and Contractor (the "AIA Form") to which this Rider is attached, the Specifications or other Contract Documents, the more

restrictive requirement and the higher standard, for the benefit of Owner, as the case may be, shall prevail and be binding upon Contractor.

(b) Any capitalized term in this Rider that is not otherwise defined in this Rider shall have the meaning ascribed to it in the AIA Form. The AIA Form and this Rider are hereinafter collectively referred to as this “**Agreement.**” “**Including**” means “including but not limited to”. “**Managing Agent**” means the then managing agent of the Building. References in this Agreement to defects in the Work shall include defects in materials and equipment incorporated in or installed as part of the Work.

2. The Work. Supplementing Section 7.3: The Work includes not only the Work specified in the Agreement, but also all work reasonably inferable from the Plans and Specifications and all related work reasonably necessary to complete the Project and ascertainable from a visual inspection of the Project site.

3. Representation by Contractor as to Contract Sum; Changes in Contract Sum; Change Orders; Establishing Pricing on Change Orders.

(a) Supplementing Section 9.1.1: Execution of this Agreement by Contractor is a representation that the Work can be completed for the Contract Sum. No additional payment shall be due for materials, tools or equipment needed for the proper performance of the Work. Accordingly, the Contract Sum may be increased only by Change Order effected in accordance with the provisions of this Agreement, and no claim may be made by Contractor for compensation in addition to the Contract Sum other than by a Change Order signed in advance by Owner and Contractor setting out the additional cost of a change in the Work or a method for determining such cost. No change in the Work shall be performed by Contractor or binding on Owner unless effected pursuant to a Change Order signed by Owner. If Contractor performs any changes in the Work without prior written authorization from Owner, Contractor shall not be entitled to any change in the Contract Sum or Contract Time and shall not make any claim for unjust enrichment or *quantum meruit* based on a change in Work that has not been authorized in writing by Owner; notwithstanding any course of dealing between the parties or any implied acceptance of any change by Owner.

(b) The final price of each change order effected pursuant to Article 13 of the AIA Form, shall be the sum of (i) the actual, out-of-pocket cost thereof (the “**Actual Cost**”), without profit, administrative expense or other “extra,” plus (ii) the Change Order Overhead Markup plus (iii) the Change Order Profit Markup. Contractor agrees that it shall provide Owner with accurate and complete information on all of its actual costs for the change in question.

4. Supervision and Construction Procedures: Site Meetings. Section 9.2 is modified to add the following sections:

9.2.3. Contractor shall provide a full-time English speaking foreman or superintendent who shall be on site at all times during the performance of the

Work; and shall provide Owner and Architect with the cell phone number of such foreman or superintendent. Contractor shall furnish to Owner upon request the names of all its employees working at the Project.

9.2.4. Contractor shall make itself available to meet Owner and/or Architect at least once per week at the Project site and such additional times as may be reasonably requested by Owner, upon Owner and/or Architect's request, in order to review the progress and status of the Work. The cost of attendance at such meetings is included in the Contract Price. Accordingly, there shall be no additional charge for attendance at such meetings.

9.2.5. *Strike if inapplicable:* Contractor agrees that the persons listed on Exhibit 1 shall serve in the positions listed thereon for the duration of the Work and that he/she/they shall not be removed from the Project, unless such person becomes unable to perform his or her assigned duties or ceases to be in the employ of Contractor. In the event of such removal, Contractor shall immediately propose by notice to Architect and Owner a candidate to serve in the place of such person, who shall have similar training and experience and who shall first be interviewed by and be reasonably acceptable to Owner and Architect.

9.2.6. Contractor shall not permit its employees or those of any Subcontractor or sub-subcontractor (or any tier) or those of material suppliers to enter upon or remain in any part of the Building except where their presence is immediately required to perform the Work. Such employees shall not utilize the plumbing systems of the Building except as may be explicitly designated for the use of the construction forces.

5. Substitutions. Supplementing Section 9.3.3. Contractor shall personally investigate each proposed substitute material or product and advise Owner if it is not equal to or superior in all respects to the material or product(s) originally specified. Contractor's warranty(ies) under the Contract Documents shall not be impaired or limited by reason of any such substitution.

6. Labor Harmony. Section 9.3 is modified to add the following section:

9.3.4. Contractor shall maintain labor harmony at the Project, and shall be responsible for any delay to the Project resulting from any strike, lockout, picketing, labor disturbance, or other labor dispute. In this connection, Contractor agrees to furnish such security services as are necessary to prevent any delay or damage to the Project. The Contract Sum includes the cost of such security services.

7. Warranties; Correction of Work. Modifying Section 9.4 and Article 18:

(a) Section 9.4 is amended to add the following sections

9.4.1 Contractor also warrants that (i) all goods, products, material and equipment to be supplied by Contractor shall be free of substances prohibited by law for use in the Project; (ii) its performance of the Work pursuant to this Agreement shall be accomplished in a good and workmanlike manner and in accordance with all applicable manufacturers' guidelines and instructions (unless otherwise expressly stated in the Specifications), all applicable laws, rules and regulations and applicable industry standards (unless otherwise expressly stated in the Specifications). Any ambiguity in the Contract Documents and any inconsistency between the Contract Documents or between the Contract Documents and such guidelines, instructions, laws, rules, regulations and industry standards, known by or made known to Contractor shall be promptly reported by Contractor to Architect and Owner.

9.4.2 Contractor acknowledges that the specification of a particular product or use of a particular method or means of construction in the Contract Documents, including through an order issued by Architect pursuant to Section 13.3, shall not relieve Contractor of its warranty obligations under this Agreement.

(b) Supplementing Sections 18.1 and 18.2: Contractor shall perform its obligations under Sections 18.1 and 18.2 and repair all damage arising therefrom, to the reasonable satisfaction of Owner, no later than thirty (30) days (or, in an emergency, immediately) after notice is given by Owner or Architect to Contractor of the defective Work; subject to reasonable extension of such time if such corrective work cannot, with reasonable diligence, be performed within such 30-day period provided that Contractor promptly commences and diligently pursues such corrective work. If Contractor fails to timely effect such repair, replacement and remedy or if Contractor's performance of the Work is unsatisfactory to Owner, Owner may repair, remedy or replace such defective Work, materials, and equipment; and Contractor shall reimburse Owner for all costs incurred by Owner in connection therewith upon demand.

(c) Section 18.5 is amended and restated in its entirety to read as follows:

18.5. If Contractor performs any corrective work pursuant to Section 18.2, the one-year period for correction of Work shall be extended, as to the portion of the Work so corrected, for a period of one year after Substantial Completion of such corrective work. The one-year limitation set out in Section 18.2 does not affect or limit the time within which Owner may initiate proceedings with respect to Contractor's failure to comply with its obligations under this Agreement, including any action for breach of contract or negligence.

8. Tax Benefits. Section 9.5 (Taxes) is modified to add the following sections:

9.5.1. If Owner determines that the Work qualifies for any tax exemption or abatement, Contractor shall cooperate with Owner's efforts to obtain any such tax exemption or abatement, which obligation shall survive Final Completion.

9.5.2. If Owner determines that the Work qualifies as a Major Capital Improvement (“MCI”), Owner shall deliver to Contractor a fully executed MCI certificate and Contractor shall credit Owner for any sales tax savings recognized by Contractor based upon Owner’s MCI certificate.

9. Violations. Section 9.6 is modified to add the following section:

9.6.3. If any notice or note of violation is issued against the Building, Contractor or Owner by any public or governmental authority as a result of or in connection with the Work, Contractor shall cause such violation to be cured and discharged of record at Contractor’s sole cost and expense within thirty (30) days after Contractor is given or receives notice of such violation (or immediately in an emergency). If Contractor fails to timely cause such violation and notice to be cured and dismissed of record, Owner may effect such cure and dismissal; in which event (a) Contractor shall promptly reimburse Owner for all costs incurred by Owner in connection therewith, including reasonable attorneys’ fees, and (b) without limiting Owner’s other remedies, Owner may offset such costs against any payments due Contractor under this Agreement. Payment in an amount sufficient, as determined by Architect, to correct and dismiss of record any such violation, shall be withheld from the payment of the Contract Sum until all such violations are dismissed of record.

10. Indemnity. Section 9.15.1 is amended and restated in its entirety to read as follows:

9.15.1 To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the Indemnified Parties from and against all losses, damages, liabilities, actions, causes of action, claims, demands, fines, penalties, judgments, costs and expenses (including, without limitation, reasonable attorneys’ fees, court costs and disbursements (collectively, the “**Damages**”) arising out of (a) the breach of any of the terms, covenants or conditions on Contractor’s part to be performed or observed under this Agreement or the Contract Documents; (b) any negligent acts, omissions or misconduct of Contractor, its Subcontractors, suppliers, materialmen and/or any of their employees, agents, servants, or invitees (collectively, the “**Contractor Parties**”), and (c) all injuries to, sickness and death of, any of the Contractor Parties except to the extent such Damages arise out of the negligence, misconduct or breach of this Agreement by Owner. In addition, if Contractor fails to promptly comply with its obligations under this Section with respect to any Indemnified Party, Contractor shall reimburse each Indemnified Party, within twenty (20) days after Contractor is billed therefor, for all reasonable attorneys’ fees, costs and disbursements incurred by such Indemnified Party in connection with the enforcement of Contractor’s obligations under this Section. This indemnity shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist; and shall (along with Contractor’s obligations) survive Final Completion and final payment.

11. Wrongful Filing of Lien. Article 9 is modified to add the following Section:

9.16. Contractor shall not file any lien against the Building if Contractor has been paid in full all amounts due under this Agreement nor shall Contractor file any lien against the Building that overstates the amount for which Contractor may file a lien pursuant to Section 9 of the New York Lien Law. Contractor shall, within ten (10) days of receipt of request or demand of Owner, correct any lien filing that overstates the amount of Contractor's lien. Without limiting the foregoing, Contractor shall be deemed to have willfully exaggerated the lien amount if Contractor includes in its computation of the lien amount lost profits or consequential damages. If Contractor willfully exaggerates the lien amount, Contractor shall reimburse Owner for its reasonable attorneys' fees incurred to discharge or modify such lien and all costs incurred by Owner to bond such lien (including reasonable attorneys' fees) as set forth in the Lien Law. Nothing contained in this Section (or elsewhere in this Agreement) shall limit Owner's rights and remedies under this Agreement, at law or in equity, by reason of any such overstatement or wrongful filing of a lien.

12. Subcontractors. Article 11 is modified to add the following Sections:

11.4 Before commencing the Work, Contractor shall deliver to Owner a list of all Subcontractors engaged to perform the Work and of those suppliers and materialmen engaged to provide materials for the principal portions of the Work, which list shall include their names, phone and cell numbers, addresses, and e-mail addresses. Contractor also shall deliver to Owner, prior to commencing the Work, an indemnification agreement from each Subcontractor (and signed by each Subcontractor) in form reasonably acceptable to Owner. All Subcontractors and laborers engaged by Contractor who are required by law to be licensed, shall be duly licensed by all applicable governmental agencies having or asserting jurisdiction.

11.5 Contractor shall obtain from each Subcontractor, supplier and materialman, prior to the time it makes a payment to such Subcontractor, supplier or materialman, a waiver of lien and release in the form included in Exhibit 2 (whether or not requested by Owner). Nothing contained in any such waiver of lien and release shall limit any defenses Owner may have to any open claims listed in such waiver of lien and release.

11.6 If any Subcontractor files a lien against the Building or makes a claim against Owner, Contractor shall, within five (5) days after Owner's request, deliver to Owner a copy of Contractor's contract with Subcontractor. If one or more liens is filed by any Subcontractor(s), supplier or materialman with respect to Work as to which Owner has made a payment to Contractor, Contractor at its own cost and expense shall cause such lien or liens to be discharged of record, by bonding or otherwise, within thirty (30) days after Owner gives Contractor notice thereof (as of which date TIME SHALL BE OF THE ESSENCE). If Contractor

fails to timely discharge such lien(s), Owner may, at its option, discharge such lien(s) by payment (without regard to any defenses Contractor may have or claim), settlement, bonding, or otherwise; and Contractor shall reimburse Owner for all costs incurred by Owner in connection therewith, including any payment(s) made by Owner to discharge or settle such lien(s) and Owner's reasonable attorneys' fees, court costs and disbursements. Owner shall also have the right to set off Contractor's liability to Owner pursuant to this Section against amounts owed by Owner to Contractor, but Owner's rights against Contractor under this Section shall not be limited in any way by any such set-off right.

11.7. Owner may communicate directly with Subcontractors, suppliers, and materialmen for the purpose of verifying amounts due and payable, or paid, for work performed and/or materials supplied by such Subcontractors, suppliers and materialmen. Within five (5) days after Owner's request, Contractor shall provide Owner with evidence of payments made to Subcontractors, suppliers, and materialmen.

11.8. Promptly upon Owner's request, Contractor shall assign to Owner all of Contractor's right, title and interest in and to the contracts between Contractor and its Subcontractors, which assignment agreement shall be in form reasonably satisfactory to Owner, shall adequately identify each such contract, and shall provide that Owner shall not exercise its rights as assignee unless and until this Agreement has been terminated by reason of Contractor's default.

13. Untimely Performance; Contractor's Sole Remedy for Delay. Article 14 is modified to add the following Sections:

14.6. If the Work is not progressing in a timely manner because of delays caused by Contractor or any Subcontractor or material supplier, Contractor shall, at its own cost and expense, take such action as is required to Substantially Complete the Work within the agreed time period, including by working additional shifts, causing its Subcontractors to work additional shifts, and taking other measures to Substantially Complete within the agreed time period. Nothing contained in this Section (or elsewhere in this Agreement) shall limit Owner's rights and remedies under this Agreement, at law or in equity by reason of Contractor's delay.

14.7 Contractor shall give Owner prompt written notice of (a) any delay in the commencement, performance or completion of the Work caused by Owner that might give rise to a claim by Contractor against Owner and (b) any events that Contractor claims will justify an extension of the Contract Time pursuant to Section 14.5, setting forth in reasonable detail the reasons for and the estimated length of such delay. Contractor shall immediately take all measures that may be required to minimize the extent of any delay. Contractor's sole remedy for any claim based on any delay in the commencement, performance or completion of the Work caused by Owner, hindrance in the performance of the Work caused by Owner, loss of productivity caused by Owner, or other similar claim (collectively

referred to as "**Delay Claim**"), whether or not foreseeable, shall be (i) an extension of the time in which to complete the Work and (ii) payment to Contractor of a reasonable sum to compensate it for increased Project expenses actually incurred and directly attributable to the Delay, but not for any consequential damages, extended general conditions, lost opportunity costs, impact damages, or similar damages.

14. Contract Deposit; Applications for Payment; Payments to Subcontractors and Suppliers; Limitation on Actions. Supplementing Articles 15 and 4:

(a) (i) If this Rider provides for payment of a Contract Deposit, the Contract Deposit shall be applied against Contractor's first Application(s) for Payment until fully applied.

(ii) *[If appropriate, include a specific payment schedule. Otherwise, Section 15.1.1 will govern the schedule of payments.]*

(b) Supplementing Section 15.1 (Applications for Payment):

i. Each Application for Payment submitted by Contractor shall include a properly completed, executed and acknowledged waiver of lien and release in the form included in Exhibit 2 from Contractor and each Subcontractor that is unconditional with respect to all prior work and services for which Contractor previously applied for and received payment and conditional as to the work for which the Application for Payment is submitted.

ii. Within thirty (30) days of Owner's receipt of Contractor's Application for Payment and Architect's Certificate for Payment, Owner shall pay the amount certified by Architect as due (less any Retainage provided in Section 4.1.4). Notwithstanding the foregoing, Owner may withhold payment (1) for any of the reasons specified in Section 15.2.3, clauses .1-.7 inclusive, or (2) if any mechanic's or other lien or liens has(have) been filed in connection with the Work and not discharged by bonding or otherwise (unless such lien arises because of Owner's failure to make a required payment); or (3) for failure of Contractor to comply with material provisions of this Agreement, including by misrepresenting the percentage of the Work completed or by billing for materials, supplies and/or equipment that has not been installed or incorporated in the Project, stored at the Project site, or stored at an off-Project site storage location(s) approved in writing by Owner; or (4) to the extent required to recoup all or any part of a prior payment made pursuant to a Certificate for Payment that has been nullified by Architect.

iii. Section 4.1.3 is deleted.

(c) Section 15.5.3 is modified to add the following sub-clauses at the end thereof:

- .4 claims by third parties against Owner, including claims by employees of the parties, for bodily injury, death or injury to property.
- .5 mechanic's liens.
- .6 any notice of violation issued against the Building or Owner, by any public or governmental authority as a result of or in connection with the Work

(d) No action or proceeding shall be commenced or maintained against Owner with respect to any claim not waived pursuant to Section 15.5.4, unless such action or proceeding is commenced against Owner within one (1) year of the date of Final Payment (or, if earlier, the date this Agreement is terminated).

15. Substantial Completion; Retainage; Punch List. Modifying Section 15.4:

(a) Supplementing Section 15.4.1: “**Substantial Completion**” of the Work shall occur only when all of the following conditions, in addition to the condition set forth in Section 15.4.1, have been met: (i) all of the Work has been fully and properly performed in strict accordance with the Contract Documents, with the exception of minor “punch list” items (as determined by Architect), (ii) all required inspections have been either waived or performed and all required sign offs (including but not limited to electrical and plumbing sign-offs) have been obtained and submitted to the New York City Department of Buildings and/or other governmental agency or department having jurisdiction, (iii) if a certificate of occupancy is being amended or a certificate of occupancy or letter of completion is being issued in connection with the Work, all inspections required to obtain same have been satisfactorily completed (with no objections made or violations issued) and evidence of satisfactory inspection delivered to Owner and all items of the Work required to obtain same have been satisfactorily performed, as determined by Architect.

(b) The Retainage withheld by Owner shall, upon Substantial Completion pursuant to Section 15.4.4, be released except for an amount equal to 200% of the estimated cost (as reasonably determined by Architect and subject to approval by Owner) to complete those items (the punch list items) to be performed by Contractor (which determination shall take into account reasonably estimated additional costs incurred to engage a new contractor to perform such work if Contractor fails to perform its obligations, and cost of labor, services and materials).

(c) The following Section 15.4.5 is added to Section 15.4:

15.4.5. Contractor shall perform all items on the punch list within thirty (30) days after Contractor's receipt of such list, unless Architect has provided for a different time period pursuant to Section 15.4.3; provided, however, that if any item is incapable of completion within the aforesaid thirty (30) day period due to no fault of Contractor, Contractor shall notify Architect thereof and use all diligent efforts to complete work on such items as soon as possible but in no event later than sixty (60) days after the punch list is received by Contractor. Failure to include an item on the punch list shall not alter Contractor's responsibility to complete all Work

in accordance with the Contract Documents, Contractor's responsibility for defective Work, or Contractor's warranty obligations.

16. Final Completion and Final Payment. Supplementing Section 15.5: Final Payment shall not be due until all of the following conditions have been met, in addition to those conditions and requirements set out in Sections 15.5.1 and 15.5.2: (i) Contractor has provided (or assigned) to Owner fully executed and valid warranties and guaranties, in form and content satisfactory to Architect, for all products and materials supplied by Contractor, (ii) Contractor has delivered to Owner all operating and service manuals and instructions for the equipment, fixtures, and materials installed as part of the Work, (iii) Contractor has delivered to Owner a final lien waiver and release, in form annexed hereto as Exhibit 2(b) for itself and from each Subcontractor, supplier, and materialman, and (iv) all liens filed against the Building by reason of Contractor's wrongful filing of a lien and/or Contractor's failure to pay Subcontractors, suppliers, and materialmen have been discharged by bonding or otherwise, and (vi) Contractor has delivered to Owner three (3) complete sets of "as built" plans.

17. Site Safety; Hazardous Materials.

(a) Section 16.1 is amended to add the following clauses .4 - .6:

- .4 Subcontractors' employees, agents, servants, and invitees;
- .5 the Building and the property of the occupants of the Building;
- .6 the Building's occupants and their guests; and the Building's workers, agents, contractors, and employees.

(b) Section 16.2.2 is deleted.

18. Risk of Loss to, and Protection of, Contractor's Materials. Article 16 is modified to add the following paragraph:

Contractor is responsible for protecting and insuring its own tools and equipment and all materials stored on-site or off-site, from theft and other loss; and, with respect to materials stored on-site, if Contractor has any special requirements with respect thereto, Contractor shall so advise Owner and cooperate with Owner to provide a safe and secure location for those items that must be stored at the Building. Owner shall not be responsible for loss or theft of or damage to any of Contractor's property or to any materials stored at the Building, except, subject to Section 17.3.3, to the extent such loss, theft or damage was caused by the negligence of Owner.

19. Insurance.

(a) Supplementing Article 17: Contractor shall provide the insurance described in Exhibit 3 to this Rider, and shall cause all Subcontractors to provide the insurance described in such Exhibit.

(b) Prior to the commencement of any of the Work, Contractor shall provide Owner with copies of the insurance policies and certificates and such other documents and instruments which Owner may reasonably request. If Contractor shall fail or refuse to obtain and maintain all of the foregoing insurance coverage, then, at the sole option of Owner, Owner shall have the absolute right to terminate this Agreement or to obtain and pay for such coverage and deduct the amount of the premiums therefor from the Contract Sum.

(c) Section 17.3.1 is amended and restated in its entirety to read as follows:

17.3.1 Owner agrees to maintain, with a company or companies lawfully authorized to do business in New York, its usual “special form” property damage or equivalent insurance policy.

(d) Sections 17.3.2 and 17.3.4 are deleted.

20. Termination. Article 20 is modified as follows:

(a) Termination by Contractor. Contractor may terminate the Contract pursuant to Sec. 20.1 only if Owner fails to cure such default within seven (7) days after Owner is given notice thereof.

(b) Termination by Owner for Cause. Section 20.2.1 is supplemented by adding the following clauses .5 and .6:

.5 Subject to Section 14.5 and to any delays caused by Owner, failure to timely perform the Work and any part of the Work, and/or failure to achieve Substantial Completion and Final Completion, within the time periods provided in the Contract Documents; or

.6 Failure to timely discharge any lien that Contractor is required to discharge under this Agreement.

(c) No Architect Certification of Default Required. Section 20.2.2 is modified to delete the requirement for a certification by Architect.

(d) Termination by Owner for Convenience. Section 20.3 is hereby amended and restated in its entirety to read as follows:

20.3 Owner may, at any time, terminate this Agreement for Owner’s convenience and without cause. If Owner so terminates this Agreement, Contractor’s compensation shall be limited to: (a) payment for Work executed in compliance with the Contract Documents, as determined by Architect, which payment shall be calculated in accordance with the schedule of values previously submitted and approved pursuant to Section 15.1.1 or Paragraph 14(a)(ii) above, as the case may

be, including any retainage allocable to the Work so executed (to the extent not previously paid to Contractor); and (b) out-of-pocket demobilization costs incurred by reason of such termination, including cancellation charges applicable to leased equipment and labor charges to dismantle and remove equipment.

21. Disputes. Article 21 is modified as follows:

(a) Section 21.1 is deleted. Mediation shall be required only if both parties consent thereto in writing.

(b) If a claim or dispute should arise between the parties, Contractor shall nonetheless continue to work in accordance with the Project Schedule and Owner shall continue to make payment for undisputed portions of the Work pending resolution of said claim or dispute.

22. Building Requirements. Contractor shall comply with (a) the Rules and Regulations annexed hereto as Exhibit 4 and (b) Owner's Construction Rules and Guidelines. Contractor acknowledges that it has received and reviewed Owner's Construction Rules and Guidelines.

23. Exculpation. If Owner is a Condominium (including its Board of Managers), no officer, agent (or employee thereof), or employee of such Condominium, no member of the Condominium's board of managers, and no owner of a Condominium unit shall have any personal liability arising from or in connection with this Agreement. If Owner is a cooperative corporation, no director, officer, employee, or agent of the cooperative corporation (or employee thereof), and no propriety lessee or shareholder of the cooperative corporation, shall have any personal liability arising from or in connection with this Agreement.

24. Miscellaneous.

(a) Unenforceable Provisions. If any provision of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable part had been severed and deleted.

(b) No Modification of Architect Agreement. Nothing in this Agreement shall be deemed to modify the agreement between Owner and Architect.

(c) No Kickbacks. Contractor warrants and represents that Contractor has not paid or received, and will not pay or receive any consideration, monetary or otherwise, in exchange for the execution of this Agreement, other than the Contract Sum.

(d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signed copies of this Agreement may be faxed and e-mailed with the same force and effect as if the originally executed Agreement had been delivered.

OWNER:

By _____

Name:

Title:

CONTRACTOR:

By _____

Name

Title:

EXHIBIT 1

LIST OF PERSONNEL WORKING ON OR SUPERVISING THE PROJECT AND
THEIR POSITIONS

<u>Name</u>	<u>Position</u>	<u>Cell Phone Number</u>
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EXHIBIT 2

FORM OF PROGRESS WAIVER OF LIEN AND RELEASE

FORM OF FINAL WAIVER OF LIEN AND RELEASE

EXHIBIT 3

INSURANCE REQUIREMENTS

NOTE: THIS EXHIBIT SHOULD BE REVIEWED BY OWNER'S AND CONTRACTOR'S INSURANCE CONSULTANTS, AND A DETERMINATION MADE AS TO WHETHER THE COVERAGES AND ENDORSEMENTS PROVIDED ARE ADEQUATE AND WHETHER ADDITIONAL COVERAGES, SUCH AS BUILDER'S RISK, ARE APPROPRIATE

Supplementing Section 17.1: Contractor shall provide and maintain at Contractor's own expense, until completion of Work, the following insurance, to the extent the following requirements exceed the requirements of the other Contract Documents:

- i. Worker's Compensation and Employer's Liability Insurance, in such amounts and scope as is required under the laws of the State of New York;
- ii. Commercial General Liability Insurance (including coverage for commercial general liability, personal injury and death, completed operations, broad form property damage coverage with "XCU" exclusion (if any) deleted, products liability, and contractual liability) with a combined single limit for bodily injury and property damage liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, together with Excess/Umbrella Liability Insurance providing excess coverage in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, which shall contain the same coverage, including contractual liability, as the base policy;
- iii. Property Damage Insurance with a limit in an amount of not less than One Million Dollars (\$1,000,000) to cover Contractor's tools and equipment; and
- iv. Comprehensive Automobile Liability to cover owned, long term leased, hired and non-owned automobiles (including medical payments and uninsured motorists coverage) with a combined single limit of not less than One Million Dollars (\$1,000,000) (for bodily injury and One Million Dollars (\$1,000,000) per occurrence for property damage).

All such insurance policies shall be written on an occurrence basis. The limit of liability may be satisfied by one or more policies, to include excess or umbrella policies, so long as the policies, viewed as a whole, provide "first dollar" coverage without any gaps or self-insured retained amounts. The foregoing insurance shall be effected under valid and enforceable policies issued by a financially responsible insurance company or companies, each having at least an A, IX rating under A. M. Best and licensed in the State of New York and reasonably acceptable to Owner.

Contractor's Commercial General Liability insurance policy (including the excess policy) shall be duly endorsed to name Owner as certificate holder and to include as additional

insureds the **Additional Insureds** and other parties designated by Owner except that the worker's compensation certificate shall name the foregoing parties only as certificate holders. All insurance policies shall provide for a waiver of the right of subrogation. Contractor's policies will be on a non-contributory basis and shall be primary for any and all losses arising out of or in connection with the performance of the Work.

If customarily available, each certificate shall contain an endorsement that the insurance may not be changed, terminated or cancelled without ten (10) day's prior written notice thereof to Owner.

EXHIBIT 4

RULES AND REGULATIONS

1. To the extent Owner's Construction Rules and Regulations for the Building (however denominated) impose greater obligations on Contractor than these Rules and Regulations, Owner's Construction Rules and Regulations shall prevail.
2. Contractor acknowledges that the Building is a first-class residential apartment building. Contractor shall take all steps reasonably necessary to ensure that its performance of the Work does not unreasonably interfere with the use and enjoyment of the Building and its amenities by the Building residents; and that access to the Building, its apartments, and any commercial units is not impeded or obstructed.
3. Contractor shall not erect, or permit the installation of, any sign on or about on the Building (including any sidewalk bridge) without the prior written consent of Owner, except for temporary safety signage and signage required by law.
4. Contractor shall follow the directions of Owner and Managing Agent as to ingress and egress to and from the Building and access to the Project site. If the Building has a freight elevator, only the building freight elevator shall be used for transporting construction materials, workmen, tools and equipment. Prior arrangements for freight elevator use shall be made with the Building superintendent by Contractor. If the freight elevator is manually operated, Contractor's freight elevator use during construction shall be subject to the availability of the freight elevator operator and shall be coordinated, at the Building superintendent's discretion, with the needs of residents. No material or equipment shall be carried under or on top of elevators. No material that exceeds the elevator's capacity may be carried in the elevator. If the Building has no freight elevator, but does have a passenger elevator, Contractor's use of the passenger elevator shall be subject to the direction and control of Owner and the Building's superintendent. Contractor shall provide adequate protection for any elevator used by Contractor and/or its Subcontractors to prevent damage to the elevator.
5. Contractor shall (i) take all precautions necessary and desirable to prevent dirt and dust from entering other parts of the Building during the progress of the Work, including residential and commercial units; (ii) protect any air conditioning unit(s) and window(s) that may be affected by performance of the Work and, if affected by the Work, thoroughly clean them at the completion of the Work, and repair or replace any damaged units and windows, as appropriate; (iii) not cause any damage (or permit its employees, Subcontractors, sub-Subcontractors to cause any damage) to the apartments and commercial units in the Building, adjacent building(s) and improvement(s), sidewalks and curbs, trees and/or cars parked on the street. To the extent required to control dust and debris, Contractor shall install dust-proof partitions (plastic, paper and/or tape)

during the performance of the Work. Contractor shall cause Work areas to be in broom-clean condition each night.

6. Debris and rubbish shall be placed in covered containers or sealed bags before being taken out of the Building. Contractor shall remove from the Building all such containers and bags, rubbish, rubble, debris, equipment, emptied packing cartons and other materials as often as is necessary to prevent the accumulation thereof at the Project Site and to ensure that no fire hazard or obstruction is created. Contractor shall comply with all directives of the Building's superintendent and Managing Agent with respect to keeping the Building clean from dust, dirt, rubbish and debris resulting in whole or in part from its operations and with respect to the protection of persons and property (provided that the foregoing does not release Contractor from its responsibilities under Article 16). Contractors shall keep containers in the construction area until ready to be removed, and coordinate garbage removal with the carter. No containers are to be kept on the street. The street and sidewalk must be swept clean after debris removal is effected
7. Except as permitted by Owner: (i) no work shall be performed on Saturdays, Sundays or holidays; and (ii) work shall be performed only Mondays through Fridays and then only between the hours of 8 a.m. and 5 p.m. Any work which creates unusual noise shall not be performed until after 10 a.m. Mondays through Fridays.
8. Workers shall not loiter around the outside of the Building, hallways, stairways or any other part of the Building used by the Building's residents. Alcohol beverages of any kind are not permitted in the Building. Workers shall not smoke anywhere inside the Building, on the roof of the Building, on the sidewalks or alleyways adjacent to the Building or anywhere else around the Building.
9. **USE OF POWER TOOLS THAT WILL CAUSE SIGNIFICANT VIBRATION, SUCH AS ELECTRIC HAMMERS AND JACKHAMMERS, IS NOT PERMITTED**, except to the extent authorized in writing by the Architect.

CONTRACTOR'S PROGRESS LIEN WAIVER AND RELEASE OF CLAIMS

Period Ending ("Payment Date"): _____, 20__

Owner: _____	Original Contract Sum:	\$ _____
Project/Premises: _____	Approved Change Orders:	\$ _____
Contractor: _____	Contract Sum to Date:	\$ _____
	Total Completed to Date:	\$ _____
	Retainage:	\$ _____
	Total Earned Less Retainage:	\$ _____
	Total Payments Received to Date:	\$ _____
	Progress Payment:	\$ _____

Contractor hereby acknowledges that the Progress Payment, upon clearance by Contractor's bank, together with Total Payments Received To Date, represents payment in full for all work, labor, services, equipment and materials furnished on the Project by Contractor and its subcontractors, laborers and materialmen through the Payment Date and for which payment is now due (the "Work").

In consideration of the sums previously received, and the Progress Payment, Contractor hereby waives and releases Owner from any and all claims for payment for the Work and liens and rights of liens in connection with the Project, other than with respect to the Retainage, the pending claims (if any) listed on the attached schedule (the "Listed Claims"), notice of which has been timely provided in accordance with the provisions of the Contract, and any potential claims for which the time to provide notice in accordance with the provisions of the Contract has not expired. [_____ Initial here if schedule is attached.]

Contractor represents and warrants that it has paid for all labor, materials, equipment and services that it has used or supplied in the amounts set forth on Contractor's Applications for Payment or, upon clearance of the Progress Payment, will pay for same in accordance with applicable law. Contractor further represents and warrants that it has no other outstanding and unpaid applications, invoices, or unbilled work or materials against Owner other than the Listed Claims and any potential claims for which the time to provide notice in accordance with the provisions of the Contract has not expired. Contractor agrees to defend, indemnify and hold harmless Owner for any losses or expenses (including without limitation reasonable attorneys' fees) should any claim, lien or right of lien be asserted against Owner by Contractor or any of its subcontractors, laborers or materialmen in connection with payment for the Work. Contractor acknowledges that (a) amounts received from Owner are trust funds under applicable law and (b) the making and delivery of this waiver is a substantial inducement to Owner in making payments to Contractor under the Contract.

By: _____
Name:
Title:

Sworn to before me this
____ day of _____, 20__

Notary Public

CONTRACTOR’S FINAL LIEN WAIVER AND RELEASE OF CLAIMS

Owner: _____	Original Contract Sum:	\$ _____
Project/Premises: _____	Approved Change Orders:	\$ _____
Contractor: _____	Contract Sum to Date:	\$ _____
	Total Completed to Date:	\$ _____
	Total Payments Received to Date:	\$ _____
	Final Payment:	\$ _____

Contractor hereby acknowledges that the Final Payment, upon clearance by Contractor’s bank, together with Total Payments Received To Date, represents payment in full for all work, labor, services, equipment and materials furnished on the Project by Contractor and its subcontractors, laborers and materialmen (the “Work”).

In consideration of the sums previously received, and the Final Payment, Contractor hereby waives and releases Owner from any and all claims for payment for the Work and liens and rights of liens in connection with the Project as well as any other claims, rights or causes of action in equity or law whatsoever arising out of, through or under the Contract for the Work on the Project or otherwise in connection with the Project.

Contractor represents and warrants that it has paid for all labor, materials, equipment and services that it has used or supplied in the amounts set forth on Contractor’s Applications for Payment or, upon clearance of the Final Payment, will pay for same in accordance with applicable law. Contractor further represents and warrants that it has no other outstanding and unpaid applications, invoices, or unbilled work or materials against Owner. Contractor agrees to defend, indemnify and hold harmless Owner for any losses or expenses (including without limitation reasonable attorneys’ fees) should any claim, lien or right of lien be asserted against Owner by Contractor or any of its subcontractors, laborers or materialmen in connection with payment for the Work. Contractor acknowledges (a) amounts received from Owner are trust funds under applicable law and (b) the making and delivery of this waiver is a substantial inducement to Owner in making payments to Contractor under the Contract.

By: _____
Name:
Title:

Sworn to before me this
____ day of _____, 20__

Notary Public

SUBCONTRACTOR’S PROGRESS LIEN WAIVER AND RELEASE OF CLAIMS

Period Ending (“Payment Date”): _____, 20__

Owner: _____

Project/Premises: _____

Contractor: _____

Subcontractor: _____

Percentage of Work Completed: _____

Subcontractor hereby acknowledges that the payment for the Percentage of Work Completed (the “Progress Payment”), upon clearance by Subcontractor’s bank, together with Total Payments Received To Date, represents payment in full for all work, labor, services, equipment and materials furnished on the Project by Subcontractor and its sub-subcontractors, laborers and materialmen through the Payment Date (the “Work”) and for which payment is now due.

In consideration of the sums previously received, and the Progress Payment, Subcontractor hereby waives and releases Contractor and Owner from any and all claims for payment for the Work and liens and rights of liens in connection with the Project, other than with respect to Retainage, the Claims (if any) listed on the attached schedule (the “Listed Claims”), notice of which has been timely provided in accordance with the provisions of the Contract for the Project, and any potential claims for which the time to provide notice in accordance with the provisions of the Contract has not expired. [_____ Initial here if schedule is attached.]

Subcontractor represents and warrants that it has paid for all labor, materials, equipment and services that it has used or supplied in the amounts set forth on Subcontractor’s Applications for Payment or, upon clearance of the Progress Payment, will pay for same in accordance with applicable law. Subcontractor further represents and warrants that it has no other outstanding and unpaid applications, invoices, or unbilled work or materials against Contractor other than the Listed Claims and any potential claims for which the time to provide notice in accordance with the provisions of the Contract has not expired. Subcontractor agrees to defend, indemnify and hold harmless Contractor and Owner for any losses or expenses (including without limitation reasonable attorneys’ fees) should any claim, lien or right of lien be asserted against Contractor or Owner by Subcontractor or any of its sub-subcontractors, laborers or materialmen in connection with payment for the Work. Subcontractor acknowledges (a) amounts received from Contractor are trust funds under applicable law and (b) the making and delivery of this waiver is a substantial inducement to Contractor in making payments to Subcontractor.

By: _____
Name:
Title:

Sworn to before me this
____ day of _____, 20__

Notary Public

SUBCONTRACTOR’S FINAL LIEN WAIVER AND RELEASE OF CLAIMS

Owner: _____
Project/Premises: _____
Contractor: _____
Subcontractor: _____
Percentage of Work Completed: _____

Subcontractor hereby acknowledges that the payment for the Percentage of Work Completed (the “Final Payment”), upon clearance by Subcontractor’s bank, together with Total Payments Received To Date, represents payment in full for all work, labor, services, equipment and materials furnished on the Project by Subcontractor and its sub-subcontractors, laborers and materialmen.

In consideration of the sums previously received, and the Final Payment, Subcontractor hereby waives and releases Contractor and Owner from any and all claims for payment for the Work and liens and rights of liens in connection with the Project as well as any other claims, rights or causes of action in equity or law whatsoever arising out of, through or under the Subcontract for the Work on the Project or otherwise in connection with the Project.

Subcontractor represents and warrants that it has paid for all labor, materials, equipment and services that it has used or supplied in the amounts set forth on Subcontractor’s Applications for Payment or, upon clearance of the Final Payment, will pay for same in accordance with applicable law. Subcontractor further represents and warrants that it has no other outstanding and unpaid applications, invoices, or unbilled work or materials against Contractor. Subcontractor agrees to defend, indemnify and hold harmless Contractor and Owner for any losses or expenses (including without limitation reasonable attorneys’ fees) should any claim, lien or right of lien be asserted against Contractor or Owner by Subcontractor or any of its sub-subcontractors, laborers or materialmen in connection with payment for the Work. Subcontractor acknowledges that (a) amounts received from Contractor are trust funds under applicable law and (b) the making and delivery of this waiver is a substantial inducement to Contractor in making payments to Subcontractor.

By: _____

Name:

Title:

Sworn to before me this
____ day of _____, 20__

Notary Public

SUBCONTRACTOR’S PROGRESS LIEN WAIVER AND RELEASE OF CLAIMS

Period Ending (“Payment Date”): _____, 20__

Owner: _____	Original Contract Sum:	\$ _____
Project/Premises: _____	Approved Change Orders:	\$ _____
Construction Manager: _____	Contract Sum to Date:	\$ _____
Subcontractor: _____	Total Completed to Date:	\$ _____
	Retainage:	\$ _____
	Total Earned Less Retainage:	\$ _____
	Total Payments Received to Date:	\$ _____
	Progress Payment:	\$ _____

Subcontractor hereby acknowledges that the Progress Payment, upon clearance by Subcontractor’s bank, together with Total Payments Received To Date, represents payment in full for all work, labor, services, equipment and materials furnished on the Project by Subcontractor and its sub-subcontractors, laborers and materialmen through the Payment Date (the “Work”) and for which payment is now due.

In consideration of the sums previously received, and the Progress Payment, Subcontractor hereby waives and releases Construction Manager and Owner from any and all claims for payment for the Work and liens and rights of liens in connection with the Project, other than with respect to the Retainage, the Claims (if any) listed on the attached schedule (the “Listed Claims”), notice of which has been timely provided in accordance with the provisions of the Contract for the Project, and any potential claims for which the time to provide notice in accordance with the provisions of the Contract has not expired.

[_____ Initial here if schedule is attached.]

Subcontractor represents and warrants that it has paid for all labor, materials, equipment and services that it has used or supplied in the amounts set forth on Subcontractor’s Applications for Payment or, upon clearance of the Progress Payment, will pay for same in accordance with applicable law. Subcontractor further represents and warrants that it has no other outstanding and unpaid applications, invoices, or unbilled work or materials against Construction Manager other than the Listed Claims and any potential claims for which the time to provide notice in accordance with the provisions of the Contract has not expired. Subcontractor agrees to defend, indemnify and hold harmless Construction Manager and Owner for any losses or expenses (including without limitation reasonable attorneys’ fees) should any claim, lien or right of lien be asserted against Construction Manager or Owner by Subcontractor or any of its sub-subcontractors, laborers or materialmen in connection with payment for the Work. Subcontractor acknowledges that (a) amounts received from Construction Manager are trust funds under applicable law and (b) the making and delivery of this waiver is a substantial inducement to Construction Manager in making payments to Subcontractor.

By: _____
Name:
Title:

Sworn to before me this
____ day of _____, 20__

Notary Public

SUBCONTRACTOR'S FINAL LIEN WAIVER AND RELEASE OF CLAIMS

Owner: _____	Original Contract Sum:	\$ _____
Project/Premises: _____	Approved Change Orders:	\$ _____
Construction Manager: _____	Contract Sum to Date:	\$ _____
Subcontractor: _____	Total Completed to Date:	\$ _____
	Total Payments Received to Date:	\$ _____
	Final Payment:	\$ _____

Subcontractor hereby acknowledges that the Final Payment, upon clearance by Subcontractor's bank, together with Total Payments Received To Date, represents payment in full for all work, labor, services, equipment and materials furnished on the Project by Subcontractor and its sub-subcontractors, laborers and materialmen.

In consideration of the sums previously received, and the Final Payment, Subcontractor hereby waives and releases Construction Manager and Owner from any and all claims for payment for the Work and liens and rights of liens in connection with the Project as well as any other claims, rights or causes of action in equity or law whatsoever arising out of, through or under the Subcontract for the Work on the Project or otherwise in connection with the Project.

Subcontractor represents and warrants that it has paid for all labor, materials, equipment and services that it has used or supplied in the amounts set forth on Subcontractor's Applications for Payment or, upon clearance of the Final Payment, will pay for same in accordance with applicable law. Subcontractor further represents and warrants that it has no other outstanding and unpaid applications, invoices, or unbilled work or materials against Construction Manager. Subcontractor agrees to defend, indemnify and hold harmless Construction Manager and Owner for any losses or expenses (including without limitation reasonable attorneys' fees) should any claim, lien or right of lien be asserted against Construction Manager or Owner by Subcontractor or any of its sub-subcontractors, laborers or materialmen in connection with payment for the Work. Subcontractor acknowledges (a) amounts received from Construction Manager are trust funds under applicable law and (b) the making and delivery of this waiver is a substantial inducement to Construction Manager in making payments to Subcontractor.

By: _____

Name:

Title:

Sworn to before me this
____ day of _____, 20__

Notary Public