Fill in this information to identify the case:

Debtor Ascend Elements, Inc.

United States Bankruptcy Court for the: Southern District of Texas (State)

Case number 26-90440

Modified Official Form 410
Proof of Claim

04/25

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Ben Hur Construction Company

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No

☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Ben Hur Construction Company Jeremy P. Brummond 600 Washington Ave. Ste. 2500 St. Louis, MO 63101, USA	
Contact phone 314-444-1339	Contact phone
Contact email jbrummond@lewisrice.com	Contact email

Uniform claim identifier (if you use one):

4. **Does this claim amend one already filed?**

☑ No

☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No

☐ Yes. Who made the earlier filing?

26904402605180000000000003

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 1,992,121.56 . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See addendum. Materials, labor, and equipment rendered.

9. **Is all or part of the claim secured?**

☐ No

☑ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☑ Other. Describe: Recorded Mechanics Lien

Basis for perfection: See addendum. E.g., recorded lien statement.

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $1,277,081

Amount of the claim that is unsecured: $715,040.56 (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $1,992,121.56

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

26904402605180000000000003

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $17,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/28 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(3) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/18/2026
MM / DD / YYYY

/s/Jeremy P. Brummond
Signature

Print the name of the person who is completing and signing this claim:

Name: Jeremy P. Brummond
First name Middle name Last name

Title: Attorney for Ben Hur Construction Company

Company: Lewis Rice LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____



Verita (KCC) ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 927-7078 | International (310) 751-2651

Debtor:
26-90440 - Ascend Elements, Inc.
District:
Southern District of Texas, Houston Division

Creditor:
Ben Hur Construction Company
Jeremy P. Brummond
600 Washington Ave.
Ste. 2500
St. Louis, MO, 63101
USA
Phone:
314-444-1339
Phone 2:
Fax:
Email:
jbrummond@lewisrice.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See addendum. Materials, labor, and equipment rendered.

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
1,992,121.56

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
Yes: 1,277,081
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Other
Describe: Recorded Mechanics Lien
Value of Property:
Annual Interest Rate:
Arrearage Amount:
1,992,121.56
Basis for Perfection:
See addendum. E.g., recorded lien statement.
Amount Unsecured:
715,040.56

Submitted By:
Jeremy P. Brummond on 18-May-2026 9:32:43 a.m. Pacific Time
Title:
Attorney for Ben Hur Construction Company
Company:
Lewis Rice LLC

Addendum to Proof of Claim of Ben Hur Construction in the Bankruptcy Case of In re Ascend Elements, Inc., Case No. 4:26-bk-90440

1. This addendum is a part of and incorporated by reference into the attached proof of claim (together with this addendum, the "Proof of Claim") filed by Ben Hur Construction Company (the "Claimant"), against Ascend Elements, Inc. and its bankruptcy estate (collectively, the "Debtor").

2. On April 9, 2026 (the "Petition Date"), Debtor filed its voluntary petition under chapter 11 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

3. Claimant provided goods and services in connection with Debtor's project to construct a battery recycling facility (the "Project") on Debtor's real property located at 6505 John Rivers Road, Hopkinsville, Kentucky (the "Property"). Claimant's goods and services were provided to or for the benefit of Debtor, as further described in the attached **Exhibit A**.

4. As of the Petition Date, Debtor was indebted to Claimant in the amount of $1,992,121.56, as set forth in **Exhibit A**. As further described in **Exhibit A**, Claimant timely filed a mechanic's lien against the Property, in the original amount of $1,277,081.00. *See* **Exhibit A**; *see also* Claimant's Statement of Mechanic's and Materialmen's Lien, attached hereto as **Exhibit B**.

5. Claimant holds a perfected mechanic's lien against the Property because Claimant complied with all notice provisions contained in KRS Chapter 376, timely filed its Statement of Mechanic's and Materialmen's Lien on February 24, 2025, and timely filed its Motion to Intervene to enforce its lien on April 16, 2025.

6. After all credits due, Debtor owes Claimant **$1,992,121.56**, of which **$1,277,081.00** is secured by the mechanic's lien against the Property.

7. Debtor has acknowledged Claimant as holding a contingent, unliquidated, and disputed secured lien claim of $ 1,277,081.00. [ECF No. 1].

8. Claimant reserves the right to (i) amend, update and/or supplement this Proof of Claim at any time and in any respect, including without limitation, as a result of future events, the discovery and analysis of additional information, the correction of any errors, or to fix and liquidate any contingent or unliquidated claim set forth herein; (ii) assert that all or any part of the claims described in this Proof of Claim are administrative expenses entitled to a first-priority under sections 507(a)(2) and 507(b) of the Bankruptcy Code; (iii) file additional proofs of claim for additional claims which may be based on the same or additional documents; and/or (iv) withdraw this Proof of Claim for any reason whatsoever. In filing this Proof of Claim, Claimant reserves all rights and causes of action, including, without limitation, contingent or unliquidated rights that Claimant may have against Debtor. Claimant does not waive any of Claimant's rights with respect to the claims by not ascribing a specific dollar amount at this time.

9. Without limiting any of the foregoing, the filing of this Proof of Claim will not constitute: (i) a waiver or release of Claimant's rights against any person or entity who may be liable for all or a part of the claim; (ii) a waiver of any right as an insured or otherwise under any policy of insurance; (iii) a waiver of Claimant's right to pursue resolution of any dispute or controversy arising under or in connection with the claims through arbitration; (iv) consent by Claimant to the jurisdiction of the Bankruptcy Court with respect to the subject matter of this Proof of Claim, any objection or other proceeding commenced regarding the Proof of Claim, or any other proceeding commenced in Debtor's bankruptcy proceeding involving Claimant; (v) a waiver of the right to move to withdraw the reference, or to otherwise challenge the jurisdiction of the Bankruptcy Court, with respect to the subject matter of this Proof of Claim, any objection or other proceeding commenced regarding this Proof of Claim, or any other proceeding commenced in Debtor's bankruptcy proceeding involving Claimant; (vi) consent by Claimant to the treatment of any non-core claim against Claimant as a core claim; (vii) a waiver of Claimant's right to have final orders in non-core matters entered only after de novo review by a district court judge; (viii) a waiver of Claimant's right to a trial by jury as to any and all matters so triable in this case or in any case, controversy or proceeding related to this Proof of Claim or Debtor's bankruptcy case; (ix) an admission that any third-party claims or causes of action exist against Debtor or Claimant or any other person; (x) a waiver or limitation of any procedural or substantive rights, or any procedural or substantive defenses, to any claim that may be asserted against Claimant; (xi) an admission by Claimant that any property (including cash) held by Debtor constitutes property of Debtor's estate; (xii) a waiver of any right to the subordination, in favor of Claimant, of indebtedness or liens held by other creditors of Debtor or its affiliates; or (xiii) an election of remedies.

EXHIBIT A

Filed 25-CI-00120 04/16/2025 Paige Parker, Christian Circuit Clerk

COMMONWEALTH OF KENTUCKY
CHRISTIAN COUNTY CIRCUIT COURT

CIVIL ACTION NO. 25-CI-00120
DIVISION NO. 2
Electronically Filed

TURNER-KOKOSING JOINT VENTURE, TURNER CONSTRUCTION COMPANY, KOKOSING INDUSTRIAL, INC., PLAINTIFFS

MOTION TO INTERVENE

v.

ASCEND ELEMENTS, INC., et al., DEFENDANTS

BEN HUR CONSTRUCTION COMPANY'S MOTION TO INTERVENE

Ben Hur Construction Company ("Ben Hur") hereby states as follows for its Motion to Intervene in the above-captioned action:

1. On February 14, 2025, Plaintiffs Turner Construction Company ("Turner Construction"), Kokosing Industrial, Inc. ("Kokosing Industrial"), and Turner-Kokosing Joint Venture (collectively, "Plaintiffs" or "Turner-Kokosing Joint Venture"), instituted this lawsuit by filing a Verified Petition against Defendant Ascend Elements, Inc. ("Ascend Elements"), among other named Defendants, for breach of contract, enforcement of mechanic's lien, unjust enrichment, and violation of the Fairness in Construction Act (this "Lawsuit").

2. Plaintiffs allege that Ascend Elements is the Owner of 6505 John Rivers Road, Hopkinsville, Kentucky (the "Property"). Plaintiffs allege that they (Turner-Kokosing Joint Venture) served as General Contractor for certain work performed at the Property for the purpose of constructing a battery recycling facility thereupon (the "Project").

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IN : 000001 of 000007

Filed 25-CI-00120 04/16/2025 Paige Parker, Christian Circuit Clerk

3. The Lawsuit arises out of Ascend Elements' alleged failure to pay Turner-Kokosing Joint Venture for substantial amounts due and owing to Turner-Kokosing Joint Venture for its work on the Project.

4. Plaintiffs named a number of other parties as Defendants, alleging that such parties may assert an interest in the Property or the improvements thereon. The majority of these Defendants are contractors who participated in the Project and subsequently filed a Statement of Mechanic's and Materialmen's Lien on the Property.

5. The Lawsuit names Steel Fab, Inc. ("Steel Fab")—a subcontractor of Turner-Kokosing Joint Venture—as a Defendant based on Steel Fab's potential interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien, which Steel Fab caused to be recorded on the Property.

6. Ben Hur performed work on the Project as a subcontractor to Steel Fab, pursuant to a series of subcontracts, under which Ben Hur agreed to furnish and install certain fabricated steel materials on the Project, in exchange for Steel Fab's promise to pay Ben Hur.

7. Ben Hur furnished labor, materials, and equipment on the Project, but has not been paid for substantial amounts due and owing to Ben Hur.

8. On February 24, 2025, Ben Hur properly filed its own Statement of Mechanic's and Materialmen's Lien on the Property in the amount of One Million Two Hundred Seventy-Seven Thousand Eighty-One Dollars ($1,277,081.00) (the "Ben Hur Lien"). The Ben Hur Lien is recorded in the Christian County Mechanic's Lien Book 8, Pages 68–70. A copy of the Ben Hur Lien is attached to this Motion to Intervene as Exhibit A and is incorporated herein by reference.

9. Ben Hur seeks to assert a claim to enforce the Ben Hur Lien, and also seeks to assert additional claims against parties in the Lawsuit, such as Steel Fab and Ascend Elements.

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10. Ben Hur has a right to intervene in this Lawsuit pursuant to Kentucky Rule of Civil Procedure 24.01, which provides for intervention of right "(a) when a statute confers an unconditional right to intervene, or (b) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless that interest is adequately represented by existing parties."

11. By filing the Ben Hur Lien, Ben Hur possesses an interest in the Property subject to the Lawsuit. The other Defendants to the lawsuit will have no incentive to protect Ben Hur's interest in the Property, and Ben Hur will need to participate in the Lawsuit in order to adequately protect its interest in the Property.

12. Ben Hur's proposed Intervening Complaint is attached to this Motion to Intervene as Exhibit B.

WHEREFORE, Ben Hur Construction Company respectfully requests that the Court enter an Order permitting Ben Hur to intervene in the present matter, that Ben Hur be granted leave to file the attached Intervening Complaint, and for such other and further relief that the Court deems just and proper.

Dated: April 16, 2025 Respectfully submitted,

640EBC97-329E-4AE9-AEAE-EE15DCCD0824 : 000003 of 000132

IN : 000003 of 000007

/s/ Cassidy R. Rosenthal
Cassidy R. Rosenthal, Bar No. 89523
crosenthal@stites.com
Holly Couch, Bar No. 100410
hcouch@stites.com

STITES & HARBISON PLLC
250 West Main Street
Suite 2300
Lexington, KY 40507-1758
Telephone: (859) 226-2300

Counsel for Ben Hur Construction Company

NOTICE

Notice is hereby given that the foregoing will be brought for a hearing before the Christian Circuit Court on Wednesday, April 30, 2025 at 1:00 p.m., or as soon thereafter as the matter may be heard.

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640EBC97-329E-4AE9-AEAE-EE15DCCD0824 : 000005 of 000132

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as indicated below, on this 16th day of April, 2025 upon:

Vic L. McConnell
Smith Cashion & Orr, PLC
3100 West End Ave., Suite 800
Nashville, Tennessee 37203
Counsel for Turner-Kokosing Joint Venture, Turner Construction Company, and Kokosing Industrial, Inc

Michael A. Owsley
English, Lucas, Priest & Owsley
1101 College Street; P.O. Box 770
Bowling Green, Kentucky 42102-0770
Counsel for Ascend Elements, Inc.

Luke G. Maher
Sasha D. Riedisser
Norton Rose Fullbright US LLP
7676 Forsyth Blvd., Suite 2230
St. Louis, Missouri 63105
Counsel for Ascend Elements, Inc.

Laura A. Scott
Farmer Scott Ozete Robinson & Schmitt LLP
21 SE Third Street, Suite 900
P.O. BOX 3565
Evansville, Indiana 47734
Counsel for Planters Bank, Inc.

H. Douglas Willen
City of Hopkinsville Attorney
P.O. Box 536
317 W Ninth Street
Hopkinsville, Kentucky 42241
Counsel for City of Hopkinsville, Kentucky

Lincoln Foster
Christian County Attorney
P.O. Box 24
209 E. 14th Street
Hopkinsville, Kentucky 42241
Counsel for Christian County, KY

Steven M. Henderson
STITES & HARBISON, PLLC
400 W. Market Street, Suite 1800
Louisville, KY 40202
Counsel for Cleary Construction, Inc. and Triangle Enterprises, Inc.

Michael J. Keeney
Keeney Law
7000 Houston Road, Suite 17
Florence, KY 41042
Counsel for Laibe Electric Co.

Richard O. Hamilton, Jr.
Elizabeth M. Johnson
Robbins, Kelly, Patterson & Tucker
312 Elm Street, Suite 2200
Cincinnati, Ohio 45202
Counsel for McCormick Equipment Co., Inc.

Lori Wisniewski Azzara
Cohen, Seglias, Pallas, Greenhall & Furman P.C.
626 Washington Pl., Suite 1902
Pittsburgh, Pennsylvania 15219
Counsel for United Electric Company, Inc.

IN : 000005 of 000007

David L. Kelly
Keuler, Kelly, Hutchins & Blankenship, & Sigler, LLP
100 S. Fourth Street, Suite 400
Paducah, KY 42001
Counsel for A&I Dock Equipment, Inc., Lents Enterprises, Inc., and Travis Construction Company, Inc.

Scott A. Bachert
Hope Hickey
Kerrick Bachert PSC
1411 Scottsville Road
P. O. Box 9547
Bowling Green, KY 42102-9547
Counsel for Foundation Steel, LLC

Julia T. Crenshaw
P.O. Box 2
Hopkinsville, KY 42241
Counsel for Hopkinsville Industrial Foundation, Inc.

John B. Crenshaw
2800 Fort Campbell Blvd.
Hopkinsville, KY 42240
Counsel for Hopkinsville Industrial Foundation, Inc.

Angelo DiBartolomeo
Manion Stigger, LLP
500 West Jefferson Street, Suite 1610
Louisville, Kentucky 40202
Counsel for C. H. Garmong & Son, Inc.

AJ Manion
Manion Stigger, LLP
20 N.W. First Street, Suite 200
Evansville, Indiana 47708
Counsel for C. H. Garmong & Son, Inc.

Gerry Stovall
Jean M. Terry
Manion Stigger, LLP
500 W. Jefferson Street, Suite 1610
Louisville, KY 40202
Counsel for Murphy Company Mechanical Contractors and Engineers

Angela M. Richie
John "Chip" Clay
Corey J. Taylor
Gordon Rees Scully Mansukhani LLP
Waterfront Plaza, Suite 2300
325 W. Main Street
Louisville, Kentucky 10202
Counsel for SteelFab, Inc.

Alexander D. Blackwell
Denton Law Firm, PLLC
P.O. Box 969
Paducah, KY 42002
Counsel for Collier Associates, Inc.

Julie A. Neuroth
Yocum & Neuroth, LLC
1 Levee Way, Suite 3109
Newport, Kentucky
Counsel for Miner, Ltd.

William G. Deatherage Jr.
Deatherage, Myers & Lackey, PLLC
701 South Main Street
P.O. Box 1065
Hopkinsville, Kentucky 42241
Counsel for Miner, Ltd.

Anthony C. Sallah
Barnes & Thornburg LLP
171 Monroe Ave. NW, Suite 1000
Grand Rapids, MI 49503
Counsel for Miner, Ltd.

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IN : 000006 of 000007

Tec-Protective Coatings Inc.
25 Brookwood Road
Waterford, NY 12188

TEC-Protective Coatings, Inc.
c/o Corporation Service Company
421 West Main Street
Frankfort, Kentucky 40601

Thomas D. Murphy, II
Tilford Dobbins & Schmidt, PLLC
One Riverfront Plaza
401 W. Main Street, Suite 1400
Louisville, KY 40202
Counsel for CEI Michigan, LLC

Alexander D. Blackwell
Denton Law Firm, PLLC
P.O. Box 969
Paducah, KY 42002-0969
Counsel for Collier Associates, Inc.

James G. Adams III
Thomas, Arvin & Adams, PLLC
1209 S. Virginia Street
P.O. Box 675
Hopkinsville, KY 42241-0675
Counsel for Tank & Tower Maintenance Division, Inc.

/s/ Cassidy R. Rosenthal

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IN : 000007 of 000007

Filed 25-CI-00120 04/16/2025 Paige Parker, Christian Circuit Clerk

Filed: 02/24/2025 03:16:59 PM
BK 8 PG 68 - 70 (3) DOC# 10062011
Melinda A. Humphries, County Clerk
Christian County, KY
Received By: Y. WICKHAM
Transfer Tax Paid: $0.00

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STATEMENT OF MECHANICS' AND MATERIALMEN'S LIEN UNDER KRS 376.010

Affiant, Cassidy Ruschell Rosenthal, Counsel of Ben Hur Construction Company ("Ben Hur"), a Missouri corporation whose principal office is located at 2191 Lemay Ferry Road, Suite 200, St. Louis, Missouri, 63125, pursuant to KRS 376.010, et. seq., after having been duly sworn, states as follows:

1. Ben Hur furnished labor, materials, and/or equipment under a subcontract with SteelFab, Inc. ("SteelFab"), a North Carolina corporation whose principal office is located at 3025 Westport Road, Charlotte, NC 28208, for the construction of improvements (the "Project") at 6505 John Rivers Road, Hopkinsville, Kentucky (the "Property").

2. The Project and Property upon which the labor, materials, and equipment were furnished and against which Ben Hur asserts its lien is 6505 John Rivers Road, Hopkinsville, Kentucky 42266, in Christian County. The Property is more particularly described in Christian County Deed Book 797, Page 420 – 423, as:

> Parcel I: Lot 1 of the Division Plat of Hopkinsville Industrial Foundation, Inc. Property, recorded in Plat Cabinet 12, Slide 519 in the Christian County, Kentucky Clerk's Records.
>
> Parcel II: Lot 2 of the Division Plat of Hopkinsville Industrial Foundation, Inc. Property, recorded in Plat Cabinet 12, Slide 519 in the Christian County, Kentucky Clerk's Records.
>
> Each parcel being a portion of the property acquired by Grantor pursuant to (a) that Deed, dated November 16, 2022 and recorded at Deed Book 797, Page 308 in the Christian County, Kentucky Clerk's Office and (b) that Deed, dated January 24, 2022, recorded at Deed Book 786, Page 334 in the Christian County, Kentucky Clerk's Office.

3. Ben Hur furnished labor, materials, and/or equipment to the Project under a subcontract with SteelFab, 3025 Westport Road, Charlotte, NC 28208, for the construction of improvements at the Property.

4. Ben Hur last provided labor and/or materials on or about November 4, 2024.

Return to Preparer:
Cassidy Ruschell Rosenthal
Stites & Harbison, PLLC
250 West Main St., Ste. 2300
Lexington, KY 40507

EXH : 000001 of 000003

Filed 25-CI-00120 04/16/2025 Paige Parker, Christian Circuit Clerk

5. The amount due to Ben Hur is the sum of One Million Two Hundred Seventy-Seven Thousand Eighty-One Dollars ($1,277,081.00) for the labor and materials furnished for the Project plus interest and costs for filing and enforcing this lien.

6. The Owner of the Project is Ascend Elements, Inc., whose registered agent for service of process in Kentucky is Cogency Global, Inc., 828 Lane Allen Rd., Suite 219, Lexington, KY 40504.

7. The service of process agent for Ben Hur is Registered Agent Solutions, Inc., 828 Lane Allen Rd., Suite 219, Lexington, KY 40504.

Return to Preparer:
Cassidy Ruschell Rosenthal
Stites & Harbison, PLLC
250 West Main St., Ste. 2300
Lexington, KY 40507

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EXH : 000002 of 000003

BEN HUR CONSTRUCTION COMPANY

By: _____
Cassidy Ruschell Rosenthal
Stites & Harbison, PLLC
Counsel for BEN HUR CONSTRUCTION COMPANY

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was subscribed and sworn to before me this 24th day of February, 2025, by Cassidy Ruschell Rosenthal as counsel for BEN HUR CONSTRUCTION COMPANY, on behalf of said corporation.

My commission expires: 5-16-2025

_____
NOTARY PUBLIC

[SEAL]

Prepared by:

_____
Cassidy Ruschell Rosenthal
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507-1758
(859) 226-2300

CERTIFICATE OF SERVICE

I hereby certify that in accordance with KRS 376.080 a copy of the foregoing Lien was served by United States First Class Mail and Certified Mail, postage prepaid, on this 24th day of February, 2025 upon:

Ascend Elements, Inc.
133 Flanders Road
Westborough, MA 01581

Ascend Elements, Inc. Registered Agent
Cogency Global Inc.
828 Lane Allen Rd.
STE 219
Lexington, KY 40504

_____
Cassidy Ruschell Rosenthal

9593059 v3

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EXH : 000003 of 000003

COMMONWEALTH OF KENTUCKY
CHRISTIAN COUNTY CIRCUIT COURT
CIVIL ACTION NO. 25-CI-00120
DIVISION NO. II
Electronically Filed

BEN HUR CONSTRUCTION COMPANY, INTERVENING PLAINTIFF

BEN HUR CONSTRUCTION COMPANY'S INTERVENING COMPLAINT

v.

ASCEND ELEMENTS, INC., et al., DEFENDANTS

BEN HUR CONSTRUCTION COMPANY, CROSS-CLAIM PLAINTIFF

BEN HUR CONSTRUCTION COMPANY'S CROSS-CLAIMS

v.

TURNER-KOKOSING JOINT VENTURE, TURNER CONSTRUCTION COMPANY, KOKOSING INDUSTRIAL, INC., CROSS-CLAIM DEFENDANTS

BEN HUR CONSTRUCTION COMPANY'S INTERVENING COMPLAINT TO ENFORCE MECHANIC'S LIEN AND FOR OTHER RELIEF

Intervening Plaintiff / Cross-Claim Plaintiff Ben Hur Construction Company ("Ben Hur") for its Intervening Complaint against Ascend Elements, Inc., Steel Fab, Inc., and all other named Defendants, and its Cross-Claim against Plaintiffs / Cross-Claim Defendants Turner Construction Company, Kokosing Industrial, Inc., and Turner-Kokosing Joint Venture, hereby states as follows:

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PARTIES, JURISDICTION, AND VENUE

1. Intervening Plaintiff Ben Hur is a corporation incorporated under the laws of the State of Missouri with its principal place of business located at 2191 Lemay Ferry Rd Ste 200, Saint Louis, MO 63125.

2. Plaintiff Turner Construction Company ("Turner Construction") is a New York Corporation with its principal place of business located at 66 Hudson Boulevard East, New York, NY 10001. Turner Construction is a Joint Venture partner authorized to conduct business in the Commonwealth of Kentucky and has participated in the construction of the project known as the Ascend Elements Battery Recycling Facility Project (the "Project"), on real property located at 6505 John Rivers Road, Hopkinsville, Kentucky in Christian County, Kentucky (the "Property").

3. Plaintiff Kokosing Industrial, Inc. ("Kokosing Industrial") is an Ohio Corporation with its principal place of business located at 6235 Westerville Road, Westerville, OH 43081. Kokosing Industrial is a Joint Venture partner authorized to conduct business in the Commonwealth of Kentucky and has participated in the construction of the Project.

4. Plaintiff Turner-Kokosing Joint Venture ("Turner-Kokosing Joint Venture") is a joint venture with its principal place of business located at 28 N. St. Clair Street, Suite 200, Toledo, OH 43604. Turner-Kokosing Joint Venture is a Joint Venture consisting of Turner Construction and Kokosing Industrial, and serves as the general contractor for the Project. Turner-Kokosing Joint Venture may also assert an interest in the Property by virtue of a Statement of Mechanics' and Materialmen's Lien in the principal amount of $138,418,735.00 recorded in Lien Book 7, Page 743 and in Book 8, Page 49 in the office of the Christian County Clerk.

5. Defendant Ascend Elements, Inc. ("Ascend Elements") is a Delaware Corporation with its principal place of business located at 133 Flanders Road, Westborough, MA 01581.

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Ascend Elements is the Owner of the Property, otherwise known as the Ascend Elements Battery Recycling Facility, where the Project took place.

6. Defendant Hopkinsville Industrial Foundation, Inc. ("HIF") may assert an interest in the Property by virtue of a Mortgage in the original principal amount of $2,856,000 recorded in Book 1763 at Page 419 in the office of the Christian County Clerk; HIF is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

7. Defendant Planters Bank, Inc. ("Planters") may assert an interest in the Property by virtue of an Assignment of Mortgage of Hopkinsville Industrial Foundation, Inc., recorded in Book 1763 at Page 432 in the office of the Christian County Clerk; Planters is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

8. Defendant City of Hopkinsville, Kentucky ("City") may assert an interest in the Property via a Real Estate Mortgage recorded in the Christian County Mortgage Book 1766 at Page 684 and via City Tax Bill #195553; City is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

9. Defendant Christian County, Kentucky ("County") may assert an interest in the Property via County Property Tax Bill #956; County is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

10. Defendant Triangle Enterprises, Inc. ("Triangle") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the total principal

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amount of $9,171,218.73 recorded in Lien Book 7 at Page 705 and Book 7 at Page 711 in the office of the Christian County Clerk; Triangle is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

11. Defendant Travis Construction Company, Inc. ("Travis") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $10,282,572.51 recorded in Lien Book 7 at Page 719 and in the principal amount of $8,452,971.49 recorded in Lien Book 7 at Page 727 in the office of the Christian County Clerk; Travis is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

12. Defendant RMF Nooter, LLC ("Nooter") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $39,850,480.17 recorded in Lien Book 7, Page 722-724 in the office of the Christian County Clerk; Nooter is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

13. Defendant A&I Dock Equipment, Inc. ("A&I") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $249,706.00 recorded in Lien Book 7 at Page 732 in the office of the Christian County Clerk; A&I is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

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14. Defendant C.H. Garmong & Son, Inc. ("Garmong") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $1,264,027.54 recorded in Lien Book 7 at Page 737 in the office of the Christian County Clerk; Garmong is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

15. Defendant United Electric Company, Inc. ("United Electric") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $18,749,075.25 recorded in Lien Book 8 at Page 4 in the office of the Christian County Clerk; United Electric is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

16. Defendant Foundation Steel, Inc. ("Foundation Steel") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $1,589,202.38 recorded in Lien Book 8 at Page 13 and Lien Book 8 at Page 47-48 in the office of the Christian County Clerk; Foundation Steel is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

17. Defendant Miner, Ltd. ("Miner") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $683,174.02 recorded in Lien Book 8 at Page 16 in the office of the Christian County Clerk; Miner is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest

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it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

18. Defendant Laibe Electric Co. ("Laibe") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $2,309,752.84 recorded in Lien Book 8 at Page 18 in the office of the Christian County Clerk; Laibe is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

19. Defendant Murphy Company Mechanical Contractors and Engineers ("Murphy") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $28,262,129.65 recorded in Lien Book 8 at Page 21 and Lien Book 8 at Page 80 in the office of the Christian County Clerk; Murphy is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

20. Defendant Cleary Construction, Inc. ("Cleary") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $1,174,706.81 recorded in Lien Book 8 at Page 27 and Lien Book 8 at Page 103 in the office of the Christian County Clerk; Cleary is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

21. Defendant McCormick Equipment Company, Inc. ("McCormick") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $155,928.90 recorded in Lien Book 8 at Page 33 in the office of the Christian

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County Clerk; McCormick is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

22. Defendant Lents Enterprises, Inc. ("Lents") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $1,556,093.82 recorded in Lien Book 8 at Page 35 in the office of the Christian County Clerk; Lents is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

23. Defendant TEC-Protective Coatings, Inc. ("TEC-Protective") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $372,294.85 recorded in Lien Book 8 at Page 42 in the office of the Christian County Clerk; TEC-Protective is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

24. Defendant Steel Fab, Inc. ("Steel Fab") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $5,200,931.35 recorded in Lien Book 8 at Page 44 in the office of the Christian County Clerk; Steel Fab is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

25. Defendant Preferred Tank & Tower Maintenance Division, Inc. ("Preferred Tank & Tower") may assert an interest in the Property by virtue of a Statement of Mechanic's and

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Materialmen's Lien in the principal amount of $964,740.52 recorded in Lien Book 8 at Page 74 in the office of the Christian County Clerk; Preferred Tank and Tower is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

26. Defendant CEI Michigan, LLC, ("CEI Michigan") may assert an interest in the Property by virtue of a Statement of Mechanic's and Materialmen's Lien in the principal amount of $819,791.87 recorded in Lien Book 8 at Page 77 in the office of the Christian County Clerk; CEI Michigan is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

27. Defendant Collier Associates, Inc. ("Collier") may assert an interest in the Property by virtue of a Mechanic's and Materialmen's Lien in the principal amount of $257,916.87 recorded in Lien Book 8 at Page 108 in the office of the Christian County Clerk; and by virtue of a Statement of Engineers', architects', landscape architects', real estate brokers', and land surveyors' lien in the principal amount of $217,916.87 recorded in Lien Book 8 at Page 111 in the office of the Christian County Clerk. Collier is therefore named as a Defendant herein and should be required to answer and set forth any claim or interest it may have in the Property and the improvements thereon or be forever barred from asserting said interest.

28. The claims that are the subject of this action arise out of construction and improvements to the Property known as the Ascend Elements Battery Recycling Facility at 6505 John Rivers Road, Hopkinsville, Christian County, Kentucky 42240, and the amount in controversy exceeds the minimum jurisdictional requirements of this Court.

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29. This Court has jurisdiction over the subject matter and the parties of this case. Venue is proper in this Court pursuant to KRS Chapter 452 and KRS Chapter 376.

FACTUAL ALLEGATIONS

30. On or about November 26, 2022, Ascend Elements entered into a contract with Turner-Kokosing Joint Venture to design and build an electric vehicle battery recycling and engineering materials manufacturing facility, generally known as the Ascend Elements Battery Recycling Facility Project, on real property located at 6505 John Rivers Road, Hopkinsville, Kentucky in Christian County, Kentucky.

31. On or about May 26, 2023, Turner-Kokosing Joint Venture entered into a subcontract with Steel Fab, pursuant to which Steel Fab agreed to provide labor, materials, and equipment necessary for construction services on the Project ("Steel Fab Subcontract").

32. Steel Fab then executed a series of subcontracts with Ben Hur, including (1) a subcontract executed August 28, 2023 for steel erection work on the "PCAM" building (the "PCAM South Subcontract"), a true and accurate copy of which is attached hereto as **Exhibit 1**; (2) a subcontract executed August 28, 2023 for steel erection work on the "Leaching" building (the "Leaching Subcontract"), a true and accurate copy of which is attached hereto as **Exhibit 2**; and (3) a subcontract executed October 31, 2023 for steel fabrication and erection work on the "PCAM North" building (the "PCAM North Subcontract"), a true and accurate copy of which is attached hereto as **Exhibit 3** (collectively, the "Ben Hur Subcontracts").

33. Each of the Ben Hur Subcontracts called for Ben Hur to perform certain steel installation and erection work, and/or for Ben Hur to furnish steel and other materials on the Project, in exchange for Steel Fab's promise to pay Ben Hur for such work.

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34. Ben Hur performed all of its obligations under the Ben Hur Subcontracts by furnishing labor, materials, and equipment for the Project, which resulted in improvements to the Property.

35. Notwithstanding the full and complete performance by Ben Hur of all obligations and conditions precedent under the Ben Hur Subcontracts, Steel Fab has failed and refused to pay Ben Hur in full for the labor, materials, equipment, and work Ben Hur rendered on the Project.

36. Ben Hur is owed $1,277,081.00 under the PCAM South Subcontract, with such unpaid amount comprised of $685,673.00 for unpaid change orders and $591,408.00 for retention.

37. Ben Hur is owed $520,386.00 under the Leaching Subcontract, with such unpaid amount comprised of retention.

38. Ben Hur is owed $194,654.56 under the PCAM North Subcontract, with such unpaid amount comprised of $194,654.56 for retention.

39. In total, Ben Hur is owed $1,992,121.56 for its work on the Project, which sum is due and owing to Ben Hur.

40. Upon information and belief, the Owner of the Project—Ascend Elements—has failed and refused to pay Turner-Kokosing Joint Venture over $100 Million for Turner-Kokosing Joint Venture's work on the Project, and, in turn, Turner-Kokosing Joint Venture has now failed to make payments due and owing to its subcontractors, including Steel Fab.

41. On or about November 1, 2024, Ascend Elements instructed Turner-Kokosing Joint Venture to suspend all work on the Project, citing alleged cost overruns. Ascend Elements similarly directed Turner-Kokosing Joint Venture to instruct all subcontractors and other workers to suspend all work on the Project.

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42. Just days later, Turner-Kokosing Joint Venture agreed to suspend work on the Project. In a November 4, 2024 letter, Turner-Kokosing Joint Venture stated its disagreement with the allegations in Ascend Elements' November 1, 2024 letter, and notified Ascend Elements that work would be suspended due to Ascend Elements' continued failure to make payment for work performed on the Project under the parties' agreement.

43. Upon information and belief, Turner-Kokosing Joint Venture subsequently instructed Steel Fab to suspend all work on the Project. Steel Fab, in turn, instructed Ben Hur to suspend all work on the Project. Ben Hur's last day of work on the Project was on or about November 6, 2024.

COUNT I – ENFORCEMENT OF MECHANIC'S LIEN

44. Ben Hur affirms and reiterates each and every allegation in the preceding paragraphs as if fully stated herein.

45. On November 18, 2022, a Deed to Ascend Elements was recorded in Christian County Deed Book 797, Pages 420-423.

46. On November 18, 2022, a Commercial Real Estate Mortgage and Assignment of Leases in favor of Hopkinsville Industrial Foundation, Inc. was recorded in Christian County Mortgage Book 1763, Pages 419-431.

47. On November 18, 2022, a Collateral Assignment of Mortgage to Planters Bank, Inc. was recorded in Christian County Mortgage Book 1763, Pages 432-435.

48. On December 15, 2022, a Real Estate Mortgage in favor of the City of Hopkinsville, Kentucky was recorded in Christian County Mortgage Book 1766, Pages 684-701.

49. On September 21, 2024, the City of Hopkinsville issued Hopkinsville City Tax Bill #195553 on the Property in the amount of $12,117.82.

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50. On November 1, 2024, the Christian County Sherriff issued 2024 Christian County Property Tax Bill #956, in the amount of $43,874.90 on the Property.

51. Ben Hur furnished labor, materials, and equipment on the Project for the improvement of the Property pursuant to the Ben Hur Subcontracts, including the PCAM South Subcontract, with Steel Fab. The last labor, materials, and equipment furnished by Ben Hur on the Project pursuant to the PCAM South Subcontract was on or about November 6, 2024.

52. Despite repeated demands by Ben Hur, Steel Fab has failed to pay Ben Hur in full for the labor, materials, and supplies furnished by Ben Hur on the Project, including for amounts due under the PCAM South Subcontract.

53. On December 9, 2024, Triangle Enterprises, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Eight Million, Three Hundred Thirteen Thousand, Six Hundred Thirty-Two Dollars and Nineteen Cents ($8,313,632.19) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 7, Page 705.

54. On December 9, 2024, Triangle Enterprises, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Eight Hundred Fifty-Seven Thousand, Five Hundred Eighty-Six Dollars and Fifty-Four Cents ($857,586.54) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 7, Page 711.

55. On December 13, 2024, Travis Construction Company, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Ten Million, Two Hundred Eighty-Two Thousand, Five Hundred Seventy-Two Dollars and Fifty-One Cents ($10,282,572.51), against the Property. The lien is recorded in Christian County Mechanic's Lien Book 7, Page 719.

56. On December 26, 2024, RMF Nooter, LLC filed a Statement of Mechanics' and Materialmen's Lien in the amount of Thirty-Nine Million, Eight Hundred Fifty Thousand, Four

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Hundred Eighty Dollars and Seventeen Cents ($39,850,480.17), against the Property. The lien is recorded in Christian County Mechanic's Lien Book 7, Page 722-724.

57. On January 1, 2025, Christian County Property Tax Bill #956, issued on the Property in the amount of $43,874.90, became delinquent.

58. On January 1, 2025, the Hopkinsville City Tax Bill #195553, issued on the Property in the amount of $12,117.82, became delinquent.

59. On January 2, 2025, Travis Construction filed a Statement of Mechanics' and Materialmen's Lien in the amount of Eight Million, Four Hundred Fifty-Two Thousand, Nine Hundred Seventy-One Dollars and Forty Nine Cents ($8,452,971.49) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 7, Page 727.

60. On January 13, 2025, A&I Dock Equipment, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Two Hundred Forty-Nine Thousand, Seven Hundred Six Dollars ($249,706.00) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 7, Pages 732.

61. On January 15, 2025, C.H. Garmong & Son, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of One Million, Two Hundred Sixty-Four Thousand, Twenty-Seven Dollars and Fifty-Four Cents ($1,264,027.54) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 7, Page 737.

62. On January 17, 2025, United Electric Company, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Eighteen Million, Seven Hundred Forty-Nine Thousand, Seventy-Five Dollars and Twenty-Five Cents ($18,749,075.25) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 4.

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63. On January 17, 2025, Turner-Kokosing Joint Venture filed a Statement of Mechanics' and Materialmen's Lien in the amount of One Hundred Twenty One Million, Eight Hundred Sixty-Seven Thousand, Six Hundred Six Dollars and Twenty One Cents ($121,867,606.21) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 7, Page 743.

64. On February 14, 2025, Turner-Kokosing Joint Venture recorded a subscribed and sworn to Amended Statement of Mechanics' and Materialmen's Lien in the amount of One Hundred Thirty-Eight Million, Four Hundred Eighteen Thousand, Seven Hundred Thirty-Five Dollars and Zero Cents ($138,418,735.00) against the Property. The amended lien is recorded in Christian County Mechanic's Lien Book 8, Page 49.

65. On January 29, 2025, Foundation Steel, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of One Million, Five Hundred Eighty-Nine Thousand, Two Hundred Two Dollars and Thirty-Eight Cents ($1,589,202.38) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 13 and Lien Book 8, Page 47.

66. On February 4, 2025, Miner, Ltd. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Six Hundred Eighty-Three Thousand, One Hundred Seventy-Four Dollars and Two Cents ($683,174.02) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 16.

67. On February 4, 2025, Laibe Electric Co. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Two Million, Three Hundred Nine Thousand, Seven Hundred Fifty-Two Dollars and Eighty-Four Cents ($2,309,752.84) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 18.

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68. On February 4, 2025, Murphy Company Mechanical Contractors and Engineers filed a Statement of Mechanics' and Materialmen's Lien in the amount of Twenty-Eight Million, One Hundred Fifty-Six Thousand, Forty Dollars and Sixty-Six Cents ($28,156,040.66) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 21.

69. On February 4, 2025, Cleary Construction, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of One Million, One Hundred Seventy-Four Thousand, Seven Hundred Six Dollars and Eighty-One Cents ($1,174,706.81) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 27.

70. On February 4, 2025, McCormick Equipment Company, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of One Hundred Fifty-Five Thousand, Nine Hundred Twenty-Eight Dollars and Ninety Cents ($155,928.90) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 33.

71. On February 7, 2025, Lents Enterprises, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of One Million, Five Hundred Fifty-Six Thousand, Ninety-Three Dollars and Eighty-Two Cents ($1,556,093.82) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 35.

72. On February 7, 2025, TEC-Protective Coatings, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Three Hundred Seventy-Two Thousand, Two Hundred Ninety-Four Dollars and Eighty-Five Cents ($372,294.85) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 42.

73. On February 13, 2025, Steel Fab, Inc. filed a Statement of Mechanics' and Materialmen's Lien in the amount of Five Million, Two Hundred Thousand, Nine Hundred Thirty-

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One Dollars and Thirty-Five Cents ($5,200,931.35) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 44.

74. On February 14, 2025, Turner-Kokosing Joint Venture recorded a subscribed and sworn to Amended Statement of Mechanics' and Materialmen's Lien in the amount of One Hundred Thirty-Eight Million, Four Hundred Eighteen Thousand, Seven Hundred Thirty-Five Dollars and Zero Cents ($138,418,735.00) against the Property. The amended lien is recorded in Christian County Mechanic's Lien Book 8, Page 49.

75. On February 24, 2025, and within six months after the last items of material and labor were furnished to the Property by Ben Hur pursuant to the PCAM South Subcontract, Ben Hur filed a Statement of Mechanics' and Materialmen's Lien (the "Lien") in the amount of One Million, Two Hundred Seventy-Seven Thousand, Eighty One Dollars ($1,277,081.00), plus interest and costs, against the Property to secure payment for its work on the Project. The Lien is recorded in Christian County Mechanic's Lien Book 8, Page 68-70 in the office of the Christian County Clerk. A copy of the Lien is attached as **Exhibit 4**.

76. On February 28, 2025, Preferred Tank & Tower Maintenance Division, Inc. filed a Statement of Mechanic's and Materialmen's Lien in the amount of Nine Hundred Sixty-Four Thousand, Seven Hundred Forty Dollars and Fifty-Two Cents ($964,740.52) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 74.

77. On March 4, 2025, CEI Michigan, LLC, filed a Statement of Mechanic's and Materialmen's Lien in the amount of Eight Hundred Nineteen Thousand, Seven Hundred Ninety-One Dollars and Eighty-Seven Cents ($819,791.87) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 77.

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78. On March 4, 2025, Murphy Company Mechanical Contractors and Engineers filed a First Amended Mechanics' and Materialmen's Lien Statement in the amount of Twenty-Eight Million, Two Hundred Sixty-Two Thousand, One Hundred Twenty-Nine Dollars and Sixty-Five Cents ($28,262,129.65) against the Property. The amended lien is recorded in Christian County Mechanic's Lien Book 8, Page 80.

79. On March 17, 2025, C.H. Garmong & Son Inc. filed a Partial Reduction of Mechanics' and Materialmen's Lien partially reducing its lien against the Property in the amount of $218,662.55, leaving a lien in the remaining amount of One Million, Forty-Five Thousand, Three Hundred Sixty-Four Dollars and Ninety-Nine Cents ($1,045,364.99) against the Property. The Partial Reduction is recorded in Christian County Mechanic's Lien Book 8, Page 95.

80. On March 21, 2025, Cleary Construction, Inc. filed a Partial Release of Mechanics' and Materialmen's Lien releasing and discharging its lien against the Property in the amount of $457,425.00, leaving a lien in the remaining amount of Seven Hundred Seventeen Thousand, Two Hundred Eighty-One Dollars and Eighty-One Cents ($717,281.81). The Partial Release is recorded in Christian County Mechanic's Lien Book 8, Page 103.

81. On March 21, 2025, SteelFab, Inc. filed a Statement of Mechanic's and Materialmen's Lien in the amount of One Million, Six Hundred Twenty-Two Thousand, One Hundred Forty-Five Dollars and Forty Cents ($1,622,145.40) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 105.

82. On March 26, 2025, Collier Associates, Inc. filed a Statement of Mechanic's and Materialmen's Lien in the amount of Two Hundred Seventy-Five Thousand, Nine Hundred Sixteen Dollars and Eighty-Seven Cents ($257,916.87) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 108.

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83. On March 26, 2025, Collier Associates, Inc. filed a Statement of Engineers', architects', landscape architects', real estate brokers', and land surveyors' lien in the amount of Two Hundred Seventy-Five Thousand, Nine Hundred Sixteen Dollars and Eighty-Seven Cents ($217,916.87) against the Property. The lien is recorded in Christian County Mechanic's Lien Book 8, Page 111.

84. Ben Hur has complied with the requirements of KRS 376.100 et seq., with respect to the Lien; therefore, Ben Hur's Lien is valid, perfected, and enforceable under Kentucky law to secure payment of the $1,277,081.00, plus interest and costs, due to Ben Hur for its work on the Project.

COUNT II – BREACH OF PCAM SOUTH SUBCONTRACT (AGAINST STEEL FAB)

85. Ben Hur affirms and reiterates each and every allegation in the preceding paragraphs as if fully stated herein.

86. Ben Hur and Steel Fab entered into the PCAM South Subcontract, which, at all times, is and has been a valid and enforceable agreement whereby Ben Hur agreed to furnish certain work, labor, materials, and equipment on the Project and at the Property.

87. In return, Steel Fab agreed to compensate and pay Ben Hur for the work, labor, materials, and equipment it furnished on the Project and at the Property.

88. Ben Hur fully performed all obligations and complied with all specifications, requirements, and conditions precedent under the PCAM South Subcontract.

89. In breach of the PCAM South Subcontract, Steel Fab has failed and refused to pay Ben Hur all of the amounts it is owed for the work, labor, materials, and equipment Ben Hur furnished on the Project and at the Property pursuant to the PCAM South Subcontract.

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90. Steel Fab's failure to pay Ben Hur the amounts due under the PCAM South Subcontract constitutes a breach of contract for which Steel Fab is liable.

91. After all just credits have been given and taken into account, Ben Hur is owed the principal sum of One Million, Two Hundred Seventy-Seven Thousand, and Eighty-One Dollars ($1,277,081.00) under the PCAM South Subcontract, comprised of $685,673.00 for unpaid change orders and $591,408.00 for retention.

92. Ben Hur has made demand upon Steel Fab for payment of said sum, but Steel Fab has failed and refused and, to date, continues to fail and refuse, to pay said amount, all in breach of the contract between Ben Hur and Steel Fab.

93. Accordingly, as a direct and proximate result of Steel Fab's breach, Ben Hur has been damaged in the amount of One Million, Two Hundred Seventy-Seven Thousand, and Eighty-One Dollars ($1,277,081.00), exclusive of interest, attorneys' fees, costs, and expenses.

94. Ben Hur has incurred, and is entitled to recover, attorneys' fees, expenses, and costs herein, in an amount Ben Hur will prove at trial.

COUNT III – BREACH OF LEACHING SUBCONTRACT (AGAINST STEEL FAB)

95. Ben Hur affirms and reiterates each and every allegation in the preceding paragraphs as if fully stated herein.

96. Ben Hur and Steel Fab entered into the Leaching Subcontract, which, at all times, is and has been a valid and enforceable agreement whereby Ben Hur agreed to furnish certain work, labor, materials, and equipment on the Project and at the Property.

97. In return, Steel Fab agreed to compensate and pay Ben Hur for the work, labor, materials, and equipment it furnished on the Project and at the Property.

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98. Ben Hur fully performed all obligations and complied with all specifications, requirements, and conditions precedent under the Leaching Subcontract.

99. In breach of the Leaching Subcontract, Steel Fab has failed and refused to pay Ben Hur all of the amounts it is owed for the work, labor, materials, and equipment Ben Hur furnished on the Project and at the Property pursuant to the Leaching Subcontract.

100. Steel Fab's failure to pay Ben Hur the amounts due under the Leaching Subcontract constitutes a breach of contract for which Steel Fab is liable.

101. After all just credits have been given and taken into account, Ben Hur is owed the principal amount of Five Hundred Twenty Thousand, Three Hundred Eighty-Six Dollars ($520,386.00) under the Leaching Subcontract for retention.

102. Ben Hur has made demand upon Steel Fab for payment of said sum, but Steel Fab has failed and refused and, to date, continues to fail and refuse, to pay said amount, all in breach of the contract between Ben Hur and Steel Fab.

103. Accordingly, as a direct and proximate result of Steel Fab's breach, Ben Hur has been damaged in the amount Five Hundred Twenty Thousand, Three Hundred Eighty-Six Dollars ($520,386.00), exclusive of interest, attorneys' fees, costs, and expenses.

104. Ben Hur has incurred, and is entitled to recover, attorneys' fees, expenses, and costs herein, in an amount Ben Hur will prove at trial.

COUNT IV – BREACH OF PCAM NORTH SUBCONTRACT
(AGAINST STEEL FAB)

105. Ben Hur affirms and reiterates each and every allegation in the preceding paragraphs as if fully stated herein.

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106. Ben Hur and Steel Fab entered into the PCAM North Subcontract, which, at all times, is and has been a valid and enforceable agreement whereby Ben Hur agreed to furnish certain work, labor, materials, and equipment on the Project and at the Property.

107. In return, Steel Fab agreed to compensate and pay Ben Hur for the work, labor, materials, and equipment it furnished on the Project and at the Property.

108. Ben Hur fully performed all obligations and complied with all specifications, requirements, and conditions precedent under the PCAM North Subcontract.

109. In breach of the PCAM North Subcontract, Steel Fab has failed and refused to pay Ben Hur all of the amounts it is owed for the work, labor, materials, and equipment Ben Hur furnished on the Project and at the Property pursuant to the PCAM North Subcontract.

110. Steel Fab's failure to pay Ben Hur the amounts due under the PCAM North Subcontract constitutes a breach of contract for which Steel Fab is liable.

111. After all just credits have been given and taken into account, Ben Hur is owed the principal sum of One Hundred Ninety-Four Thousand, Six Hundred Fifty-Four Dollars and Fifty-Six Cents ($194,654.56) under the PCAM North Subcontract, comprised of $194,654.56 for retention.

112. Ben Hur has made demand upon Steel Fab for payment of said sum, but Steel Fab has failed and refused and, to date, continues to fail and refuse, to pay said amount, all in breach of the contract between Ben Hur and Steel Fab.

113. Accordingly, as a direct and proximate result of Steel Fab's breach, Ben Hur has been damaged in the amount of One Hundred Ninety-Four Thousand, Six Hundred Fifty-Four Dollars and Fifty-Six Cents ($194,654.56), exclusive of interest, attorneys' fees, costs, and expenses.

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114. Ben Hur has incurred, and is entitled to recover, attorneys' fees, expenses, and costs herein, in an amount Ben Hur will prove at trial.

COUNT V – UNJUST ENRICHMENT
(AGAINST STEEL FAB)

115. Ben Hur affirms and reiterates each and every allegation in the preceding paragraphs as if fully stated herein.

116. Ben Hur provided work, labor, materials, and equipment to Steel Fab pursuant to the Ben Hur Subcontracts, for which Ben Hur has not received payment.

117. Steel Fab received benefits on account of the work, labor, materials, and equipment provided by Ben Hur pursuant to the Ben Hur Subcontracts, for which Ben Hur has not received payment.

118. Said work, labor, materials, and equipment were supplied by Ben Hur with the knowledge and consent of, and at the direct instance and request of, Steel Fab.

119. Said work, labor, materials, and equipment were supplied by Ben Hur with the expectation that Steel Fab would render payment to Ben Hur for the same.

120. The value of the work, labor, materials, and equipment furnished by Ben Hur is $1,992,121.56 ; further, Ben Hur states that said sum is the reasonable value of the aforesaid work, labor, materials, and equipment supplied to the Property and to Steel Fab on the Project.

121. Despite repeated demands by Ben Hur, Steel Fab has failed and refused to pay Ben Hur the sum of $1,992,121.56, which is the reasonable value of the work, labor, materials, and equipment supplied to the Property and to Steel Fab on the Project.

122. Accordingly, Steel Fab has been unjustly enriched.

123. Steel Fab is therefore liable to Ben Hur in the amount of $1,992,121.56 .

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COUNT VI – UNJUST ENRICHMENT
(AGAINST ASCEND ELEMENTS)

124. Ben Hur affirms and reiterates each and every allegation in the preceding paragraphs as if fully stated herein.

125. Ben Hur provided work, labor, materials, and equipment for the construction of improvements on the Property as part of the Project, for which Ben Hur has not received payment.

126. As the Owner of the Property, Ascend Elements received benefits on account of the work, labor, materials, and equipment provided by Ben Hur to improve the Property as part of the Project, but Ben Hur has not received payment for said work, labor, materials, and equipment provided.

127. The value of the work, labor, materials, and equipment furnished by Ben Hur is $1,992,121.56 ; further, Ben Hur states that said sum is the reasonable value of the aforesaid work, labor, materials, and equipment supplied to the Property and to Ascend Elements.

128. Despite repeated demands by Ben Hur, Steel Fab has failed and refused to pay Ben Hur the sum of $1,992,121.56, which is the reasonable value of the work, labor, materials, and equipment supplied to the Property and to Ascend Elements.

129. Upon information and belief, Ascend Elements has failed and refused to pay Turner-Kokosing Joint Venture over $100 Million for Turner-Kokosing Joint Venture's work on the Project, and, in turn, Turner-Kokosing Joint Venture has failed to make payments due and owing to Steel Fab for Steel Fab's work the Project. Consequently, Steel Fab has failed to make payments due and owing to Ben Hur for Ben Hur's work on the Project.

130. Thus, Ascend Elements has received substantial benefits from Ben Hur in the form of improvements to the Property based on the work, labor, materials, and equipment supplied by

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Ben Hur, but Ben Hur has not been compensated for providing said work, labor, materials, and equipment.

131. Accordingly, Ascend Elements has been unjustly enriched.

132. Ascend Elements is therefore liable to Ben Hur in the amount of $1,992,121.56.

COUNT VII – QUANTUM MERUIT
(AGAINST ASCEND ELEMENTS)

133. Ben Hur affirms and reiterates each and every allegation in the preceding paragraphs as if fully stated herein.

134. Ben Hur provided valuable labor, materials, and equipment to Ascend Elements, with the reasonable expectation of receiving payment in return.

135. The labor and materials provided were used for the benefit of Ascend Elements.

136. Ascend Elements failed to pay Ben Hur, despite Ben Hur's demands for payment and Ben Hur's reasonable expectation that it would be compensated for the labor and materials it provided.

137. The reasonable value in and around Ascend Elements for the labor, materials, and equipment provided by Ben Hur, for which it has not yet been paid, is $1,992,121.56 .

138. Ascend Elements has wrongfully gained valuable benefits at Ben Hur's expense and it would be inequitable for Ascend Elements to retain the full benefit of Ben Hur's labor, materials, and equipment without paying for the same.

139. As a direct and proximate result of Ascend Element's failure to make payment, Ben Hur has and will continue to suffer damages.

COUNT VIII – VIOLATION OF KENTUCKY FAIRNESS IN CONSTRUCTION ACT
(AGAINST STEEL FAB)

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140. Ben Hur affirms and reiterates each and every allegation in the preceding paragraphs as if fully stated herein.

141. The Kentucky Fairness in Construction Act, KRS 371.400 to KRS 371.425 applies to the services rendered by Ben Hur.

142. Ben Hur is a "Subcontractor" under the Kentucky Fairness in Construction Act pursuant to KRS 371.400(10).

143. Steel Fab is a "Subcontractor" under the Kentucky Fairness in Construction Act pursuant to KRS 371.400(10).

144. KRS 371.405(8) states that "a contractor shall pay its subcontractors any undisputed amounts due within fifteen (15) business days of receipt of payment from the contracting entity, including payment of retainage if retainage is released by the contracting entity, if the subcontractor has provided a timely, properly completed, and undisputed request for payment to the contractor."

145. KRS 371.405(9) states that "[i]f a contractor fails to pay a subcontractor any undisputed amounts due within fifteen (15) business days of receipt of payment from the contracting entity, the contractor shall pay interest to the subcontractor beginning on the sixteenth business day after receipt of payment by the contractor, computed at the rate of twelve percent (12%) per annum on the unpaid amount."

146. KRS 371.405(10) states that KRS 371.405(8) and KRS 371.405(9) are applicable to all payments from subcontractors to their subcontractors.

147. Ben Hur provided timely, properly completed, and undisputed requests for payment to Steel Fab that were not disputed by Steel Fab.

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148. Steel Fab violated KRS 371.405(8) by failing to pay Ben Hur within fifteen (15) business days of receiving Ben Hur's invoices, and acted in bad faith by continuously failing to pay Steel Fab for labor and materials supplied to Turner-Kokosing Joint Venture and Ascend Elements.

149. Pursuant to KRS 371.405(9), Ben Hur is entitled to interest on the unpaid amounts at the rate of twelve percent (12%) per annum.

150. Pursuant to KRS 371.415, Ben Hur is entitled to its costs and reasonable attorneys' fees incurred in enforcing its right to receive payment from Steel Fab as set forth in KRS 371.405(8).

WHEREFORE, Intervening Plaintiff / Cross-Claim Plaintiff Ben Hur Construction Company respectfully prays and demands as follows:

A. That this cause be heard by a jury of twelve (12) people;

B. That the Court enter judgment on Count I against Defendant Ascend Elements (1) enforcing Ben Hur's Mechanics' and Materialmen's Lien in the principal amount of **$1,277,081.00** plus pre- and post-judgment interest on said principal sum at the highest rate permitted by contract or applicable law from the date payment was due, plus reasonable attorneys' fees, costs of this suit and Ben Hur's Lien, (2) determining the priority of all liens against the property, and (3) ordering that the property be sold and all proceeds applied to satisfy Ben Hur's judgment and costs, and in the event that there is a deficiency, that Ben Hur be awarded a judgment against Ascend Elements and Turner-Kokosing Joint Venture for such deficiency;

C. That the Court enter judgment against Steel Fab on Count II for breach of contract in the amount of not less than $1,277,081.00, plus the cost of filing and perfecting

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Ben Hur's Mechanics' and Materialmen's Lien, all attorneys' fees incurred herein, and pre- and post-judgment interest on all amounts owed;

D. That the Court enter judgment against Steel Fab on Count III for breach of contract in the amount of not less than $520,386.00, plus all attorneys' fees incurred herein, and pre- and post-judgment interest on all amounts owed;

E. That the Court enter judgment against Steel Fab on Count IV for breach of contract in the amount of not less than $194,654.56, plus all attorneys' fees incurred herein, and pre- and post-judgment interest on all amounts owed;

F. That the Court enter judgment against Steel Fab on Count V for unjust enrichment in the amount of not less than $1,992,121.56, plus the cost of filing and perfecting Ben Hur's Mechanics' and Materialmen's Lien, all attorneys' fees incurred herein, and pre- and post-judgment interest on all amounts owed;

G. That the Court enter judgment against Ascend Elements on Count VI for unjust enrichment in the amount of not less than $1,992,121.56, plus the cost of filing and perfecting Ben Hur's Mechanics' and Materialmen's Lien, all attorneys' fees incurred herein, and pre- and post-judgment interest on all amounts owed;

H. That the Court enter judgment against Ascend Elements on Count VII for Quantum Merit in the amount of not less than $1,992,121.56, plus the cost of filing and perfecting Ben Hur's Mechanics' and Materialmen's Lien, all attorneys' fees incurred herein, and pre- and post-judgment interest on all amounts owed;

I. That the Court enter judgment against Steel Fab on Count VIII for Violation of the Kentucky Fairness in Construction Act in the amount of not less than $1,992,121.56, plus the cost of filing and perfecting Ben Hur's Mechanics' and

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Materialmen's Lien, all attorneys' fees incurred herein, and pre- and post-judgment interest on all amounts owed;

J. That, in the event of any deficiency, Ben Hur be awarded judgments for said deficiency;

K. That all lien holders assert their interest in this lawsuit or be forever barred;

L. Pre- and post-judgement interest, court costs, and attorneys' fees; and

M. All other relief to which it is entitled.

Dated: April 16, 2025

Respectfully submitted,

/s/ *Cassidy R. Rosenthal*

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crosenthal@stites.com
Holly Couch, Bar No. 100410
hcouch@stites.com

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Telephone: (859) 226-2300

Counsel for Ben Hur Construction Company

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as indicated below, on this 16th day of April, 2025 upon:

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Waterford, NY 12188

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Lexington, KY 40504

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/s/ Cassidy R. Rosenthal

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EXHIBIT 1

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STEELFAB
Steel Construction

Founded 1955

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SteelFab, Inc.
P. O. Box 19289
Charlotte, NC 28219
704-394-5376
PMA: ccollins

SUBCONTRACT – Exhibit A

To:
Ben Hur Construction Co
2191 LEMAY FERRY RD

ST. LOUIS, MO

Subcontract #: 32443NC500
Date: 5/22/2023
Job: 324-4-3 Ascend Elements PCAM Building
Job Address:

Hopkinsville, KY 42240

Description: Ben Hur Construction

Scope of Work: Install Only

Item Number	Description	Amount
1	Exhibit A & Subcontract Agreement	1,769,323.00
2	Exhibits - Billing Forms	0.00
3	Erector Checklist	0.00

Total Subcontract Amount: $1,769,323.00

Inclusions:

Unload, erect, bolt, plumb, and weld structural steel, joists, metal deck & edge angles per AISC, SDI, SJI and OSHA regulations

Subcontractor will be responsible for checking the Bill of Lading accompanying each load to ensure all pieces have been delivered. If any members are found to be missing, Subcontractor will immediately notify SteelFab's project manager.

Subcontractor will unload each delivery of material pertinent to its scope of work with 30 minutes. If for any reason the delivery cannot be completely unloaded within 30 minutes, Subcontractor shall immediately notify SteelFab's project manager.

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Filed Subcontract 1-12-16 25-CI-00120 04/16/2025 Paige Parker, Christian Circuit Clerk

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SteelFab, Inc. requires that no bundle of decking may be placed on steel joists until all bridging has been installed and anchored and all joist bearing ends attached. This work must be done in accordance with manufacturer's installation instruction and OSHA standards.

Job site safety is the subcontractor's responsibility.
All General Contractor's and OSHA Safety Rules and Regulations will be strictly enforced.

SteelFab will not accept nor fund any fines, penalties, back-charges, change order deducts, etc. associated with subcontractor's inability to follow COVID-19 safety requirements as mandated by the controlling general contractor, local, state and federal governments nor their own site-specific safety plan. Subcontractor is required to submit a site-specific safety plan which specifically addresses precautions and protocols related to COVID-19 safety protocol. SteelFab will provide its corporate policy pertaining to COVID-19 upon request for reference only

Signed:

Ben Hur Construction Co

DocuSigned by:
Scott Bullerdick
By 77B3B665D66B4DE...

08/28/2023
Date

SteelFab, Inc.

DocuSigned by:
Colby Mavropoulos
By 2AEB8233CA8D483...

08/28/2023
Date

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SUBCONTRACT AGREEMENT

BETWEEN

SteelFab, Inc.

AND

Ben Hur Construction Co

PROJECT NAME AND NUMBER: 324-4-3 Ascend Elements PCAM Building

SUBCONTRACT NUMBER: 32443NC500

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STEELFAB

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SUBCONTRACT AGREEMENT

32443NC500

SteelFab, Inc.

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SUBCONTRACT AGREEMENT

STEELFAB, INC.,

SUBCONTRACT NO. 32443NC500

SECTION 1

AGREEMENT

This Subcontract Agreement (hereinafter "Subcontract") is made and entered **5/22/2023** by and between STEELFAB, INC. AND ITS AFFILIATED COMPANIES ("SteelFab") and the Subcontractor named below (the "Subcontractor") for performance of part of the work on the project identified below ("Project"). This Subcontract is not binding on SteelFab unless and until executed by SteelFab. This Subcontract is also contingent on approval of Subcontractor by the Owner, the construction manager and/or the general contractor, if so required by SteelFab's contract with the Owner, construction manager and/or the general contractor. The earliest to occur of Subcontractor's commencement of performance of the Work, acceptance of any payment or execution of this Subcontract shall constitute Subcontractor's unqualified acceptance of this Subcontract and all terms and conditions herein.

1.0 **SteelFab, Inc.** ADDRESS, PHONE AND FACSIMILE:

P. O. Box 19289
Charlotte, NC 28219
704-394-5376

1.1 SUBCONTRACTOR NAME, ADDRESS, PHONE AND FACSIMILE:
Ben Hur Construction Co
2191 LEMAY FERRY RDSTE 200
ST. LOUIS, MO

Subcontractor ☒ is ☐ is not a Corporation FEIN# **43 0178210**
Personal Guaranty ☐ is ☒ is not required.

1.2 AUTHORIZED REPRESENTATIVES

a. For SteelFab (see Section 7)
On site: _____
Off site:

b. For Subcontractor (see Section 8.8)
On site: _____
Off site:

1.3 PROJECT NAME AND ADDRESS:

324-4-3 Ascend Elements PCAM Building

Hopkinsville, KY, 42240

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1.4 GENERAL CONTRACTOR/CONSTRUCTION MANAGER NAME AND ADDRESS:

Turner – Columbus, OH

1.5 OWNER NAME AND ADDRESS:

Ascend Elements – Westborough, MA

1.6 ARCHITECT NAME AND ADDRESS:

PTAC – Pensacola, FL

1.7 DESCRIPTION OF WORK (Exhibit A):

See Attached Subcontract EXHIBIT A for Scope of Work **32443NC500**

1.8 COMPLETION OF SUBCONTRACTOR'S WORK (see Section 3.2)

a. Weeks to Substantial Completion: **TBD**

b. Weeks to Final Completion: **9**

1.9 SUBCONTRACT PRICE (see Section 4) **1,769,323.00**

One Million seven hundred sixty-nine thousand three hundred twenty-three(Dollars)

1.10 RETAINAGE (see Section 5.2.2) **10.000**

1.11 PROGRESS PAYMENT APPLICATION DATE

20th day of each calendar month (see Section 5.2.3)

1.12 PERFORMANCE BOND & LABOR & MATERIAL PAYMENT BOND

☐ Are ☒ Are not required (see Section 9.1)

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SECTION 2

SCOPE OF WORK

2.1 **SUBCONTRACTOR'S WORK**. SteelFab contracts with the Subcontractor as an independent contractor to supply, perform and pay for the Work described in the Scope of Work (the "Work") set forth generally on Exhibit A in strict accordance with the Subcontract Documents (as defined in Section 2.2), as well as all work reasonably inferable as necessary to produce the results intended by the Subcontract Documents, except to the extent work is specifically indicated in the Subcontract Documents to be the responsibility of others. The Subcontractor shall perform such Work under the general direction of SteelFab. Subcontractor alone shall be solely responsible for and have control over job site safety for the Work and the construction means, methods, techniques, sequences and procedures and for coordinating its Work under the Subcontract Documents. The presence of and review of the Work by employees, agents and consultants of SteelFab shall be for SteelFab's benefit only and shall not operate in any manner to relieve Subcontractor from its responsibilities. The Subcontractor shall perform each activity necessary or incidental to complete the Work, which is described more particularly, but not exclusively, on Exhibit A, including but not limited to furnishing all the work, labor, services, materials, equipment, tools, scaffolds, appliances and all other things necessary for performing and completing the Work. The provisions of this Subcontract and Exhibit A are intended to complement each other, but if there is any irreconcilable inconsistency Exhibit A shall govern.

2.2 **SUBCONTRACT DOCUMENTS**. In addition to this document, the documents which form this Subcontract and which are binding on the Subcontractor (collectively the "Subcontract Documents") include the contract and the contract documents identified in any contract between SteelFab and the party with whom SteelFab has a contract for the performance of the Work, whether that be the General Contractor, Construction Manager, and/or the Owner, or other entity as the case may be (referred to herein as "General Contractor"), and/or any contract documents between any General Contractor and the Owner or other entity that are in turn binding on SteelFab, all of which are incorporated by reference herein (together, "Contract Documents") and all Modifications issued subsequent hereto. The documents referenced in Section 18.4 are also a part of the Subcontract Documents.

Subcontractor assumes toward SteelFab all of the duties, obligations and responsibilities that SteelFab by those Contract Documents assumes toward the General Contractor and/or the Owner not only as to construction activities but also including all managerial, engineering, administrative, documentation, and all other obligations ancillary to the Work., The Subcontractor agrees further that along with the rights and remedies provided for in this Subcontract , SteelFab shall also have the same rights and remedies as against the Subcontractor that the Owner or General Contractor has under the terms and provisions of the other Contract Documents against SteelFab with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Subcontract with respect to the Work to be performed and furnished by the Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of any General Contract and other Contract Documents.

This Subcontract Agreement, the provisions of the General Contract and the other Subcontract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Subcontract Documents (a "Discrepancy"), the Subcontractor shall immediately notify SteelFab in writing seeking clarification from SteelFab before proceeding with the affected work. If Subcontractor fails to so notify SteelFab of such a Discrepancy, Subcontractor assumes all responsibility at its sole cost and expense of correcting or adjusting work containing a defect or improper workmanship as a result of the Discrepancy. If any provision of this Subcontract Agreement irreconcilably conflicts with a provision of the General Contract or the other Subcontract Documents, the provision imposing the greater duty or obligation on the Subcontractor and that which will further SteelFab's best interests shall govern.

In the event that Subcontractor has performed any of the Work prior to the date of this Subcontract, pursuant to authorizations to proceed, letters of intent or otherwise, this Subcontract and the Contract Documents shall govern such prior Work to the same extent as though such Work was performed after the date hereof. Should the Contract Documents specify that any of the Drawings, Plans or Specifications are "criteria" or "preliminary" or otherwise not final, and that further Drawings, Plans or Specifications (or any combination thereof) are to be supplied and are to become a part of the Contract Documents, then such further Drawings, Plans and Specifications shall also become a part of the Subcontract Documents, and the Subcontract Price shall not be increased or decreased as a result thereof, except to the extent that the price between SteelFab and General Contractor is increased or decreased as a result thereof relative to Subcontractor's Work.. All Drawings, Specifications and other items defined herein as Contract Documents that have been prepared for the Project and furnished to SteelFab by or on behalf of Owner or other third party are without any representation or warranty by SteelFab as to the acceptability, accuracy or suitability thereof for the Work and Subcontractor accepts all risks in respect of any and all defects, deficiencies, errors and omissions therein. The Contract Documents shall be deemed to include and require all items and aspects of labor, material, equipment, supervision, administration and other services and transportation incidental to or necessary for the proper and efficient execution and completion of the Work as it relates to the Project.

SteelFab may from time to time issue policies or directives applicable to electronic communications, electronic infrastructure and electronic data and Subcontractor shall comply with such policies and directives whether issued as part of this Subcontract or hereafter, and the cost and expense of such compliance shall be borne by the Subcontractor.

2.2.1 **DRAWINGS, PLANS AND SPECIFICATIONS**. SteelFab will make available to Subcontractor the Drawings, Plans and Specifications included in the Subcontract Documents, a listing of which is provided in Exhibit A. A copy will be furnished, on request, at the Subcontractor's expense.

2.3 **EXAMINATION OF SUBCONTRACT DOCUMENTS; SITE INSPECTION**. The Subcontractor warrants and represents that it has visited the site of the proposed Work, has familiarized itself with existing conditions and the character of the operation to be carried on under the Subcontract Documents and that it fully understands the facilities, difficulties and restrictions attending the execution of the Work. The Subcontractor acknowledges that it has examined all Subcontract Documents, and the requirements of the various governmental agencies, departments and bureaus having jurisdiction over the Project and from its own investigation has satisfied itself as to the nature and location of the Work, the general local conditions, and all matters which in any way affect the Subcontractor's Work or its performance thereof. The Subcontractor further acknowledges that having made said visitation and examination, it is not aware of any existing conditions, circumstances, or requirements that will necessitate any change in the scope of the Work, the Subcontract Price, or the Schedule of Work. Subcontractor enters into this Subcontract on the basis of its own investigation and evaluation and not in reliance upon any opinions or representations of SteelFab, the General Contractor or the Owner, as the case may be.

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SECTION 3
SCHEDULE OF WORK AND COMPLETION

3.1 **CONTRACT TIME.** The "Contract Time" shall be the period of time commencing on the Start Date and ending upon the Substantial Completion Date (also addressed in Paragraphs 1.8 and 3.2). The Start Date is that date on which Subcontractor is authorized pursuant to a Notice to Proceed ("Notice to Proceed") to begin the Work on the Project required by the Contract. Any Work performed by Subcontractor in furtherance of the Project prior to execution of the Subcontract shall be deemed to have been performed as "Work" pursuant to the Subcontract and shall be governed by and subject to its terms. Any payments made for such work shall be deemed to have been made under the Subcontract Documents.

3.2 Subcontractor shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, in accordance with those project schedules as may be issued from time to time during the performance of the Work and any other scheduling requirements listed in Subcontract Documents, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the Project, and in such a manner as necessary or requested by SteelFab from time to time to ensure that SteelFab satisfies its obligations in a timely manner under the Contract Documents. Subcontractor shall achieve completion as follows, pursuant to the construction schedule set forth on Exhibit C, subject to adjustments of the Contract Time as provided in the Subcontract Documents, if any:

3.2.1 Subcontractor shall achieve Substantial Completion of the entire Work no later than the date set forth in paragraph 1.8 ("Substantial Completion Date"); provided however, Subcontractor shall endeavor to achieve Substantial Completion of its entire Work by **TBD**.

3.2.2 In addition to achieving Substantial Completion as set forth above, Subcontractor agrees to complete and make available certain portions of the Work as set forth on Exhibit C no later than the dates indicated on Exhibit C (the "Interim Completion Dates"), and such Interim Completion Dates shall be shown on Subcontractor's construction schedule for the Work set forth on Exhibit C.

3.2.3 Final completion of the entire Work shall be achieved no later than the date set forth in Section 1.8(b) ("Final Completion Date").

3.2.4 In agreeing to complete the Work within such times, Subcontractor represents that it has taken into consideration and made allowances for all reasonably foreseeable hindrances and delays incident to performance of the Work. No interruption, cessation, postponement or delay in the commencement or progress of the Work for any cause whatsoever, including disputes, shall relieve Subcontractor from its duty to perform, although such circumstances may be the subject of Subcontractor's request for an extension of time under the Subcontract Documents, if allowed under the Subcontract Documents. Nothing contained in this Paragraph shall be construed as an agreement by SteelFab that Subcontractor would be entitled to an adjustment to the Subcontract Time. Any such extension or adjustment may only be made pursuant to and in strict compliance with the Subcontract Documents. Notwithstanding the forgoing, the Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation, damages or extensions of time attributable to any changes, additions and/or omissions, directed by SteelFab or for delay, obstruction, hindrance, inefficiency, acceleration, or interference except to the limited extent that SteelFab has actually recovered corresponding cost reimbursement, compensation, damages or extensions of time from the Owner or General Contractor under the Contract Documents for such changes, additions and/or omissions or for delay, obstruction, hindrance, inefficiency, acceleration, or interference to Subcontractor's Work.

3.2.5 If Subcontractor fails to provide sufficient manpower or materials to progress its Work in such a manner that in SteelFab's sole opinion Subcontractor will not be able to meet its obligations for Interim Completion Dates, Substantial Completion and/or for Final Completion, then SteelFab may give Subcontractor 24 hours' notice that Subcontractor must supply additional manpower or procure sufficient materials to properly progress its Work in order to meet its Subcontract obligations. In addition to any other remedies allowed herein or by law, if Subcontractor fails to supply additional manpower or materials, then after an additional 24 hours' notice, SteelFab may terminate Subcontractor's performance for default or alternatively supplement Subcontractor's work force or supply such materials as necessary. Subcontractor shall be liable to SteelFab for all costs associated with any termination or supplementation, plus 20% for overhead and profit.

3.3 In the event Subcontractor fails to meet any Interim Completion Date provided for in Exhibit C for any reason or otherwise fails to meet Schedule commitments, SteelFab shall be entitled to direct Subcontractor to immediately implement whatever means are necessary to bring the Project back on schedule, including supplying additional manpower, working overtime at Subcontractor's sole expense, or by re-sequencing and/or accelerating the Work, provided such re-sequencing and/or acceleration is possible. In the event SteelFab directs Subcontractor to re-sequence and/or accelerate the Work to bring the Project back on schedule due to causes for which Subcontractor is not entitled to an extension of time under the Subcontract Documents, such re-sequencing and/or acceleration shall be done at Subcontractor's expense. In the event SteelFab directs Subcontractor to re-sequence and/or accelerate the Work due to causes for which Subcontractor is entitled to an extension of time under the Subcontract Documents, Subcontractor shall be reimbursed for extra labor, overhead and supervision costs related thereto but only to the extent that SteelFab actually recovers corresponding cost reimbursement, compensation, damages or extensions of time from the Owner or General Contractor under the Contract Documents, and these are the only time-related damages recoverable by the Subcontractor on account of time-related impacts to the Work of any kind or nature. Approval of any such plan by SteelFab pursuant to this Subparagraph 3.4 shall not constitute a waiver by SteelFab of any right hereunder, including the right to liquidated damages. Subcontractor shall use Subcontractor's best efforts to reserve the right to re-sequence and/or accelerate each subcontractor's portion of the Work in each subcontract entered into in connection with the Work, in a manner consistent with Subcontractor's obligation hereunder.

3.4 In the event Subcontractor determines at any time that the Project Substantial Completion Date or any Interim Completion Date cannot be met, Subcontractor shall immediately provide to SteelFab a plan to complete the Work in the shortest possible time. Approval of any such plan by SteelFab pursuant to this Subparagraph 3.5 shall not constitute a waiver by SteelFab of any right hereunder, including the right to liquidated damages.

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3.5 **SCHEDULE CHANGES**. The Subcontractor recognizes that changes may be made in the Schedule of Work and agrees to comply with such changes without objection and without adjustment to the Subcontract Price. Subcontractor shall, at no additional cost, provide updates, additional or further detailed schedules and other information as frequently and in whatever form SteelFab may request, including but not limited to (1) manpower and cost loaded schedules; (2) information related to its operations as a whole, including but not limited to identifying lower tier subcontractors and suppliers and the status of payments to such subcontractors and suppliers; (3) unions and related benefit funds associated with labor used in the performance of the Work; (4) credit sources and banks providing financing or loans in connection with the performance of the Work or Subcontractor's operations as a whole and any covenants and requirements imposed upon Subcontractor in connection therewith and the status of Subcontractor's compliance with such covenants and requirements; and (5) the status of orders, fabrication and delivery of materials and arrangements for the provision of labor. The foregoing information shall include names and contact information, and Subcontractor acknowledges and agrees that SteelFab may contact any persons or entities as it deems necessary to verify or obtain such information.

3.6 **PRIORITY OF WORK**. SteelFab shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work. The Work will be performed as required by the composite construction schedule (or any other schedule to which SteelFab is bound), which may be changed periodically in order to maintain the overall schedule of Work.

3.7 **COOPERATION**. The Subcontractor shall cooperate with SteelFab by scheduling and performing Subcontractor's Work so as to avoid conflict, delay in, or interference with the Work of SteelFab, other subcontractors or the General Contractor's or the Owner's own forces. Subcontractor shall participate, as requested by SteelFab, in inspections related to Substantial and Final Completion.

3.8 **SUBCONTRACTOR'S DELAY**. Should the progress of the Subcontract Work, the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to SteelFab including legal fees and disbursements incurred by SteelFab (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Subcontractor and its surety hereunder or otherwise) or to the General Contractor or Owner or any damages or additional costs or expenses for which SteelFab, General Contractor or the Owner may or shall become liable, the Subcontractor and its surety shall and does hereby agree to compensate SteelFab, General Contractor and the Owner for and indemnify them against all such costs, expenses, damages and liability.

SECTION 4
SUBCONTRACT PRICE

4.1 SteelFab agrees to pay Subcontractor for the satisfactory performance and timely completion of the Work and of all of the duties, obligations and responsibilities of the Subcontractor under this Subcontract and the other Contract Documents the sum identified in Section 1.9 (the "Subcontract Price"). Payment is expressly conditioned on Subcontractor's strict compliance with all obligations set forth in the Subcontract Documents. Payment shall further be made only out of funds SteelFab actually receives from the General Contractor and/or the Owner, receipt of which is a condition precedent to the obligation to make payment to the Subcontractor (see section 5.4). Payment shall be made in accordance with Section 5, subject to additions and deductions as provided in Section 6 or any other Subcontract Document.

4.2 Unit prices, if any, are stated in Exhibit D. The Subcontract Price includes all Federal, State, County, Municipal and other taxes imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for and in connection with the Work, including, but not limited to, sales, use and personal property taxes payable by or levied or assessed against the Owner, the General Contractor, SteelFab, or the Subcontractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the Work plus the amount of such taxes shall not exceed the Subcontract Price.

SECTION 5
PAYMENT

5.1 **GENERAL PROVISIONS.**

5.1.1 **SCHEDULE OF VALUES.** The Subcontractor has or will provide SteelFab with a schedule of values which shall be revised, if necessary, for approval by SteelFab and the General Contractor/Owner, no later than the date of the Subcontractor's first application for payment. The Schedule of Values is (or will be) attached as Exhibit E and incorporated herein.

5.1.2 **PAYMENT USE RESTRICTION.** No payment received by the Subcontractor shall be used to satisfy or secure any indebtedness other than one owed by the Subcontractor for labor or materials furnished in performing the Subcontractor's Work on this Project. All payments by SteelFab to Subcontractor must first be applied to satisfy any indebtedness arising as a result of Subcontractor's Work. Subcontractor acknowledges and agrees that to the extent that payments received by Subcontractor include amounts for Work performed by subcontractors to Subcontractor or services or materials provided to Subcontractor by suppliers, vendors, workers employed by or through Subcontractor, all such payments received by Subcontractor shall be deemed to have been received by Subcontractor as trustee with those entitled to receive payment from Subcontractor as beneficiaries of such amounts, and Subcontractor shall hold such funds separately and utilize such amounts only for the purpose of making payment to these beneficiaries. In the event that Subcontractor subsequently determines that a beneficiary is not entitled to receipt of payment, Subcontractor shall return such unpaid funds to SteelFab.

5.1.3 **PAYMENT USE VERIFICATION.** The Subcontractor agrees that, if and when requested to do so by SteelFab, it shall furnish such information, evidence and substantiation as SteelFab may require with respect to the nature and extent of all obligations incurred by the Subcontractor for or in connection with the Work, all payments made by the Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefor. SteelFab shall have the right at all times to contact the Subcontractor's lower tier subcontractors and suppliers to ensure that the same are being paid by the Subcontractor for labor or materials furnished for use in performing the Subcontractor's Work on this Project. SteelFab shall have the right, at its sole discretion, to issue payments to Subcontractor by way of joint checks to Subcontractor and suppliers and/or vendors of Subcontractor, and Subcontractor agrees to cooperate fully in facilitating the making of such joint payments and executing all reasonable documents necessary to effect such payments

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including, without limitation, joint check agreements. Subcontractor shall establish and maintain a reasonable accounting system by which records are kept that enable SteelFab to readily identify all of Subcontractor's expenses, costs, payments (including to its workers, subcontractors and suppliers, unions, and benefit funds), obligations, budgets, and other financial information related to the Work or this Subcontract. Such records shall include, but not be limited to, all accounting records, written policies and procedures, subcontract files for all tiers, payment vouchers, ledgers, cancelled checks, contract amendments, change order information, insurance documents, and other similar information. SteelFab shall have the right to audit, examine, and make copies of all such records (whether written, electronic or another format) as SteelFab may determine, and Subcontractor shall facilitate and cooperate with SteelFab's efforts in this regard. Subcontractor shall impose similar obligations on its subcontractors and vendors to ensure that comparable records kept and SteelFab has the right to audit, examine and copy those records.

5.1.4 **PARTIAL LIEN WAIVERS AND AFFIDAVITS.** As an express condition precedent to payment, the Subcontractor shall provide, in the forms attached as Exhibits F and G or in a form as otherwise required by the General Contractor, Owner and/or SteelFab, sworn interim lien and claim waivers from the Subcontractor, and its subcontractors and suppliers for the completed Subcontractor's Work. Such waivers may be made conditional upon payment of a specific amount stated therein. The Subcontractor's Authorized Representative(s) designated in Section 1.2(b) of this Subcontract are hereby designated as authorized agents of Subcontractor to execute all lien waivers required of Subcontractor.

5.1.5 **SUBCONTRACTOR PAYMENT FAILURE.** In the event SteelFab has reason to believe that labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being properly paid, SteelFab shall give written notice of such claim or lien to the Subcontractor to demand that any progress payment shall be utilized to pay such obligations. If within three days of receipt of said notice, the Subcontractor does not:

(a) supply written evidence to the satisfaction of SteelFab that the monies owing to the claimant have been paid; or
(b) post a bond in a form and with surety satisfactory to SteelFab indemnifying the General Contractor, the Owner, SteelFab, SteelFab's surety, if any, and the premises from such claim or lien;

Then SteelFab shall have the right to exercise any or all of the following rights, until the claim or lien has been satisfied by the Subcontractor:

(a) withhold from any payments due or to become due to the Subcontractor for this Project or any other SteelFab project a reasonable amount to protect SteelFab from any and all loss, damage or expense including attorney's fees and other costs arising out of or relating to any such claim or lien;
(b) issue joint checks in payment of any payments due or to become due to the Subcontractor, payable to the Subcontractor and the claimant;
(c) make direct payments of sums due the Subcontractor to the claimant to satisfy such claims or liens.

5.1.6 **PAYMENT NOT ACCEPTANCE.** Payment to the Subcontractor (interim or final) is specifically agreed not to constitute or imply acceptance by SteelFab, the General Contractor or the Owner of any portion of the Subcontractor's Work nor shall it be evidence of the proper performance of the Work, , and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Subcontractor from any of its obligations under this Subcontract; nor shall entrance and use by the Owner constitute acceptance of the Work or any part thereof.

5.2 **PROGRESS PAYMENTS**.

5.2.1 **APPLICATION.** For Work performed during a payment period, the Subcontractor shall apply for a progress payment using SteelFab's standard Application for Payment, a copy of which is attached as Exhibit J. Applications shall be submitted to SteelFab at the address in Section 1. The application shall be for Work performed up to and including the last day of the pay period, indicating Work completed; and to the extent allowed under Section 5.2.4, materials suitably stored and protected during the payment period. Applications shall be accompanied by lien waivers from all sub-subcontractors and suppliers whose labor or materials are covered by the application; such waivers shall be in the form attached as Exhibit F.

5.2.2 **RETAINAGE.** Regardless of any agreements between the General Contractor, the Owner and SteelFab, or arrangements made by them, for the withholding or release of SteelFab's retainage, retainage shall be withheld by SteelFab from all progress payments made to Subcontractor. The amount of retainage withheld from each payment shall be equal to the amount of payment earned, multiplied by the percentage identified in Section 1.10 of this Subcontract. Retainage shall be released to Subcontractor only upon completion of all requirements for final payment as provided in Section 5.3 of this Subcontract, and provided that Subcontractor does not owe to SteelFab any sums as a result of Subcontractor's performance or non-performance on this or any other project.

5.2.3 **TIME OF APPLICATION.** "Pay period" as used herein is defined as beginning with the first day of each calendar month, and ending with the last day of each calendar month. The Subcontractor shall submit progress payment applications to SteelFab no later than the day of each payment period specified in Section 1.11 of this Subcontract.

5.2.4 **STORED MATERIALS.** Unless otherwise provided in the Subcontract Documents, and if approved in writing in advance by the General Contractor or the Owner, applications for payment may include materials and equipment not incorporated in the Subcontractor's Work but delivered and suitably stored and protected at the site or at some other location agreed upon in writing. Approval of payment application for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the General Contractor, the Owner and SteelFab to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and SteelFab's interest therein, including transportation to the site.

5.2.5 **TIME OF PAYMENT.** Receipt of payment by SteelFab from General Contractor or Owner for Subcontractor's Work is an express condition precedent to any and all payment obligations by SteelFab to Subcontractor. See Section 5.4. For projects where the Owner is not a governmental body, the requirements of any applicable state "prompt pay" or similar statutes relating to the timing of payments are hereby waived (to the extent permitted under applicable law) and in lieu of the payment periods and rates of interest contained in such statutes, it is hereby agreed that the Subcontractor shall receive its payment no later than seven days after the receipt thereof by SteelFab from the General Contractor or Owner and interest on any late payments shall only be payable out of the actual interest that SteelFab receives from the General Contractor or Owner and the amount of interest to be paid to the Subcontractor would be calculated on a pro rata basis based upon the ratio that the Subcontractor payment bears to the total Owner payment made to SteelFab. Progress payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made seven (7)

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business days after receipt by SteelFab of payment from the General Contractor or the Owner for such Subcontractor's Work, and provided that Subcontractor does not owe to SteelFab any sums as a result of Subcontractor's performance or nonperformance on this or any other SteelFab project.

5.3 **FINAL PAYMENT**.

5.3.1 **APPLICATION.** Upon completion and acceptance of the Subcontractor's Work by the General Contractor, the Owner, the Architect (or other applicable design professional) and SteelFab, and upon the Subcontractor's furnishing evidence of fulfillment of Subcontractor's obligations in accordance with the Subcontract Documents and Section 5.3.2, SteelFab shall, without unreasonable delay, forward the Subcontractor's application for final payment to the General Contractor and/or the Owner. The application shall be in the form of Exhibit J.

5.3.2 **REQUIREMENTS.** Before SteelFab shall be required to forward the Subcontractor's application for final payment to the General Contractor and/or the Owner, the Subcontractor shall submit to SteelFab:

(a) an affidavit and any other evidence satisfactory to Contractor that all payrolls, bills for materials and equipment, and all other indebtedness and claims connected with the Subcontractor's Work for which the General Contractor, the Owner, or its' property, or SteelFab, or SteelFab's surety, might in any way be liable, have been paid and released;

(b) consent of surety; if any, to final payment;

(c) satisfaction of required closeout procedures;

(d) other data or documents as required by the Subcontract Documents, SteelFab, the General Contractor, or the Owner, such as receipts, releases, as-built drawings etc.;

(e) Final lien and claim waivers in the forms attached as Exhibits H and I for it and its sub-subcontractors and suppliers, or to the extent and in such form as may otherwise be designated by SteelFab or the General Contractor or the Owner; and

(f) written warranties (and any required assignments thereof) for Subcontractor's materials, labor and equipment furnished under this Subcontract and the Subcontract Documents; and

(g) execution and delivery by the Subcontractor, in a form satisfactory to SteelFab of a general release running to and in favor of SteelFab, General Contractor and the Owner; and

(h) complete and full satisfaction of all claims, demands and disputes, and all obligations and responsibilities of Subcontractor, arising out of or related to the Subcontract, including those as between SteelFab and Subcontractor as well as those between Subcontractor and any third party.

Final payment shall constitute a waiver and release of any and all claims by the Subcontractor relating to the Project and Subcontractor's Work, but shall in no way relieve the Subcontractor of liability for third party claims, the obligations under the Subcontract Documents as well as those assumed under Section 10 hereof, or for faulty or defective Work.

5.3.3 **TIME OF PAYMENT.** Final payment of the balance due of the Subcontract Price shall be made to the Subcontractor:

(a) if applicable, upon receipt of the General Contractor's or Owner's (as the case may be) waiver of all claims related to the Subcontractor Work except for unsettled liens, unknown defective Work, and noncompliance with the Subcontract Documents or warranties; and

(b) seven (7) days after receipt by SteelFab of final payment from the Owner for such Subcontractor's Work, such receipt being a condition precedent to the obligation to make final payment to the Subcontractor. *See* Sections 5.2.5 and 5.4, which are incorporated by reference herein.

5.3.4 **RIGHT OF SETOFF.** If Subcontractor is indebted to SteelFab for any reason, whether related to this Project, another project, or otherwise, Subcontractor hereby expressly agrees to allow SteelFab to set off such amounts owed to SteelFab from any other payments due hereunder. The breach of any provision of any other subcontract between SteelFab and Subcontractor shall, at SteelFab's election, constitute a breach of this Subcontract and a breach of this Subcontract shall constitute a breach of any other subcontract between SteelFab and Subcontractor on any other project. SteelFab shall be entitled to offset, against any amounts due Subcontractor, any amounts due Subcontractor from SteelFab on any other project. Subcontractor's failure to perform shall include the failure of its sub-subcontractors to perform. Subcontractor's liability shall include but not limited to (a) damages or other delay costs payable by SteelFab to General Contractor or Owner (including liquated damages); (b) SteelFab's increased cost of performance, such as extended overhead and increased performance costs resulting from delays or improper work; (c) warranty or rework costs; (d) liabilities to third parties; (e) consultant's fees and (g) attorney fees and related costs.

5.4 **NON-PAYMENT BY GENERAL CONTRACTOR AND/OR OWNER**

5.4.1 **ASSUMPTION OF RISK-CONDITION PRECEDENT.** The Subcontractor agrees that SteelFab shall have no obligation to pay the Subcontractor for any Work done on this Project until SteelFab has been paid by the General Contractor or the Owner, as the case may be. The provisions of Section 5.2 and 5.3, stating the time and amount of progress and final payments, are subject to the condition that SteelFab shall receive from the General Contractor or the Owner interim, progress or final payments for amounts payable to the Subcontractor on account of Work done by the Subcontractor on this Project. The time when such payments shall be due the Subcontractor is expressly contingent upon and shall be postponed until SteelFab has received same from the General Contractor or the Owner, as the case may be. **THE SUBCONTRACTOR EXPRESSLY AGREES TO ACCEPT AND SHARE THE RISK THAT IT WILL NOT BE PAID FOR WORK PERFORMED BY IT IN THE EVENT THAT STEELFAB, FOR WHATEVER REASON, IS NOT PAID BY THE GENERAL CONTRACTOR OR THE OWNER FOR SUCH WORK.** The Subcontractor acknowledges that it relies for payment on the credit and ability to pay of the General Contractor or the Owner, and not of SteelFab. The Subcontractor agrees that payment by the General Contractor or the Owner to SteelFab for Work performed by the Subcontractor shall be a condition precedent to any payment obligation of SteelFab to the Subcontractor. The Subcontractor agrees that the liability of the surety on SteelFab's payment bond, if any, is subject to the same conditions precedent as are applicable to SteelFab's liability to the Subcontractor. These conditions apply to payments of every type, including progress payments, retention payments, change order payments, final payments or otherwise. This condition applies without regard to any provisions contained in the federal Miller Act or state Little Miller Act provisions and without regard to the reason that the General Contractor and/or the Owner has failed to pay.

5.4.2 **REMEDY.** If the General Contractor or the Owner or their designated agent does not authorize payment or SteelFab does not receive a payment due hereunder for any cause which is not the fault of the Subcontractor, SteelFab shall promptly inform the Subcontractor in writing. SteelFab also may, in its sole discretion, pursue with the assistance of the Subcontractor, the release by the General Contractor or the Owner of the payment due for the Subcontractor's Work. At the Subcontractor's request, SteelFab may institute all reasonable legal remedies to mitigate the damages and pursue

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full payment of the Subcontractor's application for payment including interest thereon. In that event, the cost for pursuing the Subcontractor's remedies, including attorney's fees, shall be Subcontractor's responsibility. SteelFab, at its discretion, may require that the Subcontractor make financial arrangements satisfactory to SteelFab before undertaking this effort and at all times during the progress thereof. Notwithstanding the foregoing, however, in no event shall SteelFab be liable to Subcontractor for any compensation not actually recovered by SteelFab on Subcontractor's behalf.

SECTION 6
CHANGES, CLAIMS AND DELAYS

6.1 **CHANGES.** Without nullifying this Subcontract, SteelFab may by written Subcontract Work Order or Subcontract Change Order, make changes in the Work within the general scope of this Subcontract and the Subcontractor shall perform such changes. Adjustments in the Subcontract Price or Schedule of Work, if any, resulting from such changes shall be set forth in a Subcontract Change Order. No such adjustment shall be made for any such changes performed by Subcontractor that have not been so ordered in writing by SteelFab, and approved by the General Contractor and/or the Owner. Any performance of changes by Subcontractor without a written Work Order or Change Order signed by SteelFab and without compliance with all Subcontract Documents results in a waiver by Subcontractor of any right to any additional compensation or time for such changes.

A Subcontract Change Order is a written instrument prepared by SteelFab and signed by the Subcontractor stating their agreement upon the change in the scope of the Work, and/or adjustment in the Subcontract Price or Schedule of Work. A Subcontract Work Order is a written instrument prepared by SteelFab directing a change in the Work and stating a proposed adjustment, if any, in the Subcontract Price or Schedule of Work or both. A Subcontract Work Order shall be used in the absence of agreement on the terms of a Subcontract Change Order.

6.2 **CLAIMS RELATING TO GENERAL CONTRACTOR OR OWNER.** The Subcontractor agrees to make all claims for which the General Contractor or the Owner (as the case may be) is or may be liable in the manner provided in the Subcontract Documents for like claims by SteelFab upon the General Contractor and/or the Owner.

Written notice of such claims shall be given by the Subcontractor to SteelFab within sufficient time for SteelFab to make such claims against the General Contractor and/or Owner in accordance with the Subcontract Documents or within five (5) calendar days prior to the beginning of the Subcontractor's Work or within five (5) calendar days of the event for which such claim is to be made, whichever shall first occur, otherwise such claims shall be deemed waived.

6.3 **CLAIMS RELATING TO STEELFAB.** The Subcontractor shall give SteelFab written notice of all claims not included in Section 6.2 within five (5) calendar days of the beginning of the event for which claim is made; otherwise, such claims shall be deemed waived.

All unresolved claims, disputes and other matters in question between SteelFab and the Subcontractor not relating to claims included in Section 6.2 shall be resolved in the manner provided in Section 16 herein.

6.4 **ADJUSTMENT IN SUBCONTRACT PRICE.** If a Subcontract Change Order or Subcontract Work Order requires an adjustment in the Subcontract Price, the adjustment shall be established by one of the following methods:

(a) mutual agreement on a lump sum with sufficient substantiating data to permit evaluation;
(b) unit prices already established in the Subcontract Documents or if not established by the Subcontract Documents, then established by mutual agreement for this adjustment; or
(c) to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

6.5 **SUBSTANTIATION OF ADJUSTMENT.** If the Subcontractor does not respond promptly or disputes the method of adjustment under Section 6.4, the method and the adjustment shall be determined by SteelFab on the basis of reasonable costs and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Price, an allowance for overhead and profit proportionate to SteelFab's recovery of overhead and profit, if any, under the Subcontract Documents. Regardless of any disagreement as to the adjustment, Subcontractor shall perform the changed Work without delay to the Project.

The Subcontractor shall maintain for SteelFab's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order or Subcontract Work Order:

(a) labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and State Workers' Compensation insurance;
(b) costs of materials, supplies and equipment, whether incorporated in the Work or consumed, including transportation costs; costs of renting, either from SteelFab or from others, of machinery and equipment other than hand tools;
(c) costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
(d) costs of additional supervision and field office personnel services necessitated by the change.

6.6 **DELAY.** If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Change Order to the extent any extension is obtained by SteelFab from the General Contractor or the Owner, and the Schedule of Work shall be revised accordingly.

SteelFab shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of delays caused by any person not a party to this Subcontract unless SteelFab has first recovered the same on behalf of the Subcontractor from said person, and then only to the extent of such recovery after payment of all SteelFab's attorney's fees and other costs relating thereto. It is expressly understood and agreed by the Subcontractor that apart from recovery from said person, the Subcontractor's sole and exclusive remedy for delay or any time-impact resulting or relating to delay, whether resulting in acceleration, ripple effect, out-of-sequence work, inefficiencies, unabsorbed overhead or any other time or impact related costs or damages, regardless of type or cause, including but not limited to delays or other impacts caused in whole or in part by SteelFab, shall be an extension in the time for performance of the Subcontractor's Work, with Subcontractor expressly waiving any right to delay or other time related or time impact damages except as provided in Section 6.6 or as set forth as to acceleration or re-sequencing in Section 3.4

6.7 **LIQUIDATED DAMAGES ASSESSED BY GENERAL CONTRACTOR OR OWNER.** If the Contract Documents between the General Contractor and/or the Owner and SteelFab permit the General Contractor or the Owner to assess SteelFab for liquidated or other damages for delay beyond the completion dates set forth in the Subcontract Documents (interim, milestone and final), and such damages are so assessed, then SteelFab shall be entitled to assess same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay.

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SECTION 7
STEELFAB'S AUTHORIZED REPRESENTATIVES

7.1 SteelFab has designated one or more persons in Section 1.2(a) of this Subcontract who shall be SteelFab's authorized on-site and off-site representative(s). Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

SECTION 8
SUBCONTRACTOR'S OBLIGATIONS

8.1 **OBLIGATIONS DERIVATIVE.** The Subcontractor shall be bound to SteelFab by the terms of this Subcontract and by the terms of the Subcontract Documents and the Contract Documents between the General Contractor and/or the Owner and SteelFab, and shall assume toward SteelFab all the obligations and responsibilities which SteelFab, by those Contract Documents, assumes toward the General Contractor or the Owner. The Contract Documents are incorporated by reference herein and made a part hereof.

8.2 **RESPONSIBILITIES.** The Subcontractor shall furnish and pay for all of the labor, supervision, materials, tools, equipment, services, and incidentals necessary for the proper performance of the Subcontractor's Work. The Subcontractor shall provide a list of proposed sub-subcontractors and suppliers, and further is responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work and to insure the proper matching and fitting of the Work with contiguous work.

8.3 **WORKMANSHIP.** Every part of the Subcontractor's Work shall be executed in strict accordance with Subcontract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be the best of its kind performed by others engaged in the same trade. All materials used in the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work and shall be new and of the highest quality, except such materials as may be expressly provided in the Subcontract Documents to be otherwise.

8.4 **TEMPORARY SERVICES.** The Subcontractor shall furnish all temporary services and facilities necessary to perform its Work.

8.5 **COORDINATION.** The Subcontractor shall:

(a) cooperate with SteelFab and all others whose work is dependent upon the progress of the Subcontractor's Work;

(b) specifically note and immediately advise SteelFab of any interference with the Subcontractor's Work; and

(c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

8.6 **SHOP DRAWINGS AND SUBMITTALS.** The Subcontractor shall submit shop drawings, product data, samples, and any other submittals required by the Subcontract Documents expeditiously and in such manner and sequence so as to avoid delay in the progress of the Work or the activities of SteelFab or other subcontractors and/or within time to meet any General Contract requirements for same. The Subcontractor shall be responsible for accuracy and conformity with Subcontract Documents and other submittals. Unless specifically noted by SteelFab, action on shop drawings and submittals by SteelFab shall not be deemed to authorize deviation from the Subcontract Documents.

The review of shop drawings or other submittals by SteelFab shall not constitute an undertaking by SteelFab, nor does it constitute an acceptance by SteelFab that such submittal is in conformance with the Subcontract Documents.

8.7 **PROGRESS REPORTS AND MEETINGS.** The Subcontractor shall furnish periodic progress reports on the Work including information on the status of materials and equipment which may be in the course of preparation or manufacture.

8.8 **AUTHORIZED REPRESENTATIVE AND NOTICE.** The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s): (a) on-site and (b) off-site, which persons are identified in Section 1.2(b). Such authorized representative(s) shall be the only person(s) to whom SteelFab shall issue instructions, orders or directions, except in an emergency. Notices as required by this Subcontract and other communications made to any one of the Subcontractor's Authorized Representative(s) shall be binding as if given to the Subcontractor. The authorized representative shall attend project meetings as required. Subcontractor's key personnel and their positions are set forth on Exhibit B. At all times that Subcontractor has personnel at the Project site, it shall also have present an authorized representative of Subcontractor who shall supervise and direct Subcontractor's personnel and be responsible for their actions. Such representative shall be fluent in spoken and written English and shall be authorized to act on behalf of Subcontractor and communications to such representative shall be binding upon Subcontractor.

8.9 **PROVISION FOR INSPECTION.** The Subcontractor shall notify SteelFab when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish SteelFab, the Owner, and their representatives adequate means and facilities for inspecting the Work, including materials at the site or any place where materials under this Subcontract may be in the course of storage, preparation, process, manufacture or treatment. The Subcontractor shall, within twenty-four (24) hours after receiving written notice from SteelFab, proceed to take down all portions of the Work and remove from the premises all materials whether worked or unworked, which the Architect, General Contractor, Owner or any of its design consultants shall condemn as unsound, defective or improper or as in any way failing to conform to this Subcontract or the Plans, Specifications or other Contract Documents, and the Subcontractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof

8.10 **CLEAN-UP.** The Subcontractor shall follow SteelFab's clean-up directives and those of the Subcontract Documents, and

(a) at all time keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and

(b) broom clean each Work area daily prior to discontinuing Work in the same.

Should Subcontractor fail, after 24 hours' notice from SteelFab, to appropriately clean an area as required by this Section, SteelFab shall assess the Subcontractor for the actual daily clean-up cost or a daily charge of $150.00, whichever is greater, for each day such condition is not remedied.

8.11 **SAFETY PRECAUTIONS AND PROCEDURES**.

8.11.1 **GENERAL.** The Subcontractor shall take reasonable safety precautions with respect to performance of the Work, shall comply with all safety measures and protocols applicable to the Project whether initiated by General Contractor, SteelFab or other parties representing the interest of Owner or General Contractor. In addition, Subcontract shall comply with Occupational Safety and Health Standards and other applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property and in accordance with requirements of the Subcontract Documents and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of Subcontractor's failure or failures

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of Subcontractor's agents, employees, materialmen and suppliers to so comply. Subcontractor shall indemnify, defend and hold harmless SteelFab, General Contractor and Owner (including their agents and employees) from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees, claims or liability for harm to persons (including death resulting therefrom,) or property, expenses incurred pursuant to or attendant to any hearing or meeting or any other applicable cost caused or alleged to have been caused by Subcontractor's failure to fulfill the covenants set forth in this paragraph, including but not limited to the use of SteelFab's or others' equipment, hoist, elevators, and/or scaffolds. The Subcontractor shall report to SteelFab within 24 hours any personal injury or property damage occurring at the site.

Subcontractor will provide as part of their Site Specific Erection Plan**, a schedule to conduct daily safety inspections, and at a minimum shall comply with all Federal, State, and Local safety laws, rules, regulations, or ordinances relating to safety inspections, including but not limited to OSHA standard 1926.20(b)(2). Subcontractor's safety programs SHALL provide FREQUENT and REGULAR inspections of the job site, materials and equipment, with such inspections to be made by competent and qualified persons designated by Subcontractor's project superintendent, with SteelFab reserving the right to reject such person if incompetent or unqualified, or if said person fails to undertake the duties described herein.**

Subcontractor shall provide safety vests, clothing, equipment, eye protection, fall protection and any and all other items required by law and good safety practices.

8.11.2 **COMPLIANCE WITH SAFETY MATERIAL(S).** Subcontractor shall comply with SteelFab's, the General Contractor's and/or the Owner's safety manuals, if any.

8.11.3 **ALCOHOL AND DRUG FREE PROJECT.** The Subcontractor recognizes that an alcohol and drug free Project is necessary to ensure the safety of the persons employed at the Project site by the Owner, the General Contractor, SteelFab, the Subcontractor and others, and to protect the health and safety of the community. The Subcontractor agrees that its employees shall not distribute, be under the influence of, or be in possession of, any form of alcohol or unlawful drug while at the Project site or while in the performance of Project-related activities. Subcontractor's employees shall also be prohibited from using or being subject to the effects of any lawful drug while at the Project site or in the performance of Project-related activities without approval of the employee's supervisor. The Subcontractor acknowledges that it is familiar with SteelFab's Alcohol and Drug Free Project Policy. The Subcontractor represents that it has established written procedures for compliance with this policy and agrees that it will implement and enforce the policy throughout the course of the Project. The Subcontractor shall indemnify and hold the General Contractor, the Owner and SteelFab harmless from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or related to Subcontractor's implementation, application, or enforcement of compliance procedures.

If any employee or agent of Subcontractor is found to be under the influence of alcohol or an illegal drug, or a legal drug without approval of the employee's supervisor, Subcontractor, if requested by SteelFab, shall immediately terminate said employee. If Subcontractor refuses to do so such refusal shall be an event of default, and SteelFab shall have all remedies set forth in Section 11. A second infraction of this zero-tolerance drug and alcohol policy during the performance of the Work shall subject Subcontractor to immediate termination for default without further notice.

8.12 **ENVIRONMENTAL AND MISCELLANEOUS MATTERS**.

8.12.1 If Hazardous Chemicals of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to exposure of any employees on the site to such substance, provide a current copy of the Material Safety Data Sheet (MSDS) for such Hazardous Chemical in sufficient time to permit compliance with such laws by SteelFab, other subcontractors and other employees on the site. The Subcontractor shall be responsible for the removal of any Hazardous Chemicals and Hazardous Substances which are brought to Project sire in connection with the Work but are not used or consumed.

8.12.2 In the event the Subcontractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl ('PCB'), or other Hazardous Substances which have not been rendered harmless, the Subcontractor shall immediately stop Work in the area affected and report the condition to SteelFab in writing. The Work in the affected area shall resume in the absence of asbestos, PCB, or other Hazardous Substances, or when it has been rendered harmless, by written agreement of SteelFab and Subcontractor. The Subcontractor shall not be required to perform without consent any Work relating to asbestos, PCB, or other Hazardous Substances.

8.12.3 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the General Contractor, the Owner, SteelFab, other subcontractors, and their respective agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos, PCB, or other Hazardous Chemical or Hazardous Substance and has not been rendered harmless; provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by failure to comply with Sections 8.12.1 or 8.12.2 or by negligent acts or omissions of the Subcontractor, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, regardless of whether or not such claim, damage, loss or expenses is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 8.12.3.

8.12.4 For purposes of this Subcontract, (a) the term "Hazardous Chemical" means any chemical defined as hazardous in the Hazardous Communication Standard, 29 C.F.R. §§ 1926.59 or 29 C.F.R. §§ 1910.1200, promulgated pursuant to the occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*; and (b) the term "Hazardous Substances" means any substance, including solid, liquid or gaseous material, which is listed or defined as "hazardous" in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S. §§ 9601, et *seq*. or regulations promulgated pursuant thereto; oil and oil waste as those terms are defined in the Clean Water Act 33 U.S.C. §§ 1251, *et seq*., or regulations promulgated pursuant thereto; and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. §§ 301 i, *et seq*., or regulations promulgated pursuant thereto; and includes any other substance defined by federal, state or local statute, regulation, or ordinance relating to any hazardous, toxic or dangerous waste or substance.

8.13 **PROTECTION OF THE WORK AND PROPERTY.** The Subcontractor shall take all necessary precautions to protect properly the Subcontractor's Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the

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work or property of the General Contractor, the Owner, SteelFab or others, the Subcontractor shall promptly remedy such damage to the satisfaction of SteelFab, or SteelFab may so remedy and deduct the cost thereof from any amounts due or to become due the Subcontractor.

8.14 **COMPLIANCE WITH LAWS.** The Subcontractor shall at all times and at its own cost comply with all federal, state and local statutes, codes, rules, regulations, ordinances, executive orders and other laws relating to the Project and the Work. The Subcontractor warrants and represents that it is authorized to transact business in the state and local jurisdictions where the Project is located, that it holds any and all licenses necessary to perform the Work, and that it is not currently in violation of any statutes, codes, rules, regulations, ordinances, orders, or other laws on any projects in which Subcontractor is presently engaged.

8.15 **PERMITS, FEES AND LICENSES.** The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary for performance, completion or use of the Subcontractor's Work.

8.16 **TAXES, WAGES, FRINGE BENEFITS, ASSESSMENTS.** The Subcontractor shall timely comply with all requirements applicable to payment of taxes, wages, fringe benefits, retirement benefits, unemployment compensation and other assessments, and shall upon request furnish SteelFab and the General Contractor or the Owner with satisfactory proof of compliance.

8.17 **LAYOUT RESPONSIBILITY AND LEVELS.** Either SteelFab or the General Contractor shall establish principal axis lines of the building and site whereupon the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to SteelFab or others by reason of the Subcontractor's failure to set out or perform its Work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

8.18 **MATERIALS FURNISHED BY OTHERS.** In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure satisfactory and proper installation. Loss or damage due to acts or inactions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

8.19 **SUBSTITUTIONS.** No substitutions shall be made in the Subcontractor's Work unless permitted in the Subcontract Documents and only then upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions. The Subcontractor shall indemnify SteelFab for any increased costs incurred by SteelFab as a result of such substitutions, whether or not the Subcontractor has obtained approval thereof.

8.20 **USE OF STEELFAB'S EQUIPMENT.** The Subcontractor, its agents, employees, sub-subcontractors or suppliers shall not use SteelFab's equipment without the express written permission of SteelFab's authorized representative.

If the Subcontractor or any of its agents, employees, suppliers or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of SteelFab, the Subcontractor shall be liable to SteelFab, as provided in Section 14, for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely and exclusively to the negligence of SteelFab's employees operating such equipment.

8.21 **ASSIGNMENT AND SUBCONTRACTING.** The Subcontractor shall not assign this Subcontract, nor its proceeds, nor subcontract the whole or any part of the Subcontractor's Work, without the prior written approval of SteelFab. SteelFab may assign its rights and obligations under this Subcontract freely in its sole, absolute discretion.

8.22 **NON-CONTRACTED SERVICES.** The Subcontractor agrees that no claim for non-contracted construction services rendered or materials furnished shall be valid unless the Subcontractor provides SteelFab notice:

(a) prior to furnishing of the services or materials, except in an emergency affecting the safety of persons or property;
(b) in writing of such claim within three (3) days of first furnishing such services or materials; and
(c) the written charge for such services or materials to SteelFab no later than the fifteenth day (15) of the calendar month following that in which the claim originated.

8.23 **COORDINATION.** Subcontractor is responsible for coordinating its Work areas and schedule with other trades in order to perform the overall project as a team.

8.24 **NORMAL WORK WEEK.** Unless otherwise directed in writing by SteelFab or unless otherwise provided in the General Contract, the Subcontractor's Work shall be performed during a five (5) day Work week extending from Monday through Friday. If the Subcontractor's Work becomes behind schedule the Subcontractor shall Work overtime during the normal Work week and on Saturdays, Sundays and holidays. The extended Work week shall be at no cost to SteelFab.

SECTION 9
SUBCONTRACT BONDS

9.1 **PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS.** Unless otherwise provided at Section 1.12 of this Subcontract, the Subcontractor shall provide a separate Performance Bond and Labor and Material Payment Bond, in a form and with surety satisfactory to SteelFab in the full amount of this Subcontract. The premiums for these Bonds shall be paid by the Subcontractor and the cost thereof is included in the Subcontract Price.

9.2 **ASSURANCE OF PERFORMANCE.** If Performance and Payment Bonds are not required of the Subcontractor under Section 9.1, then throughout the duration of this Subcontract, SteelFab may require such bonds and the Subcontractor shall provide same. Said bonds shall be in full amount of this Subcontract in a form and by surety satisfactory to SteelFab. The Subcontractor shall be compensated for the cost of same pursuant to progress payments made hereunder after the Subcontractor furnishes the required bonds. The reimbursement amount for the bonds shall not exceed the actual rate for such subcontract bonds. In the event the Subcontractor shall fail to promptly provide such requested bonds, SteelFab may terminate this Subcontract (and/or Subcontractor's performance) and re-let the Work to another Subcontractor and all SteelFab's costs and expenses incurred thereby shall be paid by the Subcontractor.

SECTION 10
WARRANTY AND CORRECTIONS OF WORK

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10.1 **WARRANTY.**

10.1.1 The Subcontractor hereby guarantees the Work to the full extent provided in the Subcontract Documents. Without limiting the foregoing, the Subcontractor warrants to the General Contractor, the Owner and SteelFab that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents; that the Work will be performed in the best workmanlike manner, be free from defects in materials and workmanship; and that the Work will conform with the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the sole judgment of SteelFab. This warranty shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Subcontract Documents. Subcontractor agrees to defend, indemnify, and hold SteelFab, Owner, General Contractor and Architect harmless from any losses, costs or other damages or expenses (including attorney fees) resulting from any breach of the foregoing warranty. Subcontractor shall bear all expenses incurred in connection with the inspection, removal, repair, correction, handling and transportation of defective or nonconforming Work or Work for which acceptance has been revoked. In addition, at SteelFab's option, Subcontractor shall: (i) bear the costs of replacement materials, equipment and labor and all damages incurred by SteelFab and (ii) pay SteelFab for all expenses incurred in and delay caused by remedying defective or otherwise nonconforming Work. The provisions of this paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents and shall survive the making and acceptance of final payment and/or termination of this Subcontract.

10.1.2 The Subcontractor further agrees to execute and assign any additional guarantees or warranties specified in the Subcontract Documents.

10.1.3 The Subcontractor shall promptly correct Work rejected by SteelFab, or which fails to conform to the requirements of the Subcontract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed.

10.1.4 The Subcontractor shall be obligated to correct Work that is found not to be in accordance with the Subcontract Documents before or after Substantial Completion to the same extent that SteelFab is bound to the General Contractor or the Owner for correction of said Work. The Subcontractor shall begin the corrective Work immediately after receipt of written notice from SteelFab to do so. This obligation shall survive acceptance of the Work and termination of this Subcontract and/or Subcontractor's performance. This obligation is in addition to, and not in limitation of, the warranty obligations under Section 10.1. It is the intent of this Subcontract that warranty obligations are not restricted by Subcontractor's obligations to correct defective Work.

10.2 **SATISFACTION OF WARRANTY AND CORRECTIVE WORK OBLIGATIONS.** The Subcontractor agrees to satisfy warranty and corrective work obligations without cost to the General Contractor, the Owner or SteelFab. In the event of Subcontractor's failure to satisfy these obligations, all costs for design, labor, supervision, materials, travel (including meals, lodging and mileage), equipment and overhead (at 18% of costs) incurred by SteelFab in the ~~investigation, review~~, redesign and correction of such problem shall be paid to SteelFab by Subcontractor. Design and service team costs shall be computed using SteelFab's standard hourly rates. A verbal request for corrective action by SteelFab to the Subcontractor, together with a written confirmation of the action requested, will be provided. If corrective action is not initiated within 5 days and completed within a time reasonable under all the circumstances, SteelFab will itself commence investigation and implement corrective measures at the Subcontractor's expense. SteelFab's rights hereunder are in addition to all other rights and remedies pursuant to the Subcontract Documents, and the institution of such measures by SteelFab shall in no way relieve Subcontractor of its primary responsibility for performing and warranting the Work in accord with the Subcontract Documents.

SECTION 11
RECOURSE BY STEELFAB

11.1 **DEFAULT-NOTICE TO CURE.** If the Subcontractor refuses or fails to supply enough properly skilled Workers, proper materials, or maintain the Schedule of Work, or fails to achieve Substantial or Final Completion, or it fails to make prompt payment for its Workers, sub-subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to indemnify SteelFab as required by this Subcontract or by law, or otherwise is guilty of a breach of any provision of the Subcontract Documents and fails within two (2) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then SteelFab, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

(a) supply such number of workers and quantity of materials, equipment and other facilities as SteelFab deems necessary for the completion of the Subcontractor's Work, or any part thereof which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of such costs, including reasonable overhead, profit, as well as for other damages, and attorney's fees and dispute resolution costs;

(b) contract with one or more additional subcontractors to perform such part of the Subcontractor's Work as SteelFab shall determine will provide the most expeditious completion of the total Work, and charge the cost thereof to the Subcontractor;

(c) withhold payment of any monies due the Subcontractor pending corrective action or completion of the Subcontractor's Work to the extent required by and to the satisfaction of SteelFab; and

(d) set-off SteelFab's damages attributable to Subcontractor's default against any monies due Subcontractor under this Subcontract or under any other contract between SteelFab and the Subcontractor. In the event of an emergency affecting the safety of persons or property, SteelFab may proceed as above without notice.

11.2 **TERMINATION BY STEELFAB.** If the Subcontractor fails to commence and satisfactorily continue correction of a default under the Subcontract, including but not limited to those defaults identified in Section 11.1, within three (3) working days after receipt by the Subcontractor of the notice issued under Section 11.1, then SteelFab may either immediately terminate Subcontractor's performance (or this Subcontract) or issue a second written notice, by hand delivery or by certified mail, to the Subcontractor and its surety, if any, that shall state that if the Subcontractor fails to commence and continue correction of a default within three (3) days after receipt by the Subcontractor of the second notice, SteelFab may terminate this Subcontract (or Subcontractor's performance) and use any materials, equipment and/or employ such Workers or Subcontractors as SteelFab deems necessary to complete the Work.

All of the costs incurred by SteelFab in so performing the Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such

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expense may exceed the unpaid balance of the Subcontract Price, and agrees to pay said amount within seven (7) working days of receipt of an invoice from SteelFab.

SteelFab has the right for whatsoever reason to terminate this Subcontract for its convenience and if so, SteelFab shall be liable to the Subcontractor, if at all, solely for the reasonable value of Work performed by the Subcontractor prior to SteelFab's termination, including reasonable overhead and profit on work properly performed, less prior payments made. Subcontractor shall not be entitled to recover any other direct, incidental or consequential damages, including, but not limited to, profits attributable to unperformed Work. In the event a termination for cause pursuant to Section 11 is later deemed to have been improper, then the termination shall be converted to, and treated as, a termination for convenience, and Subcontractor shall have only those rights and remedies set forth herein for a termination for convenience.

11.3 **BANKRUPTCY**.

11.3.1 **TERMINATION ABSENT CURE.** If Subcontractor files a petition under the Bankruptcy Code, this Subcontract shall terminate if the Subcontractor or the Subcontractor's trustee (a) rejects the Subcontract, or (b) if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Subcontract, or (c) is otherwise unable to comply with the requirements for assuming this Subcontract under the applicable provisions of the Bankruptcy Code.

11.3.2 **INTERIM REMEDIES.** If the Subcontractor is not performing in accordance with the Schedule of Work at the time a petition in bankruptcy is filed, or at any subsequent time, SteelFab, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Subcontract and provide adequate assurance of its ability to perform hereunder, may take such steps as are reasonably necessary to maintain the Schedule of Work. SteelFab may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

11.4 **SUSPENSION BY STEELFAB.** SteelFab may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of SteelFab. Phased or interrupted Work when required shall not be deemed a suspension of Work.

The Subcontractor shall notify SteelFab in writing within five (5) calendar days after receipt of SteelFab's order of the effect of such order upon the Subcontractor's Work. To the extent, and only to the extent, allowed SteelFab under the Subcontract Documents, the Subcontract Price or Schedule of Work shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Subcontract caused by such suspension, delay, or interruption. Neither the Subcontract Price, nor the Schedule of Work, shall be adjusted under this Section for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible.

11.5 **WRONGFUL EXERCISE.** If SteelFab wrongfully exercises any option under this Section 11, SteelFab shall be liable to the Subcontractor, if at all, solely for the reasonable value of Work performed by the Subcontractor prior to SteelFab's wrongful action, including reasonable overhead and profit, less prior payments made. Subcontractor shall not be entitled to recover any other incidental or consequential damages, including, but not limited to, profits attributable to unperformed Work.

11.6 **REMEDIES CUMULATIVE.** All the rights and remedies of SteelFab in the event of a default by Subcontractor under this Subcontract shall be cumulative to the greatest extent permitted by law and shall be in addition to all other rights and remedies available to SteelFab at law or in equity.

SECTION 12
SUSPENSION OR TERMINATION BY THE GENERAL CONTRACTOR OR OWNER

12.1 **SUSPENSION BY GENERAL CONTRACT OR OWNER.** Should the General Contractor or Owner suspend SteelFab's contract or any part of SteelFab's contract which includes the Subcontractor's Work, SteelFab shall so notify the Subcontractor in writing and, upon receipt of said notice, this Subcontractor shall immediately suspend the Work.

12.2 **TERMINATION BY GENERAL CONTRACTOR OR OWNER.** If the General Contractor or Owner, for any reason, terminates SteelFab's contract or any part that includes the Subcontractor's Work, SteelFab shall so notify the Subcontractor in writing and upon receipt of said notice, this Subcontract shall also be terminated and the Subcontractor shall immediately stop the Work.

12.3 **CLAIMS FOR GENERAL CONTRACTOR OR OWNER SUSPENSION OR TERMINATION.** In the event of such General Contractor or Owner suspension or termination, SteelFab's obligation to the Subcontractor is limited to the extent of SteelFab's recovery from the General Contractor or Owner, on the Subcontractor's behalf, under the Contract Documents. SteelFab agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of a General Contractor or an Owner suspension or termination and to permit the Subcontractor to prosecute said claim, in the name of SteelFab, for the use and benefit of the Subcontractor. Administrative and overhead costs, attorney's fees and other expenses incurred by SteelFab while assisting the Subcontractor in the prosecution of such claim shall be deducted from any recovery paid to Subcontractor.

12.4 **STIPULATION.** The provisions of this Section 12 shall not be construed to create any obligation upon SteelFab to pursue any claim or litigation on behalf of the Subcontractor.

SECTION 13
LABOR RELATIONS

13.1 **LABOR HARMONY.** Subcontractor and its lower tier subcontractors shall not employ anyone in the Subcontractor's Work whose employment may be objectionable to SteelFab, the General Contractor or the Owner. All labor used throughout the Work by Subcontractor or any of its lower tier subcontractors shall be of a standing or affiliation that will permit the Project to be carried on harmoniously and without delay, and that will not, in any case, or under any circumstances, cause any disturbance, interference, or delay to the progress of the Project.

~~13.2 **LABOR DISPUTES.** In respect of all Work covered by this Subcontract, Subcontractor and persons in privity with it agree to recognize and comply with all agreements that SteelFab has, or may have, with respect to any union, or unions, concerning labor and conditions applicable to the Work covered by this Subcontract.~~

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Subcontractor and all persons in privity with it agree that, where its Work or any of the Work of SteelFab or other subcontractors is stopped or delayed or interfered with by strikes, slow-downs or Work interruptions or the threats thereof, resulting from an act or failure to act of Subcontractor and/or those in privity with it, or any of their employees or agents, then SteelFab, at its sole option, shall afford Subcontractor twenty-four (24) hours' notice wherein Subcontractor shall execute a requisite union contract or contracts, in order to maintain the harmony of the Work, or make such other arrangements, satisfactory to SteelFab that will ensure the harmonious continuation of the Work. Subcontractor's failure to so comply within the allotted time shall be an event of default for which SteelFab may, at its sole option, terminate this Subcontract pursuant to Section 11.

SECTION 14
INDEMNIFICATION

14.1 To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless SteelFab and all of its related entities, General Contractor/Construction Manager, Architect, and Owner, including for each its respective parents, subsidiaries, agents, directors, officers, consultants, and employees ("Indemnitees") from and against any and all claims (including claims relating to liability contractually assumed by Subcontractor), damages, losses, judgments, awards, fines, injuries, settlements and expenses, including but not limited to attorneys' fees and expenses, arising out of, resulting from, or relating to the Subcontract and/or the Work or performance of the Work (including loss of use resulting therefrom), if caused in whole or in part by Subcontractor's default, failure to perform the Work in strict compliance with the Subcontract Documents, breach of the Subcontract, or negligent acts or omissions or willful misconduct of Subcontractor and/or its Sub-Subcontractors, Sub-Sub-Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such indemnity obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as a party or person described in this Paragraph 14.1. Subcontractor's obligation to indemnify shall not include any obligation to indemnify which is prohibited by applicable law. To the extent that any portion or obligation under this Paragraph is held to be unenforceable, such portion or obligation shall be severed and the remainder of this subparagraph shall be enforced, and if rendered entirely unenforceable, then Subcontractor agrees to indemnify the Indemnitees, their officers and employees, from liabilities, damages, losses and costs, including not limited to, reasonable attorney's fees, to the extent caused by the breach of this Subcontract, negligence, recklessness, or intentional wrongful misconduct of the Subcontractor and persons employed or utilized by Subcontractor in the performance of this Subcontract. The foregoing indemnification shall apply irrespective of whether claims are asserted by a party, by its employees, agents or subcontractors, or by unrelated third parties. Subcontractor shall not be required to indemnify an Indemnitee for the consequences of such Indemnitee's sole negligence. If any demand is made against Subcontractor by an Indemnitee pursuant to this Section 14.1, any payment due or which thereafter becomes due to Subcontractor, shall be held by SteelFab to cover such losses and expenses, including all reasonable attorney's fees. In the event that the money then due or that thereafter becomes due to Subcontractor in insufficient to cover such costs, Subcontract shall, upon demand, reimburse SteelFab for any such costs.

14.1.1 To the fullest extent permitted by law, in addition to the express duties to indemnify, protect and hold harmless, there is a duty, separate from the duties in Section 14.1, to defend each Indemnitee in connection with a claim, demand or suit described in Section 14.1. The duty to defend includes all costs of litigation, attorney's fees, expert's and consultant's fees, settlement costs and reasonable expenses in connection with the claim or litigation, regardless of whether the claims made for loss, damage or property damage are valid or groundless as long as the claims asserted can be causally connected to Subcontractor's alleged or actual failure to timely or fully perform as described in Section 14.1, or to an alleged or actual negligent act or omission or intentional wrongful act as described in Section 14.1. If an Indemnitee tenders the defense of a claim to Subcontractor and Subcontractor fails or neglects to assume the defense thereof, any Indemnitee facing liability for the claim may defend, compromise and/or settle any such suit or action, and Subcontractor will be bound and obligated to reimburse each Indemnitee for the amount expended by it in defending, settling or compromising any such claim, or in the amount expended in paying any judgment rendered therein, together with all reasonable attorney's fees and costs of litigation incurred by reason of the defense, settlement or compromise of such claims, so long as the Indemnitee demonstrates that the settlement or compromise was made in good faith.

14.2. Subcontractor specifically agrees that this indemnification obligation shall include the obligation to defend, indemnify, and hold SteelFab harmless from any assertion of security interests, and/or liens or claims of liens by Sub-Subcontractors, Sub-Sub-Subcontractors, suppliers, materialmen or any other person or entities which provided labor, materials, equipment, and/or services to the Project and/or for the Work. In the event that security interests or liens or claims of liens are asserted or filed by anyone in relation to labor, materials, services, and/or equipment furnished by any Sub-Subcontractor, Sub-Sub-Subcontractor, suppliers or other persons or entities, Subcontractor agrees to have the same discharged at Subcontractor's own expense within ten (10) days of receipt of notice from SteelFab, by procuring and posting a bond with the appropriate court or authorities or by settlement or otherwise. Any and all such security interests and liens or claims of liens shall be discharged by Subcontractor, regardless of any dispute relating thereto. Should Subcontractor fail to discharge such security interests or liens or claims of liens within such ten (10) day period, SteelFab may, at its option discharge such liens or claims of liens by bond, settlement or otherwise and Subcontractor shall be liable to SteelFab for all damages, costs, losses and expenses incurred by SteelFab (including, without limitation, all attorneys' fees).

14.3 Subcontractor acknowledges and agrees that the Work and all labor and materials herein contracted for are being provided solely for the development and improvements of the Project and that any claim of lien of Subcontractor or its Sub-Subcontractors or suppliers with respect to labor or materials furnished for the improvement of the Project is, and shall be, subordinate and inferior to the lien and security title of any deed to secure debt and security agreement encumbering the Project. Such subordination is and shall be effective without the need for any further written agreement or instrument of Subcontractor; but Subcontractor nonetheless agrees promptly to execute and deliver, in recordable form, any such written lien subordination agreement or acknowledgement which SteelFab may from time to time request. Subcontractor agrees to require each Sub-Subcontractor to assume, toward Subcontractor, the subordination of lien rights set forth in this Paragraph 14.4.

14.4 In claims against any person or entity indemnified under Section 14.1 by an employee of Subcontractor, a Sub-Subcontractor, or a supplier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Subcontractor or a Sub-Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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14.5 Subcontractor's indemnity obligations shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), punitive damages (if any) arising out of, or in connection with, any (1) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by Subcontractor, a Sub-Subcontractor, a Sub-Sub-Subcontractor, a supplier or any person or entity for whom Subcontractor is responsible, (2) means, methods, procedures, techniques, or sequences of execution or performance of the Work, or (3) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Subcontract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by Subcontractor, a Sub-Subcontractor, or any person or entity for whom any of them are responsible.

14.6 Subcontractor shall indemnify and hold harmless SteelFab from and against any costs and expenses (including reasonable attorney's fees and expenses) incurred by SteelFab in enforcing any of Subcontractor's defense, indemnity, and hold-harmless obligations under this Agreement.

14.7 Subcontractor acknowledges that the first $100.00 of the Subcontract consideration paid to the Subcontractor constitutes specific consideration for all indemnity obligations undertaken by the Subcontractor in the Agreement.

14.8 **PATENTS.** Except as otherwise provided by the Subcontract Documents, the Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims of infringement or alleged infringement of any patent, copyright, trade secret or other proprietary right of any third party relating to the Work, arising out of the Subcontractor's work, which may be brought against SteelFab, the General Contractor or Owner, and shall indemnify SteelFab, the General Contractor and Owner for all loss, including ll costs, expenses and attorney's fees.

14.9 Notwithstanding any other provision contained in this Subcontract, the provisions of this Section 14 will survive the termination of the Subcontract for any reason whatsoever. All indemnification obligations of Subcontractor under this Agreement shall remain in full force and effect as to claims occurring after this Subcontract is terminated or completed, and shall not be limited by the insurance requirements contained herein.

14.10 In the event that this Subcontract is, for whatever reason, executed after Work on the project has begun, then SteelFab and Subcontractor agree that they intend the indemnity and defense provisions of Section 14 to have application from the outset of Subcontractor's Work.

14.11 The foregoing obligations of Subcontractor shall not be affected or limited in any way by any insurance required of or provided to Subcontractor under this Subcontract.

SECTION 15
INSURANCE

15.1 **SUBCONTRACTOR'S INSURANCE.** Prior to commencing Work, the Subcontractor shall procure and maintain insurance of the types and in the amounts described herein from insurer(s) authorized to transact business in the state where the Work or operations will be performed, at Subcontractor's sole expense, including payment of all premiums, deductibles and self-insured retentions applicable to such policies or claims thereunder. The insurance described herein shall be maintained uninterrupted for the duration of the Project, including warranty periods, and shall protect SteelFab, and others as required by the contract documents, for liabilities in connection with Work performed by or on behalf of Subcontractor, its agents, representatives, employees, vendors, suppliers or subcontractors. Subcontractor shall permit SteelFab to examine the actual policies upon request. The insurance provisions contained in the Agreement are intended to be a separate and distinct obligation on the part of the Subcontractor. Therefore, these provisions are enforceable and Subcontractor shall be bound thereby regardless of whether or not the indemnity provisions of the Subcontract Agreement are determined to be enforceable, in whole or in part, in the jurisdiction in which the Project is located.

15.1.1 **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY.**

(a) Statutory coverage as proscribed by the jurisdiction where the Project is located. Said coverage shall be for the benefit of Subcontractor's owners, partners and employees who are engaged in the performance of the Work. Regardless of the statutory or regulatory ability of any owner, partner or employee to opt out of the workers compensation coverage, all persons performing work under this Subcontract, whether at the Project site or not, shall be covered by workers compensation insurance within the minimum limits set forth in the Subcontract.

(b) Employees Liability:
$500,000 - bodily injury for each accident
$500,000 - policy limit for bodily injury by disease
$500,000 - for each employee for bodily injury by disease

(c) Waiver of Subrogation. The Workers Compensation and Employer's Liability policy shall contain a waiver of subrogation as to SteelFab and other Indemnitees (as defined in Section 14).

(d) The insurance required in this Section 15.1.1 shall be provided by Subcontractor whether or not Subcontractor utilizes some or all of its own employees, leased employees, temporary employees or other labor services. Subcontractor shall require any firm providing leased employees to meet all the same workers compensation and employers liability coverages as are required of the Subcontractor in this Section, as well as the notice and waiver of subrogation obligations found elsewhere in Section 15. Such employee leasing company shall (i) amend the Workers Compensation to include an Alternate Employer endorsement naming Subcontractor as the alternate employer and (ii) maintain Employers Liability for a limit of $1,000,000/$1,000,000/$1,000,000. A copy of the Alternate Employers endorsement naming Subcontractor as alternate employer must accompany the certificate of insurance from the leasing company.

15.1.2 **COMMERCIAL GENERAL LIABILITY.**

(a) Limits of Liability:
$2,000,000 - general aggregate
$2,000,000 - products completed operations hazard and contractual liability
$1,000,000 - personal and advertising injury

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$1,000,000 - each occurrence

(b) Coverage shall be written on ISO occurrence form CG 0001 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, contractual liability, products-completed operations, personal injury, and damages arising from defective Work, including the costs to repair the damaged Work. Contractual liability coverage shall be sufficient to meet the requirements of the Subcontract, including defense costs and attorney's fees assumed under contract, which shall be paid in addition to the limit of liability.

(c) The general aggregate limit shall apply separately to each project.

(d) Additional Insureds shall mean SteelFab, General Contractor, Owner and other entities required to be added as additional insureds by the Subcontract Documents (as defined by Section 2.2). Subcontractor shall provide additional insured status to the Additional Insureds using ISO Additional Insured Endorsement forms CG 2010 0704(on-going operations) and CG 2037 0704(completed operations) or a substitute form(s), acceptable to SteelFab, providing equivalent coverage. Subcontractor shall maintain additional insured status for the Additional Insureds under the products-completed operations coverage for the time required to satisfy the statute of repose of the state in which the project is located. Verification of additional insured status shall be furnished to SteelFab by including a copy of the endorsement(s) with the Certificate of Insurance. In the event that any insurer issues a reservation of rights to any Additional Insured as respects coverage required by this Section, the Additional Insured shall be entitled to employ independent counsel at Subcontractor's expense.

(e) Unless expressly approved by SteelFab, Subcontractor's obligation to name SteelFab and other parties as Additional Insureds cannot be satisfied by Subcontractor arranging for the issuance of an Owner and Contractor Protective liability insurance policy.

(f) This insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the Additional Insureds.

(g) The requirement for naming SteelFab, General Contractor, Owner and other entities required to be added as additional insureds, is in addition to and not in any way in substitution for all other protection provided under the Subcontract Agreement, including Article 14 (indemnification).

(h) Limits shown in this requirement are minimum acceptable limits and in no way limit available coverage to the Additional Insureds. Subcontractor's Commercial General Liability coverage shall contain no provision providing that the limits available to an Additional Insured are less than limits available to Subcontractor.

(i) If the liability coverage does not contain the standard ISO separation of insureds provision, or a substantially similar clause, the liability policy shall be endorsed to provide cross liability coverage. In as much as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsement, with the exception of limits of liability, the policy shall operate in the same manner as if there were a separate policy covering each insured. There shall be no restrictions in the policy that limits coverage for a claim brought by an Additional Insured against a named insured.

(j) There shall be no endorsements or modifications of the liability insurance required in this Section that limits the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or residential construction without express approval of SteelFab.

(k) After completion of the work, Subcontractor shall maintain general liability coverage to include liability coverage for damage to Subcontractor's completed work equivalent to that provided under ISO form CG 00 01. Such liability coverage shall include additional insured insurance per the provisions of Section 15.1.2(d).

15.1.3 **AUTOMOBILE LIABILITY.**

(a) Limits of liability: $1,000,000 per accident

(b) Such insurance shall cover liability arising from the use, loading, unloading or operations of any auto, including those owned, hired or otherwise operated or used by or on behalf of Subcontractor.

(c) SteelFab, General Contractor, Owner and other entities as required by the Subcontract Documents shall be included as additional insureds.

15.1.4 **PROFESSIONAL LIABILITY.** If Subcontractor's scope of work includes any design or other professional services usually associated with architect or engineering work product, Subcontractor shall carry Professional Liability (Errors and Omissions) coverage with a minimum limit of $1,000,000 per occurrence. Professional services for the purpose of this paragraph include, but are not limited to, performing one or more of the following: signing or stamping shop drawings, design, consulting, engineering or building information modeling ("BIM") services. If coverage is provided by a claims-made policy, the retroactive date shall preceed the start date of any Work and coverage shall be renewed annually, or include an extended reporting period , for the coverage duration required by statute of repose for the state in which the Project is located.

If any such design or professional services are contracted by Subcontractor to a separate party, Subcontractor shall communicate and require this insurance to said party.

15.1.5 **UMBRELLA OR EXCESS LIABILITY.** Subcontractor shall provide an occurrence-based Umbrella/Excess Liability policy which shall provide excess liability coverage over its employer's liability, general liability and automobil liability insurance. The policy must be written on a "following-form" coverage basis.

(a) Minimum limits of liability: $3,000,000 per occurrence
$3,000,000 aggregate

(b) Umbrella/Excess Liability shall include as Insureds all entities that are Additional Insureds on the General Liability coverage as defined in Section 15.1.2(d).

(d) Policy aggregate limit must apply on a per project basis.

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(e) This Umbrella/Excess Liability insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to, maintained by the Additional Insureds.

15.1.6 **PROPERTY INSURANCE.** Subcontractor shall procure, at Subcontractor's own expense, property insurance for tools, equipment and other business property, whether owned, leased or borrowed, used by Subcontractor in the performance of the work. The property insurance shall extend to equipment, materials and supplies stored off the project site or in transit to the project site. Subcontractor waives all recovery and subrogation rights against SteelFab, General Contractor and Owner for any such loss or damage. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's costs from any applicable Builder's Risk policy which may provide coverage for said loss

15.1.7 **WAIVER OF SUBROGATION and OTHER RIGHTS of RECOVERY.** Subcontractor agrees to waive all rights of subrogation and other rights of recovery against SteelFab, General Contractor, Owner, other parties named as additional insureds, and all of their respective agents and employees, for recovery of loss and/or damages to the extent covered, or should have been covered, by the insurance required of Subcontractor in the Subcontract Documents. All policies, as allowed by law and excluding Professional Liability, must contain a provision that the insurer recognizes and will honor this waiver agreement. Such waivers shall be provided by specific endorsement if the policy itself does not otherwise provide the required waiver.

Subcontractor shall cause each lower-tier subcontractor to contractually waive all rights of subrogation and other rights of recovery against SteelFab, General Contractor, Owner and other parties named as additional insureds, as respects loss, damage, claims, expenses, suits or demands, howsoever caused.

SteelFab and Subcontractor waive all rights against each other, the General Contractor, and the Owner, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or other similar insurance covering improvements or materials at the Project site, except such rights as they may have to the proceeds of such insurance and except as to damages not covered by insurance. Subcontractor shall require similar waivers from its lower-tier subcontractors

15.1.8 **CANCELLATION, RENEWAL OR MODIFICATION.** All insurance policies shall contain a provision that the coverages afforded thereunder shall not be canceled, non- renewed, nor restrictive modifications added, until at least thirty (30) days prior written notice had been given to SteelFab. Additionally, Subcontractor shall be required to provide written notice to SteelFab within twenty-four (24) hours of an actual or proposed cancellation, suspension or non-renewal of the required insurance. In the event of a threatened cancellation for non-payment of premium, SteelFab may, at its option, pay the same on behalf of the Subcontractor and deduct the payment from the amounts then or subsequently owing to the Subcontractor.

15.1.9 **EVIDENCE OF INSURANCE.** Prior to commencing Work, Subcontractor shall furnish SteelFab with a certificate(s) of insurance for all insurances require by this Section 15. Such certificate shall be on an ACORD form. No progress payment will be made unless SteelFab has been furnished evidence of all required coverages and endorsements. Subcontractor warrants and represents that such certificates of insurance are true and accurate representation of Subcontractor's existing insurance coverage. The description of operations section of the certificate shall state the following:

- The project name and SteelFab project number.
- SteelFab, General Contractor, Owner and other entities as required by the Subcontract Documents are additional insureds as respects General Liability, Automobile Liability and Umbrella Liability. This statement must identify the specific form number of the endorsements or policy language that conveys the additional insured coverage. A copy of General Liability additional insured endorsements or conforming policy language must be attached to the certificate.
- General Liability, Automobile Liability and Umbrella Liability coverages are primary and non-contributory as respects any other insurance or self-insurance maintained by the Additional Insureds.
- General Liability and Umbrella/Excess Liability aggregate limits apply on a per project basis.
- Umbrella Liability is follow form coverage in excess of General Liability, Automobile Liability and Employers Liability.
- Waiver of Subrogation applies to all coverages where permitted by law.
- The specific coverage and deductible amount for any coverage with a deductible greater than $25,000.
- Renewal certificates shall be provided to SteelFab prior to the expiration of any of the insurance policies specified herein.

Subcontractor shall be liable to SteelFab for any failure to provide or maintain the required coverage or limits. The following actions do not constitute a waiver of Subcontractor's obligation to maintain insurance that is in full compliance of the insurance requirements set forth herein: (1) acceptance by SteelFab of a certificate from Subcontractor that does not satisfy full compliance with these insurance requirements, (2) failure of SteelFab to demand such certificates or other evidence of full compliance with these insurance requirements, or (3) failure of SteelFab to identify a deficiency from the certificate or other evidence that is provided.

Failure to maintain insurance required by Section 15 shall constitute an event of material breach and default pursuant to Section 11 of this Agreement.

15.1.10 **OCIP/CCIP PROGRAMS**. Subcontractor may be required by General Contractor or Owner to enroll in an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP). Such requirements may or may not include the enrollment of SteelFab in the OCIP or CCIP. Subcontractor shall strictly comply with all requirements of the program in which it is required to enroll and, if required by the terms of the OCIP or CCIP, the Subcontract Amount/Purchase Order Amount shall be reduced per the directions therein to represent the insurance coverages replaced by the OCIP or CCIP.

The insurance requirements contained in this Section 15 shall apply to all exposures, operations and locales not included in the OCIP or CCIP scope of coverage.

When Subcontractor is enrolled in an OCIP or CCIP, Subcontractor shall refer to the OCIP/CCIP manual for any additional insurance requirements or obligations. The OCIP/CCIP manual is hereby incorporated by reference to this Agreement.

15.1.11 **LOWER-TIER SUBCONTRACTOR'S INSURANCE.** All lower-tier subcontractors (i.e. sub-subcontractors) are subject to the same insurance requirements as Subcontractor. Subcontractor must cause all sub-subcontractors providing equipment, materials and/or services directly to Subcontractor in connection with Subcontractor's work to furnish the same indemnity and insurance with sufficient limits as reasonably determined by SteelFab to protect the interests of SteelFab, General Contractor and Owner. Each sub-subcontractor must name SteelFab, General Contractor,

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Owner and all other entities as required by the contract documents as additional insured under their General Liability, Automobile Liability and Umbrella/Excess Liability policies as provided in Section 15.1.9, and all such insurance shall be on a primary basis. All insurance maintained by SteelFab, General Contractor and Owner shall be considered excess and non-contributory. Subcontractor shall require all sub-subcontractors to waive their rights of subrogation in each if their respective contracts as required of Subcontractor hereunder and show evidence thereof. Subcontractor must obtain certificates of insurance evidencing such coverage and provide same to SteelFab upon request. Subcontractor shall verify that each sub-subcontractor has satisfied the Workers Compensation requirements, as required by law, including but not limited to collecting all required certificates of insurance.

15.1.12 **GENERAL INSURANCE PROVISIONS**

(a) Deductibles and Self-Insured Retentions. The funding of deductibles or self-insured retentions maintained by Subcontractor shall be the sole responsibility of Subcontractor, including any deductibles or self-insured retention amount applicable to claims involving SteelFab, General Contractor or Owner as additional insureds. Any deductible or self-insured retention greater than $25,000 must be communicated to SteelFab prior to commencing operations on the Project and stated on the certificate(s) of insurance filed with SteelFab. Subcontractor shall be considered a self-insurer with respect to its additional insured obligations under Section 15.1.2(d) for any deductible or self-insured retention applied by its insurer to any of the Additional Insureds.

(b) All insurance is to be issued by companies acceptable to SteelFab, must be provided by companies having an AM Best rating of A- VII or better, and must be authorized to do business in the state where the Project is located.

(c) No Representation of Coverage Adequacy. By requiring the insurance set forth in this Section 15, SteelFab does not represent that coverage or limits will necessarily be adequate to protect Subcontractor, and such coverage and limits shall not be deemed as a limitation on Subcontractor's liabilities under the indemnities obligations owed to SteelFab in this Agreement, or any other provision of the Subcontract Documents.

(d) SteelFab reserves the right to require that Subcontractor provide certified copies of any and all insurance policies and endorsements to which this Agreement is applicable.

(e) The insurance requirements set forth in this Section 15 are independent from all other obligations of Subcontractor under this Agreement, and apply whether or not required by any other provision of this Agreement. The insurance coverages maintained by Subcontractor shall not limit any of Subcontractor's indemnity obligations or other liabilities under the Subcontract. Insurance coverages maintained by Subcontractor that exceed the minimum requirements in this Section 15 shall be applicable to the Subcontract.

(f) Reports of Accident and Injury. All incidents and near misses, regardless of severity, shall be reported to SteelFab, Inc. in writing withing 24 hours of incident occurrence.

(g) Breach of Insurance Requirements. Subcontractor's failure to obtain and maintain the insurance coverages set forth in this Section 15 or any other attachment shall constitute a material breach of the Subcontract Agreement. In such event, in addition to any and all other rights and remedies contained in the Subcontract Agreement, (i) SteelFab may, at its option, terminate the Subcontractor for default, (ii) SteelFab may, at its option, purchase such coverage and backcharge the premium and associated costs to Subcontractor, (iii) SteelFab and any Additional Insured may require that Subcontractor pay for all attorney fees, expenses and liabilities as a result of any claim or lawsuit for which coverage would have been provided to SteelFab and the Additional Insureds under Subcontractor's insurance program, but for a breach by Subcontractor.

SECTION 16
ARBITRATION AND DISPUTE RESOLUTION

16.1 **STEELFAB'S OPTION TO MEDIATE, ARBITRATE OR LITIGATE.** All claims, disputes and matters in question arising out of, or relating to, this Subcontract, the Project or the breach thereof, except for claims which have been waived by interim and final lien and claim waivers and by the making or acceptance of final payment and the claims excluded or limited by Sections 6.2 and 6.6 shall be resolved by mediation, arbitration, or litigation, at SteelFab's sole election. The site for mediation and arbitration shall be in the appropriate jurisdiction where the Project is located, or in the State and county of SteelFab's office as identified in Section 1.0, as selected by SteelFab. In the event of a conflict between this provision and the dispute resolution provisions of the General Contract, this provision shall control. Subcontractor expressly consents and agrees to submit to the personal jurisdiction and venue in the appropriate jurisdiction where the Project is located, and/or the State and county of SteelFab's office as identified in Section 1.0. Subcontractor irrevocably waives, to the fullest extent permitted by law, the defenses of lack of personal jurisdiction and/or an inconvenient forum to the maintenance of such action or proceeding in any such court or arbitral body.

16.2 **DISPUTE RESOLUTION PROCEDURE.** If and only if SteelFab so elects, prior to a demand for arbitration or initiation of litigation, as elected by SteelFab, the parties shall proceed as follows, as an express condition precedent to Subcontractor commencing formal claims against SteelFab relating to or arising out of the dispute:

(a) Subcontractor asserting a claim shall do so in writing and within the notice period, if any, established for such claims by the Subcontract Documents. In the absence of a notice period set by the Subcontract Documents, the notice of claim shall be given as soon as practicable but in no event no later than five (5) calendar days after Subcontractor is aware of the event from which the claim arises. If no notice is given, the claim is waived. SteelFab may give notice to Subcontractor of any claim by SteelFab against Subcontractor at any time.

(b) The parties shall then attempt in good faith to resolve the dispute during the next twenty (20) calendar days before pursuing any other means of dispute resolution.

(c) If the matter remains unresolved, the parties shall endeavor to resolve the dispute by proceeding at SteelFab's election to non-binding mediation conducted under the Commercial Mediation Rules of the American Arbitration Association.

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(d) If the matter has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) days of the commencement of such procedure (which period may be extended by mutual agreement), or if SteelFab elects not to participate in a mediation, then such dispute shall be resolved either by binding arbitration before the American Arbitration Association in accordance with the Construction Arbitration Rules of the American Arbitration Association or before JAMS in accordance with its rules, or, at SteelFab's election, by litigation in federal or state court. The site for the arbitration or litigation shall be at the location of the Project, or in the State and county of SteelFab's office as identified in Section 1.0, at SteelFab's election. The arbitration panel shall consist at SteelFab's election of either one or three independent and impartial persons who have experience in the construction industry or construction law. If a three member panel is selected, the Subcontractor and SteelFab shall each appoint one member of the panel and the third member shall be appointed according to the aforementioned Rules.

16.3 **AWARD.** The arbitration award shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

16.4 **WORK CONTINUATION AND PAYMENT.** Unless otherwise agreed in writing, the Subcontractor shall continue with the Work and maintain the Schedule of Work pending dispute resolution, and, if so, SteelFab shall continue to make undisputed payments earned by the Subcontractor in accordance with this Subcontract, subject to the provisions of the Subcontract Documents.

16.5 **CONSOLIDATION OF CLAIMS**. To the extent not prohibited by SteelFab's contracts with others, at SteelFab's sole election, the claims and disputes of the General Contractor, Owner, SteelFab and Subcontractor and other subcontractors and suppliers involving a common question of fact or law shall be heard by the same arbitrator(s) in consolidated arbitration proceedings or in the same litigation in a consolidated proceeding.

16.6 **DOCUMENT PRODUCTION AND EXCHANGE OF ARBITRATION EXHIBITS.** After a demand for arbitration, each party shall have the right to immediate production of the records of the other party relating to the Project for inspection and copying except for those portions which are covered by an unwaived attorney-client privilege or which were prepared in anticipation of arbitration or litigation. No later than fifteen (15) days prior to the arbitration hearing, the parties shall make available to each other, for inspection and copying, the exhibits, photographs, and other documents which they intend to introduce or refer to during the arbitration, and shall provide the other with a "may call" witness list. Any additional discovery shall be at the agreement of the parties or by order of the Arbitrator. The Arbitrator shall allow limited reasonable discovery.

16.7 **ATTORNEY'S FEES, ARBITRATION COSTS, AND COURT COSTS.**

(a) Attorney's fees and expenses shall be awarded to the prevailing party.

(b) The prevailing party shall recover its attorney's fees and court costs incurred in any judicial proceedings necessary to obtain (i) enforcement of this arbitration clause or (ii) confirmation, enforcement, or collection of an arbitration award or court judgment, or (iii) in any appeal by the losing party.

(c) To the extent the Subcontract Documents require Subcontractor to pay SteelFab's attorney's fees and expenses, SteelFab shall be entitled to recover such fees and expenses as a matter of right.

SECTION 17
MISCELLANEOUS PROVISIONS

17.1 **GOVERNING LAW**. This Subcontract shall be governed by and interpreted in accordance with the laws of the State of SteelFab's office as identified in Section 1.0applicable to agreements executed and delivered solely within that State. For purposes of conflict of laws analysis, the same State's laws shall control.

17.2 **SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision, with the partial or completely invalid provision being severed. The failure of either party hereto to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of this Subcontract or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

17.3 **STEELFAB'S CONTINUING RELATIONSHIP WITH GENERAL CONTRACTOR, CONSTRUCTION MANAGER AND/OR OWNER.** Subcontractor acknowledges the likelihood that SteelFab will have a continuing business relationship with the General Contractor, Construction Manager and/or the Owner, or at least the opportunity for a continuing business relationship, that may result in future work for SteelFab. Subcontractor agrees that it will not solicit, negotiate, or appropriate for itself future work with the Owner and that it will not interfere with SteelFab's relationships with them or its prospects for future work.

17.4 **TITLES.** The titles given to the Sections of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose.

17.5 **ATTORNEY'S FEES.** The Subcontractor shall reimburse SteelFab for all of SteelFab's attorney's fees, court costs and other expenses incurred in enforcing or declaring the Subcontractor's obligations under this Subcontract, incurred in exercising any right or remedy hereunder or under law or equity in the event of a default by the Subcontractor, or incurred in any litigation or arbitration between the parties and/or in which SteelFab, without its fault, becomes involved by reason of the existence of this Subcontract.

17.6 **WRITTEN NOTICES.** Written notices to SteelFab required by this Subcontract shall be addressed to SteelFab's address in Section 1 of this Subcontract. Written notices to Subcontractor required by this Subcontract shall be sent to the address given in Section 1.1 of this Subcontract. Any notice sent by mail shall be deemed to have been received the third (3rd) calendar day after the date of mailing. Notice may also be delivered by hand delivering, email, or fax, in which event notice shall be deemed effective on the date such notice is given.

17.7 **ENTIRE AGREEMENT.** This Subcontract is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the parties hereto and supersedes all prior or contemporaneous negotiations, representations, understandings or agreements, either written or oral. This Subcontract shall not be modified except by a written instrument signed by the parties' authorized representative. This Subcontract has been freely negotiated and accepted by both parties and shall not be construed against either party.

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17.8 **INTEREST.** Subcontractor acknowledges that this is a commercial transaction and that SteelFab has the right to charge Subcontractor and Subcontractor agrees to pay 1.5% per month on any amount owed by Subcontractor to SteelFab under the provisions of this Subcontract until such amount is paid in full.

17.9 **CONSEQUENTIAL DAMAGES WAIVER.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL STEELFAB BE LIABLE TO SUBCONTRACTOR FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, DATA, PROFITS, BUSINESS, REPUTATION OR FINANCING WHETHER OR NOT STEELFAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17.10 **PROFESSIONAL SERVICES**. The Subcontractor may be required to procure professional services in order to carry out its responsibility for construction means, methods, techniques, sequences and procedures for such services specifically called for by the Subcontract Documents. The Subcontractor shall obtain these professional services and any design certifications required from licensed design professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner and Architect shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. The Subcontractor shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

17.11 **DIGITIZED DOCUMENTS**. If the Contract Documents require the exchange of documents and data in electronic or digital form, prior to any such exchange, the parties shall agree on a written protocol governing all exchanges which, at a minimum, shall specify: (A) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (B) management and coordination responsibility; (C) necessary equipment, software and services; (D) acceptable formats, transmission methods and verification procedure; (E methods for maintaining version control; (F) privacy and security requirements; and (G) storage and retrieval requirements. The parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

17.12 **JOINT DRAFTING**. The Parties expressly agree that this Subcontract was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Subcontract shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

17.13 **SURVIVAL**. All warranty indemnity, defense, hold harmless, insurance, dispute resolution, attorney's fee and damages limitation provisions shall survive the termination or expiration of this Subcontract and/or termination of Subcontractor's performance under this Subcontract. In addition, every provision that by its terms is intended to survive termination or expiration of this Subcontract will do so.

17.14 **HEADINGS.** The headings of any paragraph, article or section of this Subcontract are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof..

SECTION 18
SPECIAL PROVISIONS

18.1 **BINDING EFFECT.** This Subcontract shall be binding upon and inure to the benefits of SteelFab, Subcontractor, and their successors and assigns, provided however that Subcontractor may not assign this Subcontract without SteelFab's written permission.

18.2 **INCONSISTENCIES AND OMISSIONS.** Should inconsistencies or omissions appear in the Subcontract Documents, it shall be the duty of the Subcontractor to so notify SteelFab in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, SteelFab shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with SteelFab's instructions.

18.3 **CROSS REFERENCE OF DOCUMENTS.** Subcontractor shall review all specifications, drawings, reports and existing conditions which affect the relationship of Subcontractor's Work to the complete project, and be responsible for that relationship.

18.4 **SUBCONTRACT DOCUMENTS.** The Subcontract Documents include this Subcontract as well as the documents below that are identified as follows and incorporated by reference:

(a) Scope of Work, Drawings, Specifications, Documents.....Exhibit A
(b) Key Personnel.....Exhibit B
(c) Construction Schedule .....Exhibit C
(d) Alternates and Unit Prices.....Exhibit D
(e) G702 and G703 .....Exhibit E
(f) Subcontractor's Interim Lien and Claim Waivers w/Sub List .....Exhibit F
(g) Sub-Subcontractor's Interim Lien and Claim Waivers .....Exhibit G
(h) Subcontractor's Final Lien and Claim Waivers .....Exhibit H
(i) Sub-Subcontractor's Final Lien and Claim Waivers.....Exhibit I
(k) Drawing List .....Exhibit K
(l) Insurance Requirements.....Exhibit L
(m) Job Site Safety Requirements .....Exhibit M
(n) Other Provisions .....Exhibit N
(o) The Contract Documents identified in any contract between the General Contractor or the Owner and SteelFab, as well as any contract between the General Contractor and the Owner, conditions of such contract(s) (general, supplementary, special or other conditions), drawings, specifications, addendums, change orders, written modifications, and other documents therein

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IN WITNESS WHEREOF, the Parties have caused this Subcontract to be executed by their duly authorized representatives, under seal, as of the day and year first above written.

SUBCONTRACT NUMBER: 32443NC500

CONTRACTOR

SteelFab, Inc.

DocuSigned by:
Colby Mavropoulos
2AEB8233CA8D483...
Signature

Colby Mavropoulos
Printed Name

Project Manager
Title

SUBCONTRACTOR

Ben Hur Construction Co
Company Name

DocuSigned by:
Scott Bullerdick
77B3B665D66B4DE...
Signature

Scott Bullerdick
Printed Name

Vice-President/Division Manager
Title

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EXHIBIT 2

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Steel Construction

Founded 1955

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SteelFab, Inc.
P. O. Box 19289
Charlotte, NC 28219
704-394-5376
PMA: ccollins

SUBCONTRACT – Exhibit A

To:
Ben Hur Construction Co
2191 LEMAY FERRY RD

ST. LOUIS, MO

Subcontract #: 32479NC500
Date: 6/7/2023
Job: 324-7-9 Ascend Elements Leaching Build
Job Address: 6505 Johns River Road

Hopkinsville, KY 42240

Description: Ben Hur Construction

Scope of Work: Erection Only

Item Number	Description	Amount
1	Exhibit A & Subcontract Agreement	3,528,578.00
2	Exhibits- Billing Forms	0.00
3	Erector Checklist	0.00

Total Subcontract Amount: $3,528,578.00

Inclusions:

Unload, erect, bolt, plumb, and weld structural steel, joists, metal deck & edge angles per AISC, SDI, SJI and OSHA regulations

Subcontractor will be responsible for checking the Bill of Lading accompanying each load to ensure all pieces have been delivered. If any members are found to be missing, Subcontractor will immediately notify SteelFab's project manager.

Subcontractor will unload each delivery of material pertinent to its scope of work with 30 minutes. If for any reason the delivery cannot be completely unloaded within 30 minutes, Subcontractor shall immediately notify SteelFab's project manager.

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SteelFab, Inc. requires that no bundle of decking may be placed on steel joists until all bridging has been installed and anchored and all joist bearing ends attached. This work must be done in accordance with manufacturer's installation instruction and OSHA standards.

Job site safety is the subcontractor's responsibility.
All General Contractor's and OSHA Safety Rules and Regulations will be strictly enforced.

SteelFab will not accept nor fund any fines, penalties, back-charges, change order deducts, etc. associated with subcontractor's inability to follow COVID-19 safety requirements as mandated by the controlling general contractor, local, state and federal governments nor their own site-specific safety plan. Subcontractor is required to submit a site-specific safety plan which specifically addresses precautions and protocols related to COVID-19 safety protocol. SteelFab will provide its corporate policy pertaining to COVID-19 upon request for reference only

Signed:

Ben Hur Construction Co		SteelFab, Inc.	
DocuSigned by: Scott Bullerdick 77B3B665D66B4DE...	08/28/2023	DocuSigned by: Colby Mavropoulos 2AEB8233CA8D483...	08/28/2023
By	Date	By	Date

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Steel Construction
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SUBCONTRACT AGREEMENT

BETWEEN

SteelFab, Inc.

AND

Ben Hur Construction Co

PROJECT NAME AND NUMBER: 324-7-9 Ascend Elements Leaching Build

SUBCONTRACT NUMBER: 32479NC500

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SUBCONTRACT AGREEMENT

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SteelFab, Inc.

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SUBCONTRACT AGREEMENT

STEELFAB, INC.,

SUBCONTRACT NO. 32479NC500

SECTION 1

AGREEMENT

This Subcontract Agreement (hereinafter "Subcontract") is made and entered **6/7/2023** by and between STEELFAB, INC. AND ITS AFFILIATED COMPANIES ("SteelFab") and the Subcontractor named below (the "Subcontractor") for performance of part of the work on the project identified below ("Project"). This Subcontract is not binding on SteelFab unless and until executed by SteelFab. This Subcontract is also contingent on approval of Subcontractor by the Owner, the construction manager and/or the general contractor, if so required by SteelFab's contract with the Owner, construction manager and/or the general contractor. The earliest to occur of Subcontractor's commencement of performance of the Work, acceptance of any payment or execution of this Subcontract shall constitute Subcontractor's unqualified acceptance of this Subcontract and all terms and conditions herein.

1.0 **SteelFab, Inc.** ADDRESS, PHONE AND FACSIMILE:

P. O. Box 19289
Charlotte, NC 28219
704-394-5376

1.1 SUBCONTRACTOR NAME, ADDRESS, PHONE AND FACSIMILE:
Ben Hur Construction Co
2191 LEMAY FERRY RDSTE 200
ST. LOUIS, MO

Subcontractor ☒ is ☐ is not a Corporation FEIN# **43 0178210**
Personal Guaranty ☐ is ☒ is not required.

1.2 AUTHORIZED REPRESENTATIVES

a. For SteelFab (see Section 7)
On site: _____
Off site:

b. For Subcontractor (see Section 8.8)
On site: _____
Off site:

1.3 PROJECT NAME AND ADDRESS:

324-7-9 Ascend Elements Leaching Build
6505 Johns River Road
Hopkinsville, KY, 42240

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1.4 GENERAL CONTRACTOR/CONSTRUCTION MANAGER NAME AND ADDRESS:

Turner

1.5 OWNER NAME AND ADDRESS:

Ascend Elements – Westborough - MA

1.6 ARCHITECT NAME AND ADDRESS:

PTAC – Pensacola, FL

1.7 DESCRIPTION OF WORK (Exhibit A):

See Attached Subcontract EXHIBIT A for Scope of Work **32479NC500**

1.8 COMPLETION OF SUBCONTRACTOR'S WORK (see Section 3.2)

a. Weeks to Substantial Completion: **TBD**

b. Weeks to Final Completion: **TBD**

1.9 SUBCONTRACT PRICE (see Section 4) **3,528,578.00**

Three million five hundred twenty-eight thousand five hundred seventy-eight (Dollars)

1.10 RETAINAGE (see Section 5.2.2) **10.000**

1.11 PROGRESS PAYMENT APPLICATION DATE

20th day of each calendar month (see Section 5.2.3)

1.12 PERFORMANCE BOND & LABOR & MATERIAL PAYMENT BOND

☐ Are ☒ Are not required (see Section 9.1)

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SECTION 2

SCOPE OF WORK

2.1 **SUBCONTRACTOR'S WORK**. SteelFab contracts with the Subcontractor as an independent contractor to supply, perform and pay for the Work described in the Scope of Work (the "Work") set forth generally on Exhibit A in strict accordance with the Subcontract Documents (as defined in Section 2.2), as well as all work reasonably inferable as necessary to produce the results intended by the Subcontract Documents, except to the extent work is specifically indicated in the Subcontract Documents to be the responsibility of others. The Subcontractor shall perform such Work under the general direction of SteelFab. Subcontractor alone shall be solely responsible for and have control over job site safety for the Work and the construction means, methods, techniques, sequences and procedures and for coordinating its Work under the Subcontract Documents. The presence of and review of the Work by employees, agents and consultants of SteelFab shall be for SteelFab's benefit only and shall not operate in any manner to relieve Subcontractor from its responsibilities. The Subcontractor shall perform each activity necessary or incidental to complete the Work, which is described more particularly, but not exclusively, on Exhibit A, including but not limited to furnishing all the work, labor, services, materials, equipment, tools, scaffolds, appliances and all other things necessary for performing and completing the Work. The provisions of this Subcontract and Exhibit A are intended to complement each other, but if there is any irreconcilable inconsistency Exhibit A shall govern.

2.2 **SUBCONTRACT DOCUMENTS**. In addition to this document, the documents which form this Subcontract and which are binding on the Subcontractor (collectively the "Subcontract Documents") include the contract and the contract documents identified in any contract between SteelFab and the party with whom SteelFab has a contract for the performance of the Work, whether that be the General Contractor, Construction Manager, and/or the Owner, or other entity as the case may be (referred to herein as "General Contractor"), and/or any contract documents between any General Contractor and the Owner or other entity that are in turn binding on SteelFab, all of which are incorporated by reference herein (together, "Contract Documents") and all Modifications issued subsequent hereto. The documents referenced in Section 18.4 are also a part of the Subcontract Documents.

Subcontractor assumes toward SteelFab all of the duties, obligations and responsibilities that SteelFab by those Contract Documents assumes toward the General Contractor and/or the Owner not only as to construction activities but also including all managerial, engineering, administrative, documentation, and all other obligations ancillary to the Work., The Subcontractor agrees further that along with the rights and remedies provided for in this Subcontract , SteelFab shall also have the same rights and remedies as against the Subcontractor that the Owner or General Contractor has under the terms and provisions of the other Contract Documents against SteelFab with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Subcontract with respect to the Work to be performed and furnished by the Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of any General Contract and other Contract Documents.

This Subcontract Agreement, the provisions of the General Contract and the other Subcontract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Subcontract Documents (a "Discrepancy"), the Subcontractor shall immediately notify SteelFab in writing seeking clarification from SteelFab before proceeding with the affected work. If Subcontractor fails to so notify SteelFab of such a Discrepancy, Subcontractor assumes all responsibility at its sole cost and expense of correcting or adjusting work containing a defect or improper workmanship as a result of the Discrepancy. If any provision of this Subcontract Agreement irreconcilably conflicts with a provision of the General Contract or the other Subcontract Documents, the provision imposing the greater duty or obligation on the Subcontractor and that which will further SteelFab's best interests shall govern.

In the event that Subcontractor has performed any of the Work prior to the date of this Subcontract, pursuant to authorizations to proceed, letters of intent or otherwise, this Subcontract and the Contract Documents shall govern such prior Work to the same extent as though such Work was performed after the date hereof. Should the Contract Documents specify that any of the Drawings, Plans or Specifications are "criteria" or "preliminary" or otherwise not final, and that further Drawings, Plans or Specifications (or any combination thereof) are to be supplied and are to become a part of the Contract Documents, then such further Drawings, Plans and Specifications shall also become a part of the Subcontract Documents, and the Subcontract Price shall not be increased or decreased as a result thereof, except to the extent that the price between SteelFab and General Contractor is increased or decreased as a result thereof relative to Subcontractor's Work.. All Drawings, Specifications and other items defined herein as Contract Documents that have been prepared for the Project and furnished to SteelFab by or on behalf of Owner or other third party are without any representation or warranty by SteelFab as to the acceptability, accuracy or suitability thereof for the Work and Subcontractor accepts all risks in respect of any and all defects, deficiencies, errors and omissions therein. The Contract Documents shall be deemed to include and require all items and aspects of labor, material, equipment, supervision, administration and other services and transportation incidental to or necessary for the proper and efficient execution and completion of the Work as it relates to the Project.

SteelFab may from time to time issue policies or directives applicable to electronic communications, electronic infrastructure and electronic data and Subcontractor shall comply with such policies and directives whether issued as part of this Subcontract or hereafter, and the cost and expense of such compliance shall be borne by the Subcontractor.

2.2.1 **DRAWINGS, PLANS AND SPECIFICATIONS**. SteelFab will make available to Subcontractor the Drawings, Plans and Specifications included in the Subcontract Documents, a listing of which is provided in Exhibit A. A copy will be furnished, on request, at the Subcontractor's expense.

2.3 **EXAMINATION OF SUBCONTRACT DOCUMENTS; SITE INSPECTION**. The Subcontractor warrants and represents that it has visited the site of the proposed Work, has familiarized itself with existing conditions and the character of the operation to be carried on under the Subcontract Documents and that it fully understands the facilities, difficulties and restrictions attending the execution of the Work. The Subcontractor acknowledges that it has examined all Subcontract Documents, and the requirements of the various governmental agencies, departments and bureaus having jurisdiction over the Project and from its own investigation has satisfied itself as to the nature and location of the Work, the general local conditions, and all matters which in any way affect the Subcontractor's Work or its performance thereof. The Subcontractor further acknowledges that having made said visitation and examination, it is not aware of any existing conditions, circumstances, or requirements that will necessitate any change in the scope of the Work, the Subcontract Price, or the Schedule of Work. Subcontractor enters into this Subcontract on the basis of its own investigation and evaluation and not in reliance upon any opinions or representations of SteelFab, the General Contractor or the Owner, as the case may be.

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SECTION 3
SCHEDULE OF WORK AND COMPLETION

3.1 **CONTRACT TIME.** The "Contract Time" shall be the period of time commencing on the Start Date and ending upon the Substantial Completion Date (also addressed in Paragraphs 1.8 and 3.2). The Start Date is that date on which Subcontractor is authorized pursuant to a Notice to Proceed ("Notice to Proceed") to begin the Work on the Project required by the Contract. Any Work performed by Subcontractor in furtherance of the Project prior to execution of the Subcontract shall be deemed to have been performed as "Work" pursuant to the Subcontract and shall be governed by and subject to its terms. Any payments made for such work shall be deemed to have been made under the Subcontract Documents.

3.2 Subcontractor shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, in accordance with those project schedules as may be issued from time to time during the performance of the Work and any other scheduling requirements listed in Subcontract Documents, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the Project, and in such a manner as necessary or requested by SteelFab from time to time to ensure that SteelFab satisfies its obligations in a timely manner under the Contract Documents. Subcontractor shall achieve completion as follows, pursuant to the construction schedule set forth on Exhibit C, subject to adjustments of the Contract Time as provided in the Subcontract Documents, if any:

3.2.1 Subcontractor shall achieve Substantial Completion of the entire Work no later than the date set forth in paragraph 1.8 ("Substantial Completion Date"); provided however, Subcontractor shall endeavor to achieve Substantial Completion of its entire Work by **TBD**.

3.2.2 In addition to achieving Substantial Completion as set forth above, Subcontractor agrees to complete and make available certain portions of the Work as set forth on Exhibit C no later than the dates indicated on Exhibit C (the "Interim Completion Dates"), and such Interim Completion Dates shall be shown on Subcontractor's construction schedule for the Work set forth on Exhibit C.

3.2.3 Final completion of the entire Work shall be achieved no later than the date set forth in Section 1.8(b) ("Final Completion Date").

3.2.4 In agreeing to complete the Work within such times, Subcontractor represents that it has taken into consideration and made allowances for all reasonably foreseeable hindrances and delays incident to performance of the Work. No interruption, cessation, postponement or delay in the commencement or progress of the Work for any cause whatsoever, including disputes, shall relieve Subcontractor from its duty to perform, although such circumstances may be the subject of Subcontractor's request for an extension of time under the Subcontract Documents, if allowed under the Subcontract Documents. Nothing contained in this Paragraph shall be construed as an agreement by SteelFab that Subcontractor would be entitled to an adjustment to the Subcontract Time. Any such extension or adjustment may only be made pursuant to and in strict compliance with the Subcontract Documents. Notwithstanding the forgoing, the Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation, damages or extensions of time attributable to any changes, additions and/or omissions, directed by SteelFab or for delay, obstruction, hindrance, inefficiency, acceleration, or interference except to the limited extent that SteelFab has actually recovered corresponding cost reimbursement, compensation, damages or extensions of time from the Owner or General Contractor under the Contract Documents for such changes, additions and/or omissions or for delay, obstruction, hindrance, inefficiency, acceleration, or interference to Subcontractor's Work.

3.2.5 If Subcontractor fails to provide sufficient manpower or materials to progress its Work in such a manner that in SteelFab's sole opinion Subcontractor will not be able to meet its obligations for Interim Completion Dates, Substantial Completion and/or for Final Completion, then SteelFab may give Subcontractor 24 hours' notice that Subcontractor must supply additional manpower or procure sufficient materials to properly progress its Work in order to meet its Subcontract obligations. In addition to any other remedies allowed herein or by law, if Subcontractor fails to supply additional manpower or materials, then after an additional 24 hours' notice, SteelFab may terminate Subcontractor's performance for default or alternatively supplement Subcontractor's work force or supply such materials as necessary. Subcontractor shall be liable to SteelFab for all costs associated with any termination or supplementation, plus 20% for overhead and profit.

3.3 In the event Subcontractor fails to meet any Interim Completion Date provided for in Exhibit C for any reason or otherwise fails to meet Schedule commitments, SteelFab shall be entitled to direct Subcontractor to immediately implement whatever means are necessary to bring the Project back on schedule, including supplying additional manpower, working overtime at Subcontractor's sole expense, or by re-sequencing and/or accelerating the Work, provided such re-sequencing and/or acceleration is possible. In the event SteelFab directs Subcontractor to re-sequence and/or accelerate the Work to bring the Project back on schedule due to causes for which Subcontractor is not entitled to an extension of time under the Subcontract Documents, such re-sequencing and/or acceleration shall be done at Subcontractor's expense. In the event SteelFab directs Subcontractor to re-sequence and/or accelerate the Work due to causes for which Subcontractor is entitled to an extension of time under the Subcontract Documents, Subcontractor shall be reimbursed for extra labor, overhead and supervision costs related thereto but only to the extent that SteelFab actually recovers corresponding cost reimbursement, compensation, damages or extensions of time from the Owner or General Contractor under the Contract Documents, and these are the only time-related damages recoverable by the Subcontractor on account of time-related impacts to the Work of any kind or nature. Approval of any such plan by SteelFab pursuant to this Subparagraph 3.4 shall not constitute a waiver by SteelFab of any right hereunder, including the right to liquidated damages. Subcontractor shall use Subcontractor's best efforts to reserve the right to re-sequence and/or accelerate each subcontractor's portion of the Work in each subcontract entered into in connection with the Work, in a manner consistent with Subcontractor's obligation hereunder.

3.4 In the event Subcontractor determines at any time that the Project Substantial Completion Date or any Interim Completion Date cannot be met, Subcontractor shall immediately provide to SteelFab a plan to complete the Work in the shortest possible time. Approval of any such plan by SteelFab pursuant to this Subparagraph 3.5 shall not constitute a waiver by SteelFab of any right hereunder, including the right to liquidated damages.

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3.5 **SCHEDULE CHANGES**. The Subcontractor recognizes that changes may be made in the Schedule of Work and agrees to comply with such changes without objection and without adjustment to the Subcontract Price. Subcontractor shall, at no additional cost, provide updates, additional or further detailed schedules and other information as frequently and in whatever form SteelFab may request, including but not limited to (1) manpower and cost loaded schedules; (2) information related to its operations as a whole, including but not limited to identifying lower tier subcontractors and suppliers and the status of payments to such subcontractors and suppliers; (3) unions and related benefit funds associated with labor used in the performance of the Work; (4) credit sources and banks providing financing or loans in connection with the performance of the Work or Subcontractor's operations as a whole and any covenants and requirements imposed upon Subcontractor in connection therewith and the status of Subcontractor's compliance with such covenants and requirements; and (5) the status of orders, fabrication and delivery of materials and arrangements for the provision of labor. The foregoing information shall include names and contact information, and Subcontractor acknowledges and agrees that SteelFab may contact any persons or entities as it deems necessary to verify or obtain such information.

3.6 **PRIORITY OF WORK**. SteelFab shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work. The Work will be performed as required by the composite construction schedule (or any other schedule to which SteelFab is bound), which may be changed periodically in order to maintain the overall schedule of Work.

3.7 **COOPERATION**. The Subcontractor shall cooperate with SteelFab by scheduling and performing Subcontractor's Work so as to avoid conflict, delay in, or interference with the Work of SteelFab, other subcontractors or the General Contractor's or the Owner's own forces. Subcontractor shall participate, as requested by SteelFab, in inspections related to Substantial and Final Completion.

3.8 **SUBCONTRACTOR'S DELAY**. Should the progress of the Subcontract Work, the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to SteelFab including legal fees and disbursements incurred by SteelFab (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Subcontractor and its surety hereunder or otherwise) or to the General Contractor or Owner or any damages or additional costs or expenses for which SteelFab, General Contractor or the Owner may or shall become liable, the Subcontractor and its surety shall and does hereby agree to compensate SteelFab, General Contractor and the Owner for and indemnify them against all such costs, expenses, damages and liability.

SECTION 4
SUBCONTRACT PRICE

4.1 SteelFab agrees to pay Subcontractor for the satisfactory performance and timely completion of the Work and of all of the duties, obligations and responsibilities of the Subcontractor under this Subcontract and the other Contract Documents the sum identified in Section 1.9 (the "Subcontract Price"). Payment is expressly conditioned on Subcontractor's strict compliance with all obligations set forth in the Subcontract Documents. Payment shall further be made only out of funds SteelFab actually receives from the General Contractor and/or the Owner, receipt of which is a condition precedent to the obligation to make payment to the Subcontractor (see section 5.4). Payment shall be made in accordance with Section 5, subject to additions and deductions as provided in Section 6 or any other Subcontract Document.

4.2 Unit prices, if any, are stated in Exhibit D. The Subcontract Price includes all Federal, State, County, Municipal and other taxes imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for and in connection with the Work, including, but not limited to, sales, use and personal property taxes payable by or levied or assessed against the Owner, the General Contractor, SteelFab, or the Subcontractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the Work plus the amount of such taxes shall not exceed the Subcontract Price.

SECTION 5
PAYMENT

5.1 **GENERAL PROVISIONS.**

5.1.1 **SCHEDULE OF VALUES.** The Subcontractor has or will provide SteelFab with a schedule of values which shall be revised, if necessary, for approval by SteelFab and the General Contractor/Owner, no later than the date of the Subcontractor's first application for payment. The Schedule of Values is (or will be) attached as Exhibit E and incorporated herein.

5.1.2 **PAYMENT USE RESTRICTION.** No payment received by the Subcontractor shall be used to satisfy or secure any indebtedness other than one owed by the Subcontractor for labor or materials furnished in performing the Subcontractor's Work on this Project. All payments by SteelFab to Subcontractor must first be applied to satisfy any indebtedness arising as a result of Subcontractor's Work. Subcontractor acknowledges and agrees that to the extent that payments received by Subcontractor include amounts for Work performed by subcontractors to Subcontractor or services or materials provided to Subcontractor by suppliers, vendors, workers employed by or through Subcontractor, all such payments received by Subcontractor shall be deemed to have been received by Subcontractor as trustee with those entitled to receive payment from Subcontractor as beneficiaries of such amounts, and Subcontractor shall hold such funds separately and utilize such amounts only for the purpose of making payment to these beneficiaries. In the event that Subcontractor subsequently determines that a beneficiary is not entitled to receipt of payment, Subcontractor shall return such unpaid funds to SteelFab.

5.1.3 **PAYMENT USE VERIFICATION.** The Subcontractor agrees that, if and when requested to do so by SteelFab, it shall furnish such information, evidence and substantiation as SteelFab may require with respect to the nature and extent of all obligations incurred by the Subcontractor for or in connection with the Work, all payments made by the Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefor. SteelFab shall have the right at all times to contact the Subcontractor's lower tier subcontractors and suppliers to ensure that the same are being paid by the Subcontractor for labor or materials furnished for use in performing the Subcontractor's Work on this Project. SteelFab shall have the right, at its sole discretion, to issue payments to Subcontractor by way of joint checks to Subcontractor and suppliers and/or vendors of Subcontractor, and Subcontractor agrees to cooperate fully in facilitating the making of such joint payments and executing all reasonable documents necessary to effect such payments

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including, without limitation, joint check agreements. Subcontractor shall establish and maintain a reasonable accounting system by which records are kept that enable SteelFab to readily identify all of Subcontractor's expenses, costs, payments (including to its workers, subcontractors and suppliers, unions, and benefit funds), obligations, budgets, and other financial information related to the Work or this Subcontract. Such records shall include, but not be limited to, all accounting records, written policies and procedures, subcontract files for all tiers, payment vouchers, ledgers, cancelled checks, contract amendments, change order information, insurance documents, and other similar information. SteelFab shall have the right to audit, examine, and make copies of all such records (whether written, electronic or another format) as SteelFab may determine, and Subcontractor shall facilitate and cooperate with SteelFab's efforts in this regard. Subcontractor shall impose similar obligations on its subcontractors and vendors to ensure that comparable records kept and SteelFab has the right to audit, examine and copy those records.

5.1.4 **PARTIAL LIEN WAIVERS AND AFFIDAVITS.** As an express condition precedent to payment, the Subcontractor shall provide, in the forms attached as Exhibits F and G or in a form as otherwise required by the General Contractor, Owner and/or SteelFab, sworn interim lien and claim waivers from the Subcontractor, and its subcontractors and suppliers for the completed Subcontractor's Work. Such waivers may be made conditional upon payment of a specific amount stated therein. The Subcontractor's Authorized Representative(s) designated in Section 1.2(b) of this Subcontract are hereby designated as authorized agents of Subcontractor to execute all lien waivers required of Subcontractor.

5.1.5 **SUBCONTRACTOR PAYMENT FAILURE.** In the event SteelFab has reason to believe that labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being properly paid, SteelFab shall give written notice of such claim or lien to the Subcontractor to demand that any progress payment shall be utilized to pay such obligations. If within three days of receipt of said notice, the Subcontractor does not:

(a) supply written evidence to the satisfaction of SteelFab that the monies owing to the claimant have been paid; or
(b) post a bond in a form and with surety satisfactory to SteelFab indemnifying the General Contractor, the Owner, SteelFab, SteelFab's surety, if any, and the premises from such claim or lien;

Then SteelFab shall have the right to exercise any or all of the following rights, until the claim or lien has been satisfied by the Subcontractor:

(a) withhold from any payments due or to become due to the Subcontractor for this Project or any other SteelFab project a reasonable amount to protect SteelFab from any and all loss, damage or expense including attorney's fees and other costs arising out of or relating to any such claim or lien;
(b) issue joint checks in payment of any payments due or to become due to the Subcontractor, payable to the Subcontractor and the claimant;
(c) make direct payments of sums due the Subcontractor to the claimant to satisfy such claims or liens.

5.1.6 **PAYMENT NOT ACCEPTANCE.** Payment to the Subcontractor (interim or final) is specifically agreed not to constitute or imply acceptance by SteelFab, the General Contractor or the Owner of any portion of the Subcontractor's Work nor shall it be evidence of the proper performance of the Work, , and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Subcontractor from any of its obligations under this Subcontract; nor shall entrance and use by the Owner constitute acceptance of the Work or any part thereof.

5.2 **PROGRESS PAYMENTS**.

5.2.1 **APPLICATION.** For Work performed during a payment period, the Subcontractor shall apply for a progress payment using SteelFab's standard Application for Payment, a copy of which is attached as Exhibit J. Applications shall be submitted to SteelFab at the address in Section 1. The application shall be for Work performed up to and including the last day of the pay period, indicating Work completed; and to the extent allowed under Section 5.2.4, materials suitably stored and protected during the payment period. Applications shall be accompanied by lien waivers from all sub-subcontractors and suppliers whose labor or materials are covered by the application; such waivers shall be in the form attached as Exhibit F.

5.2.2 **RETAINAGE.** Regardless of any agreements between the General Contractor, the Owner and SteelFab, or arrangements made by them, for the withholding or release of SteelFab's retainage, retainage shall be withheld by SteelFab from all progress payments made to Subcontractor. The amount of retainage withheld from each payment shall be equal to the amount of payment earned, multiplied by the percentage identified in Section 1.10 of this Subcontract. Retainage shall be released to Subcontractor only upon completion of all requirements for final payment as provided in Section 5.3 of this Subcontract, and provided that Subcontractor does not owe to SteelFab any sums as a result of Subcontractor's performance or non-performance on this or any other project.

5.2.3 **TIME OF APPLICATION.** "Pay period" as used herein is defined as beginning with the first day of each calendar month, and ending with the last day of each calendar month. The Subcontractor shall submit progress payment applications to SteelFab no later than the day of each payment period specified in Section 1.11 of this Subcontract.

5.2.4 **STORED MATERIALS.** Unless otherwise provided in the Subcontract Documents, and if approved in writing in advance by the General Contractor or the Owner, applications for payment may include materials and equipment not incorporated in the Subcontractor's Work but delivered and suitably stored and protected at the site or at some other location agreed upon in writing. Approval of payment application for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the General Contractor, the Owner and SteelFab to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and SteelFab's interest therein, including transportation to the site.

5.2.5 **TIME OF PAYMENT.** Receipt of payment by SteelFab from General Contractor or Owner for Subcontractor's Work is an express condition precedent to any and all payment obligations by SteelFab to Subcontractor. See Section 5.4. For projects where the Owner is not a governmental body, the requirements of any applicable state "prompt pay" or similar statutes relating to the timing of payments are hereby waived (to the extent permitted under applicable law) and in lieu of the payment periods and rates of interest contained in such statutes, it is hereby agreed that the Subcontractor shall receive its payment no later than seven days after the receipt thereof by SteelFab from the General Contractor or Owner and interest on any late payments shall only be payable out of the actual interest that SteelFab receives from the General Contractor or Owner and the amount of interest to be paid to the Subcontractor would be calculated on a pro rata basis based upon the ratio that the Subcontractor payment bears to the total Owner payment made to SteelFab. Progress payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made seven (7)

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business days after receipt by SteelFab of payment from the General Contractor or the Owner for such Subcontractor's Work, and provided that Subcontractor does not owe to SteelFab any sums as a result of Subcontractor's performance or nonperformance on this or any other SteelFab project.

5.3 **FINAL PAYMENT**.

5.3.1 **APPLICATION.** Upon completion and acceptance of the Subcontractor's Work by the General Contractor, the Owner, the Architect (or other applicable design professional) and SteelFab, and upon the Subcontractor's furnishing evidence of fulfillment of Subcontractor's obligations in accordance with the Subcontract Documents and Section 5.3.2, SteelFab shall, without unreasonable delay, forward the Subcontractor's application for final payment to the General Contractor and/or the Owner. The application shall be in the form of Exhibit J.

5.3.2 **REQUIREMENTS.** Before SteelFab shall be required to forward the Subcontractor's application for final payment to the General Contractor and/or the Owner, the Subcontractor shall submit to SteelFab:

(a) an affidavit and any other evidence satisfactory to Contractor that all payrolls, bills for materials and equipment, and all other indebtedness and claims connected with the Subcontractor's Work for which the General Contractor, the Owner, or its' property, or SteelFab, or SteelFab's surety, might in any way be liable, have been paid and released;

(b) consent of surety; if any, to final payment;

(c) satisfaction of required closeout procedures;

(d) other data or documents as required by the Subcontract Documents, SteelFab, the General Contractor, or the Owner, such as receipts, releases, as-built drawings etc.;

(e) Final lien and claim waivers in the forms attached as Exhibits H and I for it and its sub-subcontractors and suppliers, or to the extent and in such form as may otherwise be designated by SteelFab or the General Contractor or the Owner; and

(f) written warranties (and any required assignments thereof) for Subcontractor's materials, labor and equipment furnished under this Subcontract and the Subcontract Documents; and

(g) execution and delivery by the Subcontractor, in a form satisfactory to SteelFab of a general release running to and in favor of SteelFab, General Contractor and the Owner; and

(h) complete and full satisfaction of all claims, demands and disputes, and all obligations and responsibilities of Subcontractor, arising out of or related to the Subcontract, including those as between SteelFab and Subcontractor as well as those between Subcontractor and any third party.

Final payment shall constitute a waiver and release of any and all claims by the Subcontractor relating to the Project and Subcontractor's Work, but shall in no way relieve the Subcontractor of liability for third party claims, the obligations under the Subcontract Documents as well as those assumed under Section 10 hereof, or for faulty or defective Work.

5.3.3 **TIME OF PAYMENT.** Final payment of the balance due of the Subcontract Price shall be made to the Subcontractor:

(a) if applicable, upon receipt of the General Contractor's or Owner's (as the case may be) waiver of all claims related to the Subcontractor Work except for unsettled liens, unknown defective Work, and noncompliance with the Subcontract Documents or warranties; and

(b) seven (7) days after receipt by SteelFab of final payment from the Owner for such Subcontractor's Work, such receipt being a condition precedent to the obligation to make final payment to the Subcontractor. *See* Sections 5.2.5 and 5.4, which are incorporated by reference herein.

5.3.4 **RIGHT OF SETOFF.** If Subcontractor is indebted to SteelFab for any reason, whether related to this Project, another project, or otherwise, Subcontractor hereby expressly agrees to allow SteelFab to set off such amounts owed to SteelFab from any other payments due hereunder. The breach of any provision of any other subcontract between SteelFab and Subcontractor shall, at SteelFab's election, constitute a breach of this Subcontract and a breach of this Subcontract shall constitute a breach of any other subcontract between SteelFab and Subcontractor on any other project. SteelFab shall be entitled to offset, against any amounts due Subcontractor, any amounts due Subcontractor from SteelFab on any other project. Subcontractor's failure to perform shall include the failure of its sub-subcontractors to perform. Subcontractor's liability shall include but not limited to (a) damages or other delay costs payable by SteelFab to General Contractor or Owner (including liquated damages); (b) SteelFab's increased cost of performance, such as extended overhead and increased performance costs resulting from delays or improper work; (c) warranty or rework costs; (d) liabilities to third parties; (e) consultant's fees and (g) attorney fees and related costs.

5.4 **NON-PAYMENT BY GENERAL CONTRACTOR AND/OR OWNER**

5.4.1 **ASSUMPTION OF RISK-CONDITION PRECEDENT.** The Subcontractor agrees that SteelFab shall have no obligation to pay the Subcontractor for any Work done on this Project until SteelFab has been paid by the General Contractor or the Owner, as the case may be. The provisions of Section 5.2 and 5.3, stating the time and amount of progress and final payments, are subject to the condition that SteelFab shall receive from the General Contractor or the Owner interim, progress or final payments for amounts payable to the Subcontractor on account of Work done by the Subcontractor on this Project. The time when such payments shall be due the Subcontractor is expressly contingent upon and shall be postponed until SteelFab has received same from the General Contractor or the Owner, as the case may be. **THE SUBCONTRACTOR EXPRESSLY AGREES TO ACCEPT AND SHARE THE RISK THAT IT WILL NOT BE PAID FOR WORK PERFORMED BY IT IN THE EVENT THAT STEELFAB, FOR WHATEVER REASON, IS NOT PAID BY THE GENERAL CONTRACTOR OR THE OWNER FOR SUCH WORK.** The Subcontractor acknowledges that it relies for payment on the credit and ability to pay of the General Contractor or the Owner, and not of SteelFab. The Subcontractor agrees that payment by the General Contractor or the Owner to SteelFab for Work performed by the Subcontractor shall be a condition precedent to any payment obligation of SteelFab to the Subcontractor. The Subcontractor agrees that the liability of the surety on SteelFab's payment bond, if any, is subject to the same conditions precedent as are applicable to SteelFab's liability to the Subcontractor. These conditions apply to payments of every type, including progress payments, retention payments, change order payments, final payments or otherwise. This condition applies without regard to any provisions contained in the federal Miller Act or state Little Miller Act provisions and without regard to the reason that the General Contractor and/or the Owner has failed to pay.

5.4.2 **REMEDY.** If the General Contractor or the Owner or their designated agent does not authorize payment or SteelFab does not receive a payment due hereunder for any cause which is not the fault of the Subcontractor, SteelFab shall promptly inform the Subcontractor in writing. SteelFab also may, in its sole discretion, pursue with the assistance of the Subcontractor, the release by the General Contractor or the Owner of the payment due for the Subcontractor's Work. At the Subcontractor's request, SteelFab may institute all reasonable legal remedies to mitigate the damages and pursue

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full payment of the Subcontractor's application for payment including interest thereon. In that event, the cost for pursuing the Subcontractor's remedies, including attorney's fees, shall be Subcontractor's responsibility. SteelFab, at its discretion, may require that the Subcontractor make financial arrangements satisfactory to SteelFab before undertaking this effort and at all times during the progress thereof. Notwithstanding the foregoing, however, in no event shall SteelFab be liable to Subcontractor for any compensation not actually recovered by SteelFab on Subcontractor's behalf.

SECTION 6
CHANGES, CLAIMS AND DELAYS

6.1 **CHANGES.** Without nullifying this Subcontract, SteelFab may by written Subcontract Work Order or Subcontract Change Order, make changes in the Work within the general scope of this Subcontract and the Subcontractor shall perform such changes. Adjustments in the Subcontract Price or Schedule of Work, if any, resulting from such changes shall be set forth in a Subcontract Change Order. No such adjustment shall be made for any such changes performed by Subcontractor that have not been so ordered in writing by SteelFab, and approved by the General Contractor and/or the Owner. Any performance of changes by Subcontractor without a written Work Order or Change Order signed by SteelFab and without compliance with all Subcontract Documents results in a waiver by Subcontractor of any right to any additional compensation or time for such changes.

A Subcontract Change Order is a written instrument prepared by SteelFab and signed by the Subcontractor stating their agreement upon the change in the scope of the Work, and/or adjustment in the Subcontract Price or Schedule of Work. A Subcontract Work Order is a written instrument prepared by SteelFab directing a change in the Work and stating a proposed adjustment, if any, in the Subcontract Price or Schedule of Work or both. A Subcontract Work Order shall be used in the absence of agreement on the terms of a Subcontract Change Order.

6.2 **CLAIMS RELATING TO GENERAL CONTRACTOR OR OWNER.** The Subcontractor agrees to make all claims for which the General Contractor or the Owner (as the case may be) is or may be liable in the manner provided in the Subcontract Documents for like claims by SteelFab upon the General Contractor and/or the Owner.

Written notice of such claims shall be given by the Subcontractor to SteelFab within sufficient time for SteelFab to make such claims against the General Contractor and/or Owner in accordance with the Subcontract Documents or within five (5) calendar days prior to the beginning of the Subcontractor's Work or within five (5) calendar days of the event for which such claim is to be made, whichever shall first occur, otherwise such claims shall be deemed waived.

6.3 **CLAIMS RELATING TO STEELFAB.** The Subcontractor shall give SteelFab written notice of all claims not included in Section 6.2 within five (5) calendar days of the beginning of the event for which claim is made; otherwise, such claims shall be deemed waived.

All unresolved claims, disputes and other matters in question between SteelFab and the Subcontractor not relating to claims included in Section 6.2 shall be resolved in the manner provided in Section 16 herein.

6.4 **ADJUSTMENT IN SUBCONTRACT PRICE.** If a Subcontract Change Order or Subcontract Work Order requires an adjustment in the Subcontract Price, the adjustment shall be established by one of the following methods:

(a) mutual agreement on a lump sum with sufficient substantiating data to permit evaluation;
(b) unit prices already established in the Subcontract Documents or if not established by the Subcontract Documents, then established by mutual agreement for this adjustment; or
(c) to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

6.5 **SUBSTANTIATION OF ADJUSTMENT.** If the Subcontractor does not respond promptly or disputes the method of adjustment under Section 6.4, the method and the adjustment shall be determined by SteelFab on the basis of reasonable costs and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Price, an allowance for overhead and profit proportionate to SteelFab's recovery of overhead and profit, if any, under the Subcontract Documents. Regardless of any disagreement as to the adjustment, Subcontractor shall perform the changed Work without delay to the Project.

The Subcontractor shall maintain for SteelFab's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order or Subcontract Work Order:

(a) labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and State Workers' Compensation insurance;
(b) costs of materials, supplies and equipment, whether incorporated in the Work or consumed, including transportation costs; costs of renting, either from SteelFab or from others, of machinery and equipment other than hand tools;
(c) costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
(d) costs of additional supervision and field office personnel services necessitated by the change.

6.6 **DELAY.** If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Change Order to the extent any extension is obtained by SteelFab from the General Contractor or the Owner, and the Schedule of Work shall be revised accordingly.

SteelFab shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of delays caused by any person not a party to this Subcontract unless SteelFab has first recovered the same on behalf of the Subcontractor from said person, and then only to the extent of such recovery after payment of all SteelFab's attorney's fees and other costs relating thereto. It is expressly understood and agreed by the Subcontractor that apart from recovery from said person, the Subcontractor's sole and exclusive remedy for delay or any time-impact resulting or relating to delay, whether resulting in acceleration, ripple effect, out-of-sequence work, inefficiencies, unabsorbed overhead or any other time or impact related costs or damages, regardless of type or cause, including but not limited to delays or other impacts caused in whole or in part by SteelFab, shall be an extension in the time for performance of the Subcontractor's Work, with Subcontractor expressly waiving any right to delay or other time related or time impact damages except as provided in Section 6.6 or as set forth as to acceleration or re-sequencing in Section 3.4

6.7 **LIQUIDATED DAMAGES ASSESSED BY GENERAL CONTRACTOR OR OWNER.** If the Contract Documents between the General Contractor and/or the Owner and SteelFab permit the General Contractor or the Owner to assess SteelFab for liquidated or other damages for delay beyond the completion dates set forth in the Subcontract Documents (interim, milestone and final), and such damages are so assessed, then SteelFab shall be entitled to assess same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay.

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SECTION 7
STEELFAB'S AUTHORIZED REPRESENTATIVES

7.1 SteelFab has designated one or more persons in Section 1.2(a) of this Subcontract who shall be SteelFab's authorized on-site and off-site representative(s). Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

SECTION 8
SUBCONTRACTOR'S OBLIGATIONS

8.1 **OBLIGATIONS DERIVATIVE.** The Subcontractor shall be bound to SteelFab by the terms of this Subcontract and by the terms of the Subcontract Documents and the Contract Documents between the General Contractor and/or the Owner and SteelFab, and shall assume toward SteelFab all the obligations and responsibilities which SteelFab, by those Contract Documents, assumes toward the General Contractor or the Owner. The Contract Documents are incorporated by reference herein and made a part hereof.

8.2 **RESPONSIBILITIES.** The Subcontractor shall furnish and pay for all of the labor, supervision, materials, tools, equipment, services, and incidentals necessary for the proper performance of the Subcontractor's Work. The Subcontractor shall provide a list of proposed sub-subcontractors and suppliers, and further is responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work and to insure the proper matching and fitting of the Work with contiguous work.

8.3 **WORKMANSHIP.** Every part of the Subcontractor's Work shall be executed in strict accordance with Subcontract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be the best of its kind performed by others engaged in the same trade. All materials used in the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work and shall be new and of the highest quality, except such materials as may be expressly provided in the Subcontract Documents to be otherwise.

8.4 **TEMPORARY SERVICES.** The Subcontractor shall furnish all temporary services and facilities necessary to perform its Work.

8.5 **COORDINATION.** The Subcontractor shall:

(a) cooperate with SteelFab and all others whose work is dependent upon the progress of the Subcontractor's Work;

(b) specifically note and immediately advise SteelFab of any interference with the Subcontractor's Work; and

(c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

8.6 **SHOP DRAWINGS AND SUBMITTALS.** The Subcontractor shall submit shop drawings, product data, samples, and any other submittals required by the Subcontract Documents expeditiously and in such manner and sequence so as to avoid delay in the progress of the Work or the activities of SteelFab or other subcontractors and/or within time to meet any General Contract requirements for same. The Subcontractor shall be responsible for accuracy and conformity with Subcontract Documents and other submittals. Unless specifically noted by SteelFab, action on shop drawings and submittals by SteelFab shall not be deemed to authorize deviation from the Subcontract Documents.

The review of shop drawings or other submittals by SteelFab shall not constitute an undertaking by SteelFab, nor does it constitute an acceptance by SteelFab that such submittal is in conformance with the Subcontract Documents.

8.7 **PROGRESS REPORTS AND MEETINGS.** The Subcontractor shall furnish periodic progress reports on the Work including information on the status of materials and equipment which may be in the course of preparation or manufacture.

8.8 **AUTHORIZED REPRESENTATIVE AND NOTICE.** The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s): (a) on-site and (b) off-site, which persons are identified in Section 1.2(b). Such authorized representative(s) shall be the only person(s) to whom SteelFab shall issue instructions, orders or directions, except in an emergency. Notices as required by this Subcontract and other communications made to any one of the Subcontractor's Authorized Representative(s) shall be binding as if given to the Subcontractor. The authorized representative shall attend project meetings as required. Subcontractor's key personnel and their positions are set forth on Exhibit B. At all times that Subcontractor has personnel at the Project site, it shall also have present an authorized representative of Subcontractor who shall supervise and direct Subcontractor's personnel and be responsible for their actions. Such representative shall be fluent in spoken and written English and shall be authorized to act on behalf of Subcontractor and communications to such representative shall be binding upon Subcontractor.

8.9 **PROVISION FOR INSPECTION.** The Subcontractor shall notify SteelFab when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish SteelFab, the Owner, and their representatives adequate means and facilities for inspecting the Work, including materials at the site or any place where materials under this Subcontract may be in the course of storage, preparation, process, manufacture or treatment. The Subcontractor shall, within twenty-four (24) hours after receiving written notice from SteelFab, proceed to take down all portions of the Work and remove from the premises all materials whether worked or unworked, which the Architect, General Contractor, Owner or any of its design consultants shall condemn as unsound, defective or improper or as in any way failing to conform to this Subcontract or the Plans, Specifications or other Contract Documents, and the Subcontractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof

8.10 **CLEAN-UP.** The Subcontractor shall follow SteelFab's clean-up directives and those of the Subcontract Documents, and

(a) at all time keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and

(b) broom clean each Work area daily prior to discontinuing Work in the same.

Should Subcontractor fail, after 24 hours' notice from SteelFab, to appropriately clean an area as required by this Section, SteelFab shall assess the Subcontractor for the actual daily clean-up cost or a daily charge of $150.00, whichever is greater, for each day such condition is not remedied.

8.11 **SAFETY PRECAUTIONS AND PROCEDURES**.

8.11.1 **GENERAL.** The Subcontractor shall take reasonable safety precautions with respect to performance of the Work, shall comply with all safety measures and protocols applicable to the Project whether initiated by General Contractor, SteelFab or other parties representing the interest of Owner or General Contractor. In addition, Subcontract shall comply with Occupational Safety and Health Standards and other applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property and in accordance with requirements of the Subcontract Documents and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of Subcontractor's failure or failures

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of Subcontractor's agents, employees, materialmen and suppliers to so comply. Subcontractor shall indemnify, defend and hold harmless SteelFab, General Contractor and Owner (including their agents and employees) from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees, claims or liability for harm to persons (including death resulting therefrom,) or property, expenses incurred pursuant to or attendant to any hearing or meeting or any other applicable cost caused or alleged to have been caused by Subcontractor's failure to fulfill the covenants set forth in this paragraph, including but not limited to the use of SteelFab's or others' equipment, hoist, elevators, and/or scaffolds. The Subcontractor shall report to SteelFab within 24 hours any personal injury or property damage occurring at the site.

Subcontractor will provide as part of their Site Specific Erection Plan**, a schedule to conduct daily safety inspections, and at a minimum shall comply with all Federal, State, and Local safety laws, rules, regulations, or ordinances relating to safety inspections, including but not limited to OSHA standard 1926.20(b)(2). Subcontractor's safety programs SHALL provide FREQUENT and REGULAR inspections of the job site, materials and equipment, with such inspections to be made by competent and qualified persons designated by Subcontractor's project superintendent, with SteelFab reserving the right to reject such person if incompetent or unqualified, or if said person fails to undertake the duties described herein.**

Subcontractor shall provide safety vests, clothing, equipment, eye protection, fall protection and any and all other items required by law and good safety practices.

8.11.2 **COMPLIANCE WITH SAFETY MATERIAL(S).** Subcontractor shall comply with SteelFab's, the General Contractor's and/or the Owner's safety manuals, if any.

8.11.3 **ALCOHOL AND DRUG FREE PROJECT.** The Subcontractor recognizes that an alcohol and drug free Project is necessary to ensure the safety of the persons employed at the Project site by the Owner, the General Contractor, SteelFab, the Subcontractor and others, and to protect the health and safety of the community. The Subcontractor agrees that its employees shall not distribute, be under the influence of, or be in possession of, any form of alcohol or unlawful drug while at the Project site or while in the performance of Project-related activities. Subcontractor's employees shall also be prohibited from using or being subject to the effects of any lawful drug while at the Project site or in the performance of Project-related activities without approval of the employee's supervisor. The Subcontractor acknowledges that it is familiar with SteelFab's Alcohol and Drug Free Project Policy. The Subcontractor represents that it has established written procedures for compliance with this policy and agrees that it will implement and enforce the policy throughout the course of the Project. The Subcontractor shall indemnify and hold the General Contractor, the Owner and SteelFab harmless from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or related to Subcontractor's implementation, application, or enforcement of compliance procedures.

If any employee or agent of Subcontractor is found to be under the influence of alcohol or an illegal drug, or a legal drug without approval of the employee's supervisor, Subcontractor, if requested by SteelFab, shall immediately terminate said employee. If Subcontractor refuses to do so such refusal shall be an event of default, and SteelFab shall have all remedies set forth in Section 11. A second infraction of this zero-tolerance drug and alcohol policy during the performance of the Work shall subject Subcontractor to immediate termination for default without further notice.

8.12 **ENVIRONMENTAL AND MISCELLANEOUS MATTERS**.

8.12.1 If Hazardous Chemicals of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to exposure of any employees on the site to such substance, provide a current copy of the Material Safety Data Sheet (MSDS) for such Hazardous Chemical in sufficient time to permit compliance with such laws by SteelFab, other subcontractors and other employees on the site. The Subcontractor shall be responsible for the removal of any Hazardous Chemicals and Hazardous Substances which are brought to Project sire in connection with the Work but are not used or consumed.

8.12.2 In the event the Subcontractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl ('PCB'), or other Hazardous Substances which have not been rendered harmless, the Subcontractor shall immediately stop Work in the area affected and report the condition to SteelFab in writing. The Work in the affected area shall resume in the absence of asbestos, PCB, or other Hazardous Substances, or when it has been rendered harmless, by written agreement of SteelFab and Subcontractor. The Subcontractor shall not be required to perform without consent any Work relating to asbestos, PCB, or other Hazardous Substances.

8.12.3 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the General Contractor, the Owner, SteelFab, other subcontractors, and their respective agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos, PCB, or other Hazardous Chemical or Hazardous Substance and has not been rendered harmless; provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by failure to comply with Sections 8.12.1 or 8.12.2 or by negligent acts or omissions of the Subcontractor, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, regardless of whether or not such claim, damage, loss or expenses is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 8.12.3.

8.12.4 For purposes of this Subcontract, (a) the term "Hazardous Chemical" means any chemical defined as hazardous in the Hazardous Communication Standard, 29 C.F.R. §§ 1926.59 or 29 C.F.R. §§ 1910.1200, promulgated pursuant to the occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*; and (b) the term "Hazardous Substances" means any substance, including solid, liquid or gaseous material, which is listed or defined as "hazardous" in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S. §§ 9601, et *seq*. or regulations promulgated pursuant thereto; oil and oil waste as those terms are defined in the Clean Water Act 33 U.S.C. §§ 1251, *et seq*., or regulations promulgated pursuant thereto; and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. §§ 301 i, *et seq.*, or regulations promulgated pursuant thereto; and includes any other substance defined by federal, state or local statute, regulation, or ordinance relating to any hazardous, toxic or dangerous waste or substance.

8.13 **PROTECTION OF THE WORK AND PROPERTY.** The Subcontractor shall take all necessary precautions to protect properly the Subcontractor's Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the

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work or property of the General Contractor, the Owner, SteelFab or others, the Subcontractor shall promptly remedy such damage to the satisfaction of SteelFab, or SteelFab may so remedy and deduct the cost thereof from any amounts due or to become due the Subcontractor.

8.14 **COMPLIANCE WITH LAWS.** The Subcontractor shall at all times and at its own cost comply with all federal, state and local statutes, codes, rules, regulations, ordinances, executive orders and other laws relating to the Project and the Work. The Subcontractor warrants and represents that it is authorized to transact business in the state and local jurisdictions where the Project is located, that it holds any and all licenses necessary to perform the Work, and that it is not currently in violation of any statutes, codes, rules, regulations, ordinances, orders, or other laws on any projects in which Subcontractor is presently engaged.

8.15 **PERMITS, FEES AND LICENSES.** The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary for performance, completion or use of the Subcontractor's Work.

8.16 **TAXES, WAGES, FRINGE BENEFITS, ASSESSMENTS.** The Subcontractor shall timely comply with all requirements applicable to payment of taxes, wages, fringe benefits, retirement benefits, unemployment compensation and other assessments, and shall upon request furnish SteelFab and the General Contractor or the Owner with satisfactory proof of compliance.

8.17 **LAYOUT RESPONSIBILITY AND LEVELS.** Either SteelFab or the General Contractor shall establish principal axis lines of the building and site whereupon the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to SteelFab or others by reason of the Subcontractor's failure to set out or perform its Work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

8.18 **MATERIALS FURNISHED BY OTHERS.** In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure satisfactory and proper installation. Loss or damage due to acts or inactions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

8.19 **SUBSTITUTIONS.** No substitutions shall be made in the Subcontractor's Work unless permitted in the Subcontract Documents and only then upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions. The Subcontractor shall indemnify SteelFab for any increased costs incurred by SteelFab as a result of such substitutions, whether or not the Subcontractor has obtained approval thereof.

8.20 **USE OF STEELFAB'S EQUIPMENT.** The Subcontractor, its agents, employees, sub-subcontractors or suppliers shall not use SteelFab's equipment without the express written permission of SteelFab's authorized representative.

If the Subcontractor or any of its agents, employees, suppliers or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of SteelFab, the Subcontractor shall be liable to SteelFab, as provided in Section 14, for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely and exclusively to the negligence of SteelFab's employees operating such equipment.

8.21 **ASSIGNMENT AND SUBCONTRACTING.** The Subcontractor shall not assign this Subcontract, nor its proceeds, nor subcontract the whole or any part of the Subcontractor's Work, without the prior written approval of SteelFab. SteelFab may assign its rights and obligations under this Subcontract freely in its sole, absolute discretion.

8.22 **NON-CONTRACTED SERVICES.** The Subcontractor agrees that no claim for non-contracted construction services rendered or materials furnished shall be valid unless the Subcontractor provides SteelFab notice:

(a) prior to furnishing of the services or materials, except in an emergency affecting the safety of persons or property;
(b) in writing of such claim within three (3) days of first furnishing such services or materials; and
(c) the written charge for such services or materials to SteelFab no later than the fifteenth day (15) of the calendar month following that in which the claim originated.

8.23 **COORDINATION.** Subcontractor is responsible for coordinating its Work areas and schedule with other trades in order to perform the overall project as a team.

8.24 **NORMAL WORK WEEK.** Unless otherwise directed in writing by SteelFab or unless otherwise provided in the General Contract, the Subcontractor's Work shall be performed during a five (5) day Work week extending from Monday through Friday. If the Subcontractor's Work becomes behind schedule the Subcontractor shall Work overtime during the normal Work week and on Saturdays, Sundays and holidays. The extended Work week shall be at no cost to SteelFab.

SECTION 9
SUBCONTRACT BONDS

9.1 **PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS.** Unless otherwise provided at Section 1.12 of this Subcontract, the Subcontractor shall provide a separate Performance Bond and Labor and Material Payment Bond, in a form and with surety satisfactory to SteelFab in the full amount of this Subcontract. The premiums for these Bonds shall be paid by the Subcontractor and the cost thereof is included in the Subcontract Price.

9.2 **ASSURANCE OF PERFORMANCE.** If Performance and Payment Bonds are not required of the Subcontractor under Section 9.1, then throughout the duration of this Subcontract, SteelFab may require such bonds and the Subcontractor shall provide same. Said bonds shall be in full amount of this Subcontract in a form and by surety satisfactory to SteelFab. The Subcontractor shall be compensated for the cost of same pursuant to progress payments made hereunder after the Subcontractor furnishes the required bonds. The reimbursement amount for the bonds shall not exceed the actual rate for such subcontract bonds. In the event the Subcontractor shall fail to promptly provide such requested bonds, SteelFab may terminate this Subcontract (and/or Subcontractor's performance) and re-let the Work to another Subcontractor and all SteelFab's costs and expenses incurred thereby shall be paid by the Subcontractor.

SECTION 10
WARRANTY AND CORRECTIONS OF WORK

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10.1 **WARRANTY.**

10.1.1 The Subcontractor hereby guarantees the Work to the full extent provided in the Subcontract Documents. Without limiting the foregoing, the Subcontractor warrants to the General Contractor, the Owner and SteelFab that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents; that the Work will be performed in the best workmanlike manner, be free from defects in materials and workmanship; and that the Work will conform with the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the sole judgment of SteelFab. This warranty shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Subcontract Documents. Subcontractor agrees to defend, indemnify, and hold SteelFab, Owner, General Contractor and Architect harmless from any losses, costs or other damages or expenses (including attorney fees) resulting from any breach of the foregoing warranty. Subcontractor shall bear all expenses incurred in connection with the inspection, removal, repair, correction, handling and transportation of defective or nonconforming Work or Work for which acceptance has been revoked. In addition, at SteelFab's option, Subcontractor shall: (i) bear the costs of replacement materials, equipment and labor and all damages incurred by SteelFab and (ii) pay SteelFab for all expenses incurred in and delay caused by remedying defective or otherwise nonconforming Work. The provisions of this paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents and shall survive the making and acceptance of final payment and/or termination of this Subcontract.

10.1.2 The Subcontractor further agrees to execute and assign any additional guarantees or warranties specified in the Subcontract Documents.

10.1.3 The Subcontractor shall promptly correct Work rejected by SteelFab, or which fails to conform to the requirements of the Subcontract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed.

10.1.4 The Subcontractor shall be obligated to correct Work that is found not to be in accordance with the Subcontract Documents before or after Substantial Completion to the same extent that SteelFab is bound to the General Contractor or the Owner for correction of said Work. The Subcontractor shall begin the corrective Work immediately after receipt of written notice from SteelFab to do so. This obligation shall survive acceptance of the Work and termination of this Subcontract and/or Subcontractor's performance. This obligation is in addition to, and not in limitation of, the warranty obligations under Section 10.1. It is the intent of this Subcontract that warranty obligations are not restricted by Subcontractor's obligations to correct defective Work.

10.2 **SATISFACTION OF WARRANTY AND CORRECTIVE WORK OBLIGATIONS.** The Subcontractor agrees to satisfy warranty and corrective work obligations without cost to the General Contractor, the Owner or SteelFab. In the event of Subcontractor's failure to satisfy these obligations, all costs for design, labor, supervision, materials, travel (including meals, lodging and mileage), equipment and overhead (at 18% of costs) incurred by SteelFab in the ~~investigation, review~~, redesign and correction of such problem shall be paid to SteelFab by Subcontractor. Design and service team costs shall be computed using SteelFab's standard hourly rates. A verbal request for corrective action by SteelFab to the Subcontractor, together with a written confirmation of the action requested, will be provided. If corrective action is not initiated within 5 days and completed within a time reasonable under all the circumstances, SteelFab will itself commence investigation and implement corrective measures at the Subcontractor's expense. SteelFab's rights hereunder are in addition to all other rights and remedies pursuant to the Subcontract Documents, and the institution of such measures by SteelFab shall in no way relieve Subcontractor of its primary responsibility for performing and warranting the Work in accord with the Subcontract Documents.

SECTION 11
RECOURSE BY STEELFAB

11.1 **DEFAULT-NOTICE TO CURE.** If the Subcontractor refuses or fails to supply enough properly skilled Workers, proper materials, or maintain the Schedule of Work, or fails to achieve Substantial or Final Completion, or it fails to make prompt payment for its Workers, sub-subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to indemnify SteelFab as required by this Subcontract or by law, or otherwise is guilty of a breach of any provision of the Subcontract Documents and fails within two (2) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then SteelFab, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

(a) supply such number of workers and quantity of materials, equipment and other facilities as SteelFab deems necessary for the completion of the Subcontractor's Work, or any part thereof which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of such costs, including reasonable overhead, profit, as well as for other damages, and attorney's fees and dispute resolution costs;

(b) contract with one or more additional subcontractors to perform such part of the Subcontractor's Work as SteelFab shall determine will provide the most expeditious completion of the total Work, and charge the cost thereof to the Subcontractor;

(c) withhold payment of any monies due the Subcontractor pending corrective action or completion of the Subcontractor's Work to the extent required by and to the satisfaction of SteelFab; and

(d) set-off SteelFab's damages attributable to Subcontractor's default against any monies due Subcontractor under this Subcontract or under any other contract between SteelFab and the Subcontractor. In the event of an emergency affecting the safety of persons or property, SteelFab may proceed as above without notice.

11.2 **TERMINATION BY STEELFAB.** If the Subcontractor fails to commence and satisfactorily continue correction of a default under the Subcontract, including but not limited to those defaults identified in Section 11.1, within three (3) working days after receipt by the Subcontractor of the notice issued under Section 11.1, then SteelFab may either immediately terminate Subcontractor's performance (or this Subcontract) or issue a second written notice, by hand delivery or by certified mail, to the Subcontractor and its surety, if any, that shall state that if the Subcontractor fails to commence and continue correction of a default within three (3) days after receipt by the Subcontractor of the second notice, SteelFab may terminate this Subcontract (or Subcontractor's performance) and use any materials, equipment and/or employ such Workers or Subcontractors as SteelFab deems necessary to complete the Work.

All of the costs incurred by SteelFab in so performing the Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such

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expense may exceed the unpaid balance of the Subcontract Price, and agrees to pay said amount within seven (7) working days of receipt of an invoice from SteelFab.

SteelFab has the right for whatsoever reason to terminate this Subcontract for its convenience and if so, SteelFab shall be liable to the Subcontractor, if at all, solely for the reasonable value of Work performed by the Subcontractor prior to SteelFab's termination, including reasonable overhead and profit on work properly performed, less prior payments made. Subcontractor shall not be entitled to recover any other direct, incidental or consequential damages, including, but not limited to, profits attributable to unperformed Work. In the event a termination for cause pursuant to Section 11 is later deemed to have been improper, then the termination shall be converted to, and treated as, a termination for convenience, and Subcontractor shall have only those rights and remedies set forth herein for a termination for convenience.

11.3 **BANKRUPTCY**.

11.3.1 **TERMINATION ABSENT CURE.** If Subcontractor files a petition under the Bankruptcy Code, this Subcontract shall terminate if the Subcontractor or the Subcontractor's trustee (a) rejects the Subcontract, or (b) if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Subcontract, or (c) is otherwise unable to comply with the requirements for assuming this Subcontract under the applicable provisions of the Bankruptcy Code.

11.3.2 **INTERIM REMEDIES.** If the Subcontractor is not performing in accordance with the Schedule of Work at the time a petition in bankruptcy is filed, or at any subsequent time, SteelFab, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Subcontract and provide adequate assurance of its ability to perform hereunder, may take such steps as are reasonably necessary to maintain the Schedule of Work. SteelFab may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

11.4 **SUSPENSION BY STEELFAB.** SteelFab may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of SteelFab. Phased or interrupted Work when required shall not be deemed a suspension of Work.

The Subcontractor shall notify SteelFab in writing within five (5) calendar days after receipt of SteelFab's order of the effect of such order upon the Subcontractor's Work. To the extent, and only to the extent, allowed SteelFab under the Subcontract Documents, the Subcontract Price or Schedule of Work shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Subcontract caused by such suspension, delay, or interruption. Neither the Subcontract Price, nor the Schedule of Work, shall be adjusted under this Section for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible.

11.5 **WRONGFUL EXERCISE.** If SteelFab wrongfully exercises any option under this Section 11, SteelFab shall be liable to the Subcontractor, if at all, solely for the reasonable value of Work performed by the Subcontractor prior to SteelFab's wrongful action, including reasonable overhead and profit, less prior payments made. Subcontractor shall not be entitled to recover any other incidental or consequential damages, including, but not limited to, profits attributable to unperformed Work.

11.6 **REMEDIES CUMULATIVE.** All the rights and remedies of SteelFab in the event of a default by Subcontractor under this Subcontract shall be cumulative to the greatest extent permitted by law and shall be in addition to all other rights and remedies available to SteelFab at law or in equity.

SECTION 12
SUSPENSION OR TERMINATION BY THE GENERAL CONTRACTOR OR OWNER

12.1 **SUSPENSION BY GENERAL CONTRACT OR OWNER.** Should the General Contractor or Owner suspend SteelFab's contract or any part of SteelFab's contract which includes the Subcontractor's Work, SteelFab shall so notify the Subcontractor in writing and, upon receipt of said notice, this Subcontractor shall immediately suspend the Work.

12.2 **TERMINATION BY GENERAL CONTRACTOR OR OWNER.** If the General Contractor or Owner, for any reason, terminates SteelFab's contract or any part that includes the Subcontractor's Work, SteelFab shall so notify the Subcontractor in writing and upon receipt of said notice, this Subcontract shall also be terminated and the Subcontractor shall immediately stop the Work.

12.3 **CLAIMS FOR GENERAL CONTRACTOR OR OWNER SUSPENSION OR TERMINATION.** In the event of such General Contractor or Owner suspension or termination, SteelFab's obligation to the Subcontractor is limited to the extent of SteelFab's recovery from the General Contractor or Owner, on the Subcontractor's behalf, under the Contract Documents. SteelFab agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of a General Contractor or an Owner suspension or termination and to permit the Subcontractor to prosecute said claim, in the name of SteelFab, for the use and benefit of the Subcontractor. Administrative and overhead costs, attorney's fees and other expenses incurred by SteelFab while assisting the Subcontractor in the prosecution of such claim shall be deducted from any recovery paid to Subcontractor.

12.4 **STIPULATION.** The provisions of this Section 12 shall not be construed to create any obligation upon SteelFab to pursue any claim or litigation on behalf of the Subcontractor.

SECTION 13
LABOR RELATIONS

13.1 **LABOR HARMONY.** Subcontractor and its lower tier subcontractors shall not employ anyone in the Subcontractor's Work whose employment may be objectionable to SteelFab, the General Contractor or the Owner. All labor used throughout the Work by Subcontractor or any of its lower tier subcontractors shall be of a standing or affiliation that will permit the Project to be carried on harmoniously and without delay, and that will not, in any case, or under any circumstances, cause any disturbance, interference, or delay to the progress of the Project.

~~13.2 **LABOR DISPUTES.** In respect of all Work covered by this Subcontract, Subcontractor and persons in privity with it agree to recognize and comply with all agreements that SteelFab has, or may have, with respect to any union, or unions, concerning labor and conditions applicable to the Work covered by this Subcontract~~.

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Subcontractor and all persons in privity with it agree that, where its Work or any of the Work of SteelFab or other subcontractors is stopped or delayed or interfered with by strikes, slow-downs or Work interruptions or the threats thereof, resulting from an act or failure to act of Subcontractor and/or those in privity with it, or any of their employees or agents, then SteelFab, at its sole option, shall afford Subcontractor twenty-four (24) hours' notice wherein Subcontractor shall execute a requisite union contract or contracts, in order to maintain the harmony of the Work, or make such other arrangements, satisfactory to SteelFab that will ensure the harmonious continuation of the Work Subcontractor's failure to so comply within the allotted time shall be an event of default for which SteelFab may, at its sole option, terminate this Subcontract pursuant to Section 11.

SECTION 14
INDEMNIFICATION

14.1 To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless SteelFab and all of its related entities, General Contractor/Construction Manager, Architect, and Owner, including for each its respective parents, subsidiaries, agents, directors, officers, consultants, and employees ("Indemnitees") from and against any and all claims (including claims relating to liability contractually assumed by Subcontractor), damages, losses, judgments, awards, fines, injuries, settlements and expenses, including but not limited to attorneys' fees and expenses, arising out of, resulting from, or relating to the Subcontract and/or the Work or performance of the Work (including loss of use resulting therefrom), if caused in whole or in part by Subcontractor's default, failure to perform the Work in strict compliance with the Subcontract Documents, breach of the Subcontract, or negligent acts or omissions or willful misconduct of Subcontractor and/or its Sub-Subcontractors, Sub-Sub-Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such indemnity obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as a party or person described in this Paragraph 14.1. Subcontractor's obligation to indemnify shall not include any obligation to indemnify which is prohibited by applicable law. To the extent that any portion or obligation under this Paragraph is held to be unenforceable, such portion or obligation shall be severed and the remainder of this subparagraph shall be enforced, and if rendered entirely unenforceable, then Subcontractor agrees to indemnify the Indemnitees, their officers and employees, from liabilities, damages, losses and costs, including not limited to, reasonable attorney's fees, to the extent caused by the breach of this Subcontract, negligence, recklessness, or intentional wrongful misconduct of the Subcontractor and persons employed or utilized by Subcontractor in the performance of this Subcontract. The foregoing indemnification shall apply irrespective of whether claims are asserted by a party, by its employees, agents or subcontractors, or by unrelated third parties. Subcontractor shall not be required to indemnify an Indemnitee for the consequences of such Indemnitee's sole negligence. If any demand is made against Subcontractor by an Indemnitee pursuant to this Section 14.1, any payment due or which thereafter becomes due to Subcontractor, shall be held by SteelFab to cover such losses and expenses, including all reasonable attorney's fees. In the event that the money then due or that thereafter becomes due to Subcontractor in insufficient to cover such costs, Subcontract shall, upon demand, reimburse SteelFab for any such costs.

14.1.1 To the fullest extent permitted by law, in addition to the express duties to indemnify, protect and hold harmless, there is a duty, separate from the duties in Section 14.1, to defend each Indemnitee in connection with a claim, demand or suit described in Section 14.1. The duty to defend includes all costs of litigation, attorney's fees, expert's and consultant's fees, settlement costs and reasonable expenses in connection with the claim or litigation, regardless of whether the claims made for loss, damage or property damage are valid or groundless as long as the claims asserted can be causally connected to Subcontractor's alleged or actual failure to timely or fully perform as described in Section 14.1, or to an alleged or actual negligent act or omission or intentional wrongful act as described in Section 14.1. If an Indemnitee tenders the defense of a claim to Subcontractor and Subcontractor fails or neglects to assume the defense thereof, any Indemnitee facing liability for the claim may defend, compromise and/or settle any such suit or action, and Subcontractor will be bound and obligated to reimburse each Indemnitee for the amount expended by it in defending, settling or compromising any such claim, or in the amount expended in paying any judgment rendered therein, together with all reasonable attorney's fees and costs of litigation incurred by reason of the defense, settlement or compromise of such claims, so long as the Indemnitee demonstrates that the settlement or compromise was made in good faith.

14.2. Subcontractor specifically agrees that this indemnification obligation shall include the obligation to defend, indemnify, and hold SteelFab harmless from any assertion of security interests, and/or liens or claims of liens by Sub-Subcontractors, Sub-Sub-Subcontractors, suppliers, materialmen or any other person or entities which provided labor, materials, equipment, and/or services to the Project and/or for the Work. In the event that security interests or liens or claims of liens are asserted or filed by anyone in relation to labor, materials, services, and/or equipment furnished by any Sub-Subcontractor, Sub-Sub-Subcontractor, suppliers or other persons or entities, Subcontractor agrees to have the same discharged at Subcontractor's own expense within ten (10) days of receipt of notice from SteelFab, by procuring and posting a bond with the appropriate court or authorities or by settlement or otherwise. Any and all such security interests and liens or claims of liens shall be discharged by Subcontractor, regardless of any dispute relating thereto. Should Subcontractor fail to discharge such security interests or liens or claims of liens within such ten (10) day period, SteelFab may, at its option discharge such liens or claims of liens by bond, settlement or otherwise and Subcontractor shall be liable to SteelFab for all damages, costs, losses and expenses incurred by SteelFab (including, without limitation, all attorneys' fees).

14.3 Subcontractor acknowledges and agrees that the Work and all labor and materials herein contracted for are being provided solely for the development and improvements of the Project and that any claim of lien of Subcontractor or its Sub-Subcontractors or suppliers with respect to labor or materials furnished for the improvement of the Project is, and shall be, subordinate and inferior to the lien and security title of any deed to secure debt and security agreement encumbering the Project. Such subordination is and shall be effective without the need for any further written agreement or instrument of Subcontractor; but Subcontractor nonetheless agrees promptly to execute and deliver, in recordable form, any such written lien subordination agreement or acknowledgement which SteelFab may from time to time request. Subcontractor agrees to require each Sub-Subcontractor to assume, toward Subcontractor, the subordination of lien rights set forth in this Paragraph 14.4.

14.4 In claims against any person or entity indemnified under Section 14.1 by an employee of Subcontractor, a Sub-Subcontractor, or a supplier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Subcontractor or a Sub-Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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14.5 Subcontractor's indemnity obligations shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), punitive damages (if any) arising out of, or in connection with, any (1) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by Subcontractor, a Sub-Subcontractor, a Sub-Sub-Subcontractor, a supplier or any person or entity for whom Subcontractor is responsible, (2) means, methods, procedures, techniques, or sequences of execution or performance of the Work, or (3) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Subcontract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by Subcontractor, a Sub-Subcontractor, or any person or entity for whom any of them are responsible.

14.6 Subcontractor shall indemnify and hold harmless SteelFab from and against any costs and expenses (including reasonable attorney's fees and expenses) incurred by SteelFab in enforcing any of Subcontractor's defense, indemnity, and hold-harmless obligations under this Agreement.

14.7 Subcontractor acknowledges that the first $100.00 of the Subcontract consideration paid to the Subcontractor constitutes specific consideration for all indemnity obligations undertaken by the Subcontractor in the Agreement.

14.8 **PATENTS.** Except as otherwise provided by the Subcontract Documents, the Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims of infringement or alleged infringement of any patent, copyright, trade secret or other proprietary right of any third party relating to the Work, arising out of the Subcontractor's work, which may be brought against SteelFab, the General Contractor or Owner, and shall indemnify SteelFab, the General Contractor and Owner for all loss, including ll costs, expenses and attorney's fees.

14.9 Notwithstanding any other provision contained in this Subcontract, the provisions of this Section 14 will survive the termination of the Subcontract for any reason whatsoever. All indemnification obligations of Subcontractor under this Agreement shall remain in full force and effect as to claims occurring after this Subcontract is terminated or completed, and shall not be limited by the insurance requirements contained herein.

14.10 In the event that this Subcontract is, for whatever reason, executed after Work on the project has begun, then SteelFab and Subcontractor agree that they intend the indemnity and defense provisions of Section 14 to have application from the outset of Subcontractor's Work.

14.11 The foregoing obligations of Subcontractor shall not be affected or limited in any way by any insurance required of or provided to Subcontractor under this Subcontract.

SECTION 15
INSURANCE

15.1 **SUBCONTRACTOR'S INSURANCE.** Prior to commencing Work, the Subcontractor shall procure and maintain insurance of the types and in the amounts described herein from insurer(s) authorized to transact business in the state where the Work or operations will be performed, at Subcontractor's sole expense, including payment of all premiums, deductibles and self-insured retentions applicable to such policies or claims thereunder. The insurance described herein shall be maintained uninterrupted for the duration of the Project, including warranty periods, and shall protect SteelFab, and others as required by the contract documents, for liabilities in connection with Work performed by or on behalf of Subcontractor, its agents, representatives, employees, vendors, suppliers or subcontractors. Subcontractor shall permit SteelFab to examine the actual policies upon request. The insurance provisions contained in the Agreement are intended to be a separate and distinct obligation on the part of the Subcontractor. Therefore, these provisions are enforceable and Subcontractor shall be bound thereby regardless of whether or not the indemnity provisions of the Subcontract Agreement are determined to be enforceable, in whole or in part, in the jurisdiction in which the Project is located.

15.1.1 **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY.**

(a) Statutory coverage as proscribed by the jurisdiction where the Project is located. Said coverage shall be for the benefit of Subcontractor's owners, partners and employees who are engaged in the performance of the Work. Regardless of the statutory or regulatory ability of any owner, partner or employee to opt out of the workers compensation coverage, all persons performing work under this Subcontract, whether at the Project site or not, shall be covered by workers compensation insurance within the minimum limits set forth in the Subcontract.

(b) Employees Liability:
$500,000 - bodily injury for each accident
$500,000 - policy limit for bodily injury by disease
$500,000 - for each employee for bodily injury by disease

(c) Waiver of Subrogation. The Workers Compensation and Employer's Liability policy shall contain a waiver of subrogation as to SteelFab and other Indemnitees (as defined in Section 14).

(d) The insurance required in this Section 15.1.1 shall be provided by Subcontractor whether or not Subcontractor utilizes some or all of its own employees, leased employees, temporary employees or other labor services. Subcontractor shall require any firm providing leased employees to meet all the same workers compensation and employers liability coverages as are required of the Subcontractor in this Section, as well as the notice and waiver of subrogation obligations found elsewhere in Section 15. Such employee leasing company shall (i) amend the Workers Compensation to include an Alternate Employer endorsement naming Subcontractor as the alternate employer and (ii) maintain Employers Liability for a limit of $1,000,000/$1,000,000/$1,000,000. A copy of the Alternate Employers endorsement naming Subcontractor as alternate employer must accompany the certificate of insurance from the leasing company.

15.1.2 **COMMERCIAL GENERAL LIABILITY.**

(a) Limits of Liability:
$2,000,000 - general aggregate
$2,000,000 - products completed operations hazard and contractual liability
$1,000,000 - personal and advertising injury

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$1,000,000 - each occurrence

(b) Coverage shall be written on ISO occurrence form CG 0001 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, contractual liability, products-completed operations, personal injury, and damages arising from defective Work, including the costs to repair the damaged Work. Contractual liability coverage shall be sufficient to meet the requirements of the Subcontract, including defense costs and attorney's fees assumed under contract, which shall be paid in addition to the limit of liability.

(c) The general aggregate limit shall apply separately to each project.

(d) Additional Insureds shall mean SteelFab, General Contractor, Owner and other entities required to be added as additional insureds by the Subcontract Documents (as defined by Section 2.2). Subcontractor shall provide additional insured status to the Additional Insureds using ISO Additional Insured Endorsement forms CG 2010 0704(on-going operations) and CG 2037 0704(completed operations) or a substitute form(s), acceptable to SteelFab, providing equivalent coverage. Subcontractor shall maintain additional insured status for the Additional Insureds under the products-completed operations coverage for the time required to satisfy the statute of repose of the state in which the project is located. Verification of additional insured status shall be furnished to SteelFab by including a copy of the endorsement(s) with the Certificate of Insurance. In the event that any insurer issues a reservation of rights to any Additional Insured as respects coverage required by this Section, the Additional Insured shall be entitled to employ independent counsel at Subcontractor's expense.

(e) Unless expressly approved by SteelFab, Subcontractor's obligation to name SteelFab and other parties as Additional Insureds cannot be satisfied by Subcontractor arranging for the issuance of an Owner and Contractor Protective liability insurance policy.

(f) This insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the Additional Insureds.

(g) The requirement for naming SteelFab, General Contractor, Owner and other entities required to be added as additional insureds, is in addition to and not in any way in substitution for all other protection provided under the Subcontract Agreement, including Article 14 (indemnification).

(h) Limits shown in this requirement are minimum acceptable limits and in no way limit available coverage to the Additional Insureds. Subcontractor's Commercial General Liability coverage shall contain no provision providing that the limits available to an Additional Insured are less than limits available to Subcontractor.

(i) If the liability coverage does not contain the standard ISO separation of insureds provision, or a substantially similar clause, the liability policy shall be endorsed to provide cross liability coverage. In as much as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsement, with the exception of limits of liability, the policy shall operate in the same manner as if there were a separate policy covering each insured. There shall be no restrictions in the policy that limits coverage for a claim brought by an Additional Insured against a named insured.

(j) There shall be no endorsements or modifications of the liability insurance required in this Section that limits the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or residential construction without express approval of SteelFab.

(k) After completion of the work, Subcontractor shall maintain general liability coverage to include liability coverage for damage to Subcontractor's completed work equivalent to that provided under ISO form CG 00 01. Such liability coverage shall include additional insured insurance per the provisions of Section 15.1.2(d).

15.1.3 **AUTOMOBILE LIABILITY.**

(a) Limits of liability: $1,000,000 per accident

(b) Such insurance shall cover liability arising from the use, loading, unloading or operations of any auto, including those owned, hired or otherwise operated or used by or on behalf of Subcontractor.

(c) SteelFab, General Contractor, Owner and other entities as required by the Subcontract Documents shall be included as additional insureds.

15.1.4 **PROFESSIONAL LIABILITY.** If Subcontractor's scope of work includes any design or other professional services usually associated with architect or engineering work product, Subcontractor shall carry Professional Liability (Errors and Omissions) coverage with a minimum limit of $1,000,000 per occurrence. Professional services for the purpose of this paragraph include, but are not limited to, performing one or more of the following: signing or stamping shop drawings, design, consulting, engineering or building information modeling ("BIM") services. If coverage is provided by a claims-made policy, the retroactive date shall preceed the start date of any Work and coverage shall be renewed annually, or include an extended reporting period , for the coverage duration required by statute of repose for the state in which the Project is located.

If any such design or professional services are contracted by Subcontractor to a separate party, Subcontractor shall communicate and require this insurance to said party.

15.1.5 **UMBRELLA OR EXCESS LIABILITY.** Subcontractor shall provide an occurrence-based Umbrella/Excess Liability policy which shall provide excess liability coverage over its employer's liability, general liability and automobil liability insurance. The policy must be written on a "following-form" coverage basis.

(a) Minimum limits of liability: $3,000,000 per occurrence
$3,000,000 aggregate

(b) Umbrella/Excess Liability shall include as Insureds all entities that are Additional Insureds on the General Liability coverage as defined in Section 15.1.2(d).

(d) Policy aggregate limit must apply on a per project basis.

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(e) This Umbrella/Excess Liability insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to, maintained by the Additional Insureds.

15.1.6 **PROPERTY INSURANCE.** Subcontractor shall procure, at Subcontractor's own expense, property insurance for tools, equipment and other business property, whether owned, leased or borrowed, used by Subcontractor in the performance of the work. The property insurance shall extend to equipment, materials and supplies stored off the project site or in transit to the project site. Subcontractor waives all recovery and subrogation rights against SteelFab, General Contractor and Owner for any such loss or damage. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's costs from any applicable Builder's Risk policy which may provide coverage for said loss

15.1.7 **WAIVER OF SUBROGATION and OTHER RIGHTS of RECOVERY.** Subcontractor agrees to waive all rights of subrogation and other rights of recovery against SteelFab, General Contractor, Owner, other parties named as additional insureds, and all of their respective agents and employees, for recovery of loss and/or damages to the extent covered, or should have been covered, by the insurance required of Subcontractor in the Subcontract Documents. All policies, as allowed by law and excluding Professional Liability, must contain a provision that the insurer recognizes and will honor this waiver agreement. Such waivers shall be provided by specific endorsement if the policy itself does not otherwise provide the required waiver.

Subcontractor shall cause each lower-tier subcontractor to contractually waive all rights of subrogation and other rights of recovery against SteelFab, General Contractor, Owner and other parties named as additional insureds, as respects loss, damage, claims, expenses, suits or demands, howsoever caused.

SteelFab and Subcontractor waive all rights against each other, the General Contractor, and the Owner, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or other similar insurance covering improvements or materials at the Project site, except such rights as they may have to the proceeds of such insurance and except as to damages not covered by insurance. Subcontractor shall require similar waivers from its lower-tier subcontractors

15.1.8 **CANCELLATION, RENEWAL OR MODIFICATION.** All insurance policies shall contain a provision that the coverages afforded thereunder shall not be canceled, non- renewed, nor restrictive modifications added, until at least thirty (30) days prior written notice had been given to SteelFab. Additionally, Subcontractor shall be required to provide written notice to SteelFab within twenty-four (24) hours of an actual or proposed cancellation, suspension or non-renewal of the required insurance. In the event of a threatened cancellation for non-payment of premium, SteelFab may, at its option, pay the same on behalf of the Subcontractor and deduct the payment from the amounts then or subsequently owing to the Subcontractor.

15.1.9 **EVIDENCE OF INSURANCE.** Prior to commencing Work, Subcontractor shall furnish SteelFab with a certificate(s) of insurance for all insurances require by this Section 15. Such certificate shall be on an ACORD form. No progress payment will be made unless SteelFab has been furnished evidence of all required coverages and endorsements. Subcontractor warrants and represents that such certificates of insurance are true and accurate representation of Subcontractor's existing insurance coverage. The description of operations section of the certificate shall state the following:

- The project name and SteelFab project number.
- SteelFab, General Contractor, Owner and other entities as required by the Subcontract Documents are additional insureds as respects General Liability, Automobile Liability and Umbrella Liability. This statement must identify the specific form number of the endorsements or policy language that conveys the additional insured coverage. A copy of General Liability additional insured endorsements or conforming policy language must be attached to the certificate.
- General Liability, Automobile Liability and Umbrella Liability coverages are primary and non-contributory as respects any other insurance or self-insurance maintained by the Additional Insureds.
- General Liability and Umbrella/Excess Liability aggregate limits apply on a per project basis.
- Umbrella Liability is follow form coverage in excess of General Liability, Automobile Liability and Employers Liability.
- Waiver of Subrogation applies to all coverages where permitted by law.
- The specific coverage and deductible amount for any coverage with a deductible greater than $25,000.
- Renewal certificates shall be provided to SteelFab prior to the expiration of any of the insurance policies specified herein.

Subcontractor shall be liable to SteelFab for any failure to provide or maintain the required coverage or limits. The following actions do not constitute a waiver of Subcontractor's obligation to maintain insurance that is in full compliance of the insurance requirements set forth herein: (1) acceptance by SteelFab of a certificate from Subcontractor that does not satisfy full compliance with these insurance requirements, (2) failure of SteelFab to demand such certificates or other evidence of full compliance with these insurance requirements, or (3) failure of SteelFab to identify a deficiency from the certificate or other evidence that is provided.

Failure to maintain insurance required by Section 15 shall constitute an event of material breach and default pursuant to Section 11 of this Agreement.

15.1.10 **OCIP/CCIP PROGRAMS**. Subcontractor may be required by General Contractor or Owner to enroll in an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP). Such requirements may or may not include the enrollment of SteelFab in the OCIP or CCIP. Subcontractor shall strictly comply with all requirements of the program in which it is required to enroll and, if required by the terms of the OCIP or CCIP, the Subcontract Amount/Purchase Order Amount shall be reduced per the directions therein to represent the insurance coverages replaced by the OCIP or CCIP.

The insurance requirements contained in this Section 15 shall apply to all exposures, operations and locales not included in the OCIP or CCIP scope of coverage.

When Subcontractor is enrolled in an OCIP or CCIP, Subcontractor shall refer to the OCIP/CCIP manual for any additional insurance requirements or obligations. The OCIP/CCIP manual is hereby incorporated by reference to this Agreement.

15.1.11 **LOWER-TIER SUBCONTRACTOR'S INSURANCE.** All lower-tier subcontractors (i.e. sub-subcontractors) are subject to the same insurance requirements as Subcontractor. Subcontractor must cause all sub-subcontractors providing equipment, materials and/or services directly to Subcontractor in connection with Subcontractor's work to furnish the same indemnity and insurance with sufficient limits as reasonably determined by SteelFab to protect the interests of SteelFab, General Contractor and Owner. Each sub-subcontractor must name SteelFab, General Contractor,

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Owner and all other entities as required by the contract documents as additional insured under their General Liability, Automobile Liability and Umbrella/Excess Liability policies as provided in Section 15.1.9, and all such insurance shall be on a primary basis. All insurance maintained by SteelFab, General Contractor and Owner shall be considered excess and non-contributory. Subcontractor shall require all sub-subcontractors to waive their rights of subrogation in each if their respective contracts as required of Subcontractor hereunder and show evidence thereof. Subcontractor must obtain certificates of insurance evidencing such coverage and provide same to SteelFab upon request. Subcontractor shall verify that each sub-subcontractor has satisfied the Workers Compensation requirements, as required by law, including but not limited to collecting all required certificates of insurance.

15.1.12 **GENERAL INSURANCE PROVISIONS**

(a) Deductibles and Self-Insured Retentions. The funding of deductibles or self-insured retentions maintained by Subcontractor shall be the sole responsibility of Subcontractor, including any deductibles or self-insured retention amount applicable to claims involving SteelFab, General Contractor or Owner as additional insureds. Any deductible or self-insured retention greater than $25,000 must be communicated to SteelFab prior to commencing operations on the Project and stated on the certificate(s) of insurance filed with SteelFab. Subcontractor shall be considered a self-insurer with respect to its additional insured obligations under Section 15.1.2(d) for any deductible or self-insured retention applied by its insurer to any of the Additional Insureds.

(b) All insurance is to be issued by companies acceptable to SteelFab, must be provided by companies having an AM Best rating of A- VII or better, and must be authorized to do business in the state where the Project is located.

(c) No Representation of Coverage Adequacy. By requiring the insurance set forth in this Section 15, SteelFab does not represent that coverage or limits will necessarily be adequate to protect Subcontractor, and such coverage and limits shall not be deemed as a limitation on Subcontractor's liabilities under the indemnities obligations owed to SteelFab in this Agreement, or any other provision of the Subcontract Documents.

(d) SteelFab reserves the right to require that Subcontractor provide certified copies of any and all insurance policies and endorsements to which this Agreement is applicable.

(e) The insurance requirements set forth in this Section 15 are independent from all other obligations of Subcontractor under this Agreement, and apply whether or not required by any other provision of this Agreement. The insurance coverages maintained by Subcontractor shall not limit any of Subcontractor's indemnity obligations or other liabilities under the Subcontract. Insurance coverages maintained by Subcontractor that exceed the minimum requirements in this Section 15 shall be applicable to the Subcontract.

(f) Reports of Accident and Injury. All incidents and near misses, regardless of severity, shall be reported to SteelFab, Inc. in writing withing 24 hours of incident occurrence.

(g) Breach of Insurance Requirements. Subcontractor's failure to obtain and maintain the insurance coverages set forth in this Section 15 or any other attachment shall constitute a material breach of the Subcontract Agreement. In such event, in addition to any and all other rights and remedies contained in the Subcontract Agreement, (i) SteelFab may, at its option, terminate the Subcontractor for default, (ii) SteelFab may, at its option, purchase such coverage and backcharge the premium and associated costs to Subcontractor, (iii) SteelFab and any Additional Insured may require that Subcontractor pay for all attorney fees, expenses and liabilities as a result of any claim or lawsuit for which coverage would have been provided to SteelFab and the Additional Insureds under Subcontractor's insurance program, but for a breach by Subcontractor.

SECTION 16
ARBITRATION AND DISPUTE RESOLUTION

16.1 **STEELFAB'S OPTION TO MEDIATE, ARBITRATE OR LITIGATE.** All claims, disputes and matters in question arising out of, or relating to, this Subcontract, the Project or the breach thereof, except for claims which have been waived by interim and final lien and claim waivers and by the making or acceptance of final payment and the claims excluded or limited by Sections 6.2 and 6.6 shall be resolved by mediation, arbitration, or litigation, at SteelFab's sole election. The site for mediation and arbitration shall be in the appropriate jurisdiction where the Project is located, or in the State and county of SteelFab's office as identified in Section 1.0, as selected by SteelFab. In the event of a conflict between this provision and the dispute resolution provisions of the General Contract, this provision shall control. Subcontractor expressly consents and agrees to submit to the personal jurisdiction and venue in the appropriate jurisdiction where the Project is located, and/or the State and county of SteelFab's office as identified in Section 1.0. Subcontractor irrevocably waives, to the fullest extent permitted by law, the defenses of lack of personal jurisdiction and/or an inconvenient forum to the maintenance of such action or proceeding in any such court or arbitral body.

16.2 **DISPUTE RESOLUTION PROCEDURE.** If and only if SteelFab so elects, prior to a demand for arbitration or initiation of litigation, as elected by SteelFab, the parties shall proceed as follows, as an express condition precedent to Subcontractor commencing formal claims against SteelFab relating to or arising out of the dispute:

(a) Subcontractor asserting a claim shall do so in writing and within the notice period, if any, established for such claims by the Subcontract Documents. In the absence of a notice period set by the Subcontract Documents, the notice of claim shall be given as soon as practicable but in no event no later than five (5) calendar days after Subcontractor is aware of the event from which the claim arises. If no notice is given, the claim is waived. SteelFab may give notice to Subcontractor of any claim by SteelFab against Subcontractor at any time.

(b) The parties shall then attempt in good faith to resolve the dispute during the next twenty (20) calendar days before pursuing any other means of dispute resolution.

(c) If the matter remains unresolved, the parties shall endeavor to resolve the dispute by proceeding at SteelFab's election to non-binding mediation conducted under the Commercial Mediation Rules of the American Arbitration Association.

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(d) If the matter has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) days of the commencement of such procedure (which period may be extended by mutual agreement), or if SteelFab elects not to participate in a mediation, then such dispute shall be resolved either by binding arbitration before the American Arbitration Association in accordance with the Construction Arbitration Rules of the American Arbitration Association or before JAMS in accordance with its rules, or, at SteelFab's election, by litigation in federal or state court. The site for the arbitration or litigation shall be at the location of the Project, or in the State and county of SteelFab's office as identified in Section 1.0, at SteelFab's election. The arbitration panel shall consist at SteelFab's election of either one or three independent and impartial persons who have experience in the construction industry or construction law. If a three member panel is selected, the Subcontractor and SteelFab shall each appoint one member of the panel and the third member shall be appointed according to the aforementioned Rules.

16.3 **AWARD.** The arbitration award shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

16.4 **WORK CONTINUATION AND PAYMENT.** Unless otherwise agreed in writing, the Subcontractor shall continue with the Work and maintain the Schedule of Work pending dispute resolution, and, if so, SteelFab shall continue to make undisputed payments earned by the Subcontractor in accordance with this Subcontract, subject to the provisions of the Subcontract Documents.

16.5 **CONSOLIDATION OF CLAIMS**. To the extent not prohibited by SteelFab's contracts with others, at SteelFab's sole election, the claims and disputes of the General Contractor, Owner, SteelFab and Subcontractor and other subcontractors and suppliers involving a common question of fact or law shall be heard by the same arbitrator(s) in consolidated arbitration proceedings or in the same litigation in a consolidated proceeding.

16.6 **DOCUMENT PRODUCTION AND EXCHANGE OF ARBITRATION EXHIBITS.** After a demand for arbitration, each party shall have the right to immediate production of the records of the other party relating to the Project for inspection and copying except for those portions which are covered by an unwaived attorney-client privilege or which were prepared in anticipation of arbitration or litigation. No later than fifteen (15) days prior to the arbitration hearing, the parties shall make available to each other, for inspection and copying, the exhibits, photographs, and other documents which they intend to introduce or refer to during the arbitration, and shall provide the other with a "may call" witness list. Any additional discovery shall be at the agreement of the parties or by order of the Arbitrator. The Arbitrator shall allow limited reasonable discovery.

16.7 **ATTORNEY'S FEES, ARBITRATION COSTS, AND COURT COSTS.**

(a) Attorney's fees and expenses shall be awarded to the prevailing party.

(b) The prevailing party shall recover its attorney's fees and court costs incurred in any judicial proceedings necessary to obtain (i) enforcement of this arbitration clause or (ii) confirmation, enforcement, or collection of an arbitration award or court judgment, or (iii) in any appeal by the losing party.

(c) To the extent the Subcontract Documents require Subcontractor to pay SteelFab's attorney's fees and expenses, SteelFab shall be entitled to recover such fees and expenses as a matter of right.

SECTION 17
MISCELLANEOUS PROVISIONS

17.1 **GOVERNING LAW**. This Subcontract shall be governed by and interpreted in accordance with the laws of the State of SteelFab's office as identified in Section 1.0applicable to agreements executed and delivered solely within that State. For purposes of conflict of laws analysis, the same State's laws shall control.

17.2 **SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision, with the partial or completely invalid provision being severed. The failure of either party hereto to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of this Subcontract or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

17.3 **STEELFAB'S CONTINUING RELATIONSHIP WITH GENERAL CONTRACTOR, CONSTRUCTION MANAGER AND/OR OWNER.** Subcontractor acknowledges the likelihood that SteelFab will have a continuing business relationship with the General Contractor, Construction Manager and/or the Owner, or at least the opportunity for a continuing business relationship, that may result in future work for SteelFab. Subcontractor agrees that it will not solicit, negotiate, or appropriate for itself future work with the Owner and that it will not interfere with SteelFab's relationships with them or its prospects for future work.

17.4 **TITLES.** The titles given to the Sections of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose.

17.5 **ATTORNEY'S FEES.** The Subcontractor shall reimburse SteelFab for all of SteelFab's attorney's fees, court costs and other expenses incurred in enforcing or declaring the Subcontractor's obligations under this Subcontract, incurred in exercising any right or remedy hereunder or under law or equity in the event of a default by the Subcontractor, or incurred in any litigation or arbitration between the parties and/or in which SteelFab, without its fault, becomes involved by reason of the existence of this Subcontract.

17.6 **WRITTEN NOTICES.** Written notices to SteelFab required by this Subcontract shall be addressed to SteelFab's address in Section 1 of this Subcontract. Written notices to Subcontractor required by this Subcontract shall be sent to the address given in Section 1.1 of this Subcontract. Any notice sent by mail shall be deemed to have been received the third (3rd) calendar day after the date of mailing. Notice may also be delivered by hand delivering, email, or fax, in which event notice shall be deemed effective on the date such notice is given.

17.7 **ENTIRE AGREEMENT.** This Subcontract is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the parties hereto and supersedes all prior or contemporaneous negotiations, representations, understandings or agreements, either written or oral. This Subcontract shall not be modified except by a written instrument signed by the parties' authorized representative. This Subcontract has been freely negotiated and accepted by both parties and shall not be construed against either party.

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17.8 **INTEREST.** Subcontractor acknowledges that this is a commercial transaction and that SteelFab has the right to charge Subcontractor and Subcontractor agrees to pay 1.5% per month on any amount owed by Subcontractor to SteelFab under the provisions of this Subcontract until such amount is paid in full.

17.9 **CONSEQUENTIAL DAMAGES WAIVER**. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL STEELFAB BE LIABLE TO SUBCONTRACTOR FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, DATA, PROFITS, BUSINESS, REPUTATION OR FINANCING WHETHER OR NOT STEELFAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17.10 **PROFESSIONAL SERVICES**. The Subcontractor may be required to procure professional services in order to carry out its responsibility for construction means, methods, techniques, sequences and procedures for such services specifically called for by the Subcontract Documents. The Subcontractor shall obtain these professional services and any design certifications required from licensed design professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner and Architect shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. The Subcontractor shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

17.11 **DIGITIZED DOCUMENTS**. If the Contract Documents require the exchange of documents and data in electronic or digital form, prior to any such exchange, the parties shall agree on a written protocol governing all exchanges which, at a minimum, shall specify: (A) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (B) management and coordination responsibility; (C) necessary equipment, software and services; (D) acceptable formats, transmission methods and verification procedure; (E methods for maintaining version control; (F) privacy and security requirements; and (G) storage and retrieval requirements. The parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

17.12 **JOINT DRAFTING**. The Parties expressly agree that this Subcontract was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Subcontract shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

17.13 **SURVIVAL**. All warranty indemnity, defense, hold harmless, insurance, dispute resolution, attorney's fee and damages limitation provisions shall survive the termination or expiration of this Subcontract and/or termination of Subcontractor's performance under this Subcontract. In addition, every provision that by its terms is intended to survive termination or expiration of this Subcontract will do so.

17.14 **HEADINGS.** The headings of any paragraph, article or section of this Subcontract are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof..

SECTION 18
SPECIAL PROVISIONS

18.1 **BINDING EFFECT.** This Subcontract shall be binding upon and inure to the benefits of SteelFab, Subcontractor, and their successors and assigns, provided however that Subcontractor may not assign this Subcontract without SteelFab's written permission.

18.2 **INCONSISTENCIES AND OMISSIONS.** Should inconsistencies or omissions appear in the Subcontract Documents, it shall be the duty of the Subcontractor to so notify SteelFab in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, SteelFab shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with SteelFab's instructions.

18.3 **CROSS REFERENCE OF DOCUMENTS.** Subcontractor shall review all specifications, drawings, reports and existing conditions which affect the relationship of Subcontractor's Work to the complete project, and be responsible for that relationship.

18.4 **SUBCONTRACT DOCUMENTS.** The Subcontract Documents include this Subcontract as well as the documents below that are identified as follows and incorporated by reference:

(a) Scope of Work, Drawings, Specifications, Documents ..... Exhibit A
(b) Key Personnel ..... Exhibit B
(c) Construction Schedule ..... Exhibit C
(d) Alternates and Unit Prices ..... Exhibit D
(e) G702 and G703 ..... Exhibit E
(f) Subcontractor's Interim Lien and Claim Waivers w/Sub List ..... Exhibit F
(g) Sub-Subcontractor's Interim Lien and Claim Waivers ..... Exhibit G
(h) Subcontractor's Final Lien and Claim Waivers ..... Exhibit H
(i) Sub-Subcontractor's Final Lien and Claim Waivers ..... Exhibit I
(k) Drawing List ..... Exhibit K
(l) Insurance Requirements ..... Exhibit L
(m) Job Site Safety Requirements ..... Exhibit M
(n) Other Provisions ..... Exhibit N
(o) The Contract Documents identified in any contract between the General Contractor or the Owner and SteelFab, as well as any contract between the General Contractor and the Owner, conditions of such contract(s) (general, supplementary, special or other conditions), drawings, specifications, addendums, change orders, written modifications, and other documents therein

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IN WITNESS WHEREOF, the Parties have caused this Subcontract to be executed by their duly authorized representatives, under seal, as of the day and year first above written.

SUBCONTRACT NUMBER: 32479NC500

CONTRACTOR

SteelFab, Inc.

DocuSigned by:
Colby Mavropoulos
2AEB8233CA8D483...
Signature

Colby Mavropoulos
Printed Name

Project Manager
Title

SUBCONTRACTOR

Ben Hur Construction Co
Company Name

DocuSigned by:
Scott Bullerdick
77B3B665D66B4DE...
Signature

Scott Bullerdick
Printed Name

Vice-President/Division Manager
Title

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EXHIBIT 3

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Contract 32661NC501

SteelFab, Inc. - HQ
3025 Westport Road
Charlotte, North Carolina 28208
Phone: (704) 394-5376

Project: 32661-SFI-Cost - Ascend Elements PCAM North
6505 Johns River Road
Hopkinsville, Kentucky 42240

Ben Hur Estimate 23.150

DATE CREATED:	10/23/2023		
CONTRACT COMPANY:	Ben Hur Construction Co 2191 LEMAY FERRY RD STE 200 ST. LOUIS, Missouri Phone: (314)298-8007 Fax: (314)699-9889	**CREATED BY:**	Rhonda Pike **(Steelfab, Inc. - HQ)** PO Box 19289 Charlotte, North Carolina 28219
CONTRACT STATUS:	Out for Signature	**EXECUTED:**	No
START DATE:	02/12/2024	**SIGNED CONTRACT RECEIVED DATE:**	
ESTIMATED COMPLETION DATE:	05/20/2024		
CONTRACT DATE:	10/23/2023	**ISSUED ON DATE:**	10/23/2023
DEFAULT RETAINAGE:	10.0%		

DESCRIPTION:
Miscellaneous Metals

INCLUSIONS:
FURNISH & INSTALL fabricated steel materials for the above referenced project.

1. Bid Documents

1.1 Drawings: Structural dated 8/30/2023
1.2 Other Documents:
1.3 Addenda:

2. Scope (furnished only)

2.1 Structural Steel (051200)
2.1.1 Includes all structural steel shown and sized on the structural design drawings, fabricated in accordance with AISC Specifications and Code of Standard Practice.
2.1.1.1 Approx. 2,046 tons structural steel.
2.1.1.2 Main members (columns, beams, bracing)
2.1.1.3 (2) Roof trusses (shipped in two pieces each)
2.1.1.4 Pipe rack framing (hangers, beams, welded frames)
2.1.1.5 Girt framing, sag rods
2.1.1.6 Jambs and headers at wall openings (knock-down)
2.1.1.7 Attachments and connection material
2.1.1.8 Perimeter angles/plates
2.1.1.9 Misc. angle braces, kickers, etc. as shown on plans
2.1.1.10 Shop fasteners
2.1.1.11 Paint material
2.1.2 Finishes:
2.1.2.1 Majority of structural framing will be furnished bare, without prep or primer, to receive field applied fireproofing
2.1.2.2 Girt framing & pipe rack framing to receive clean/prep per SSPC-SP2 and one shop applied coat of standard alkyd primer. (Sherwin Williams Steel Spec Primer B50AV11 or equivalent)
2.1.2.3 Sag rods are included as galvanized threaded rods, painting of sag rods is not included
2.1.3 Price does not include reinforcement of SEOR designed members to account for local effects at connection points unless specifically shown and sized on the current design documents.
2.1.4 Price is based on using tension control (twist-off) shop bolts.
2.1.5 Price includes hauling to Hopkinsville, KY
2.1.6 Girder connections to columns have been assumed where no connection detail is called out on the framing plan. In general the connections are assumed to be similar to connection details on D-SS-501.
2.1.7 Infill beam connections to girders are assumed to be 3/8” thick shear plates with standard rows of bolts.
2.1.8 Ref. Detail 2/D-SS-504 – Girt clips on columns are assumed to be WT4x9.

2.2 Installation only of the following materials

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2.2.1 Metal decking
2.2.2 Field fasteners (field bolts, expansion anchors, epoxy anchors, etc.)
2.2.3 Field welded headed shear studs

3. Alternate Pricing (NOT included in base bid)
3.1 PCAM North OCIP/CCIP Credit (Worker's Comp supplied by others) ……..DEDUCT ($ 41,802.00)
3.2 PCAM North Total Impact (Erection): See attached erection proposal for more details. INCLUDED IN BASE BID

4. Clarifications

4.1 Price includes applicable tax on materials only (value = $422,032).
4.2 Pricing is firm for 30 days and is based on current material pricing and availability. Price does not include escalation or contingency.
4.3 Time is of the essence. Shop availability is subject to prior sale.
4.4 Schedule:
4.4.1 Price is tentatively based on delivery starting February 19, 2024 and an erection duration of (11) weeks.
4.4.2 A detailer produced ABM for main material must be received no later than 10/17/2023.
4.4.3 Approximately first half of "For Fabrication" shop drawings must be received no later than 11/16/2023. Remainder of shop drawings must be received no later than 12/22/2024.
4.4.4 Final schedule for delivery and duration to be mutually agreed upon at time of award.
4.4.5 We have not included allowance for delays caused by weather or any other conditions beyond our control.
4.4.6 See attached erection proposal for additional schedule information.
4.5 Field measurements, if required, will be provided by customer in a timely fashion to avoid delays in fabrication.
4.6 We require fully functional CNC files be provided with released for fabrication shop drawings
4.7 Erection Specific:
4.7.1 Crane and truck access area must be firm, level and rocked to support a large capacity crane, we will require crane access throughout the entire area including inside the footprint. Access road for deliveries to the crane must be a firm, level and rocked roadway.
4.7.2 Crane access shall be in compliance with 29 CFR 1926 OSHA Subpart CC, Section 1926.1402 and OSHA Subpart R, Section 1926.752 and is to be provided and maintained by others at no cost.
4.7.3 Customer to provide sufficient clear and accessible area to perform our work, including all-weather truck and crane access, free from all interferences, obstructions and utilities including those located overhead and underground. (In accordance with 29 CFR 1926 OSHA Subpart CC, Section 1926.1402 and OSHA Subpart R, Section 1926.752(c))
4.7.4 Fall protection during truck unloading will be accomplished by using a safety monitoring system in lieu of tie-off protection.
4.7.5 We will perform an informal survey of anchor bolts prior to erection. Necessary corrections to be done by others before erection begins.
4.7.6 See attached erection proposal for additional clarifications.

Commercial Terms
6.1 This proposal is based on the ability to reach mutually agreeable terms and conditions prior to entering into a contract agreement. Upon release by customer to proceed with any portion of the work described herein, this proposal becomes a binding agreement, unless and until formal contract terms have been agreed upon.
6.2 We require full payment for mill ordered materials upon receipt without retainage. Progress payments are due within (30) days of properly executed invoices for work satisfactorily completed. Final retention to be paid within (30) days of final completion of our scope of work.
6.3 All extra work to be done after written or verbal approval with no retention, paid when completed.

EXCLUSIONS:
5. Exclusions
5.1 Payment & Performance Bond
5.2 Liquidated and consequential damages
5.3 Independent (3rd party) testing and inspection in shop or field including non-destructive testing (ultrasonic, magnetic particle, etc.) of materials or welds. (NOTE: If the owner/customer does not engage an inspection/testing firm to perform the required NDT in our shop, BHSW will engage a firm directly and will be reimbursed via change order for all costs incurred; however, this service is not included in our base bid price and is not part of the AISC certification program.)
5.4 Commercial or labor diversity requirements
5.5 Field Work Specific:
5.5.1 Demolition or patching of existing construction; Excavation; Dewatering or dust control; Street cleaning; Cleaning of embeds to bare metal; Caulking/sealing/mastic; Dedicated labor or machinery to assist in testing; Location of utilities; Protection of installed steel
5.5.2 Design, installation, maintenance and removal of site access (crane and truck roads/paths, temporary roads, access ramps, lay down area, etc.)
5.5.3 Crane mats or other supplemental material below the crane tracks, outrigger pads or truck tires.
5.5.4 Unloading or staging of materials furnished by us but installed by others (embeds, lintels, etc.)
5.5.5 Installation of metal deck on light gauge supports.
5.5.6 Painting/touch-up; Grouting; Core drilling; Certified surveys; Cleaning/sweeping of metal deck including ferrule removal; Safety cable at roof-decked levels; Field welded splices at cont. perimeter plates/angles;
5.5.7 See attached erection proposal for additional exclusions
5.6 Shoring or temporary supports for other trades; Light gauge metal framing/clips; Flexible closure strips for deck; Asphaltic/bitumastic coatings; Fireproofing coatings; Grout; Corner guards or other wall protection; Mock-ups; Abrasive stair nosings; Joist reinforcing angles;
5.7 Additional coatings on galvanized or shop primed steel (unless noted otherwise in scope above)
5.8 Material or holes for other trades U.N.O. (i.e. for precast, tilt-up, MEPF, etc.)
5.9 Column anchor bolts and other embedded steel materials
5.10 Plate washer material for column anchor bolts (if required)

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5.11 Field fastener material (field bolts, expansion anchors, epoxy anchors, etc.)
5.12 Field welded headed shear stud material
5.13 Threaded rod material for attaching to pour stop (4/D-SS-506) (shop welded nut is included in price)
5.14 Metal decking material and accessories
5.15 Metal grating material and accessories
5.16 Misc. metals (stairs, railings, ladders, bollards, dock embeds, etc.)
5.17 Frames/framing for roof openings; All details on D-SS-503 (quantity/locations unknown)
5.18 Shims or leveling nuts for columns
5.19 Steel detailing or connection design

ATTACHMENTS:
23.150_Ascend_PCAM_North_SubFab+Erection_Proposal_REV1_cc10.12.23.pdf, _Ben Hur.docx, _tax statement.xls, _1 Billing Instructions Revised 2023-4-11.docx, _Exhibit E G702-703.xlsx, _W9-Rev 10-18.pdf

PAYMENT TERMS:	Net 30 with Progress

PROJECT INFORMATION

1.4 GENERAL CONTRACTOR:	Turner Construction (Char)	**1.5 OWNER:**	Ascend Elements
1.6 ARCHITECT:	PTAC		

NOTICES

BILLING INFORMATION: The following must be received before first payment can be made:

- W-9
- Executed Contract
- COI
- Site Specific Safety Plan
- Site Personnel List
- Erector Checklist

Send with every billing:

- G702/G703
- Tax Statement (If furnish and install)

Waivers will be requested for www.Levelset.com. You will be responsible for adding subs and requesting your sub's waivers via Levelset.com.

Email pay apps to invoices@steelfab-inc.com.

DELIVERY INFO: Subcontractor will be responsible for checking the Bill of Lading accompanying each load to ensure all pieces have been delivered. If any members are found to be missing, Subcontractor will immediately notify SteelFab's project manager. Subcontractor will unload each delivery of material pertinent to its scope of work with 30 minutes. If for any reason the delivery cannot be completely unloaded within 30 minutes, Subcontractor shall immediately notify SteelFab's project manager.

DECKING: SteelFab, Inc. requires that no bundle of decking may be placed on steel joists until all bridging has been installed and anchored and all joist bearing ends attached. This work must be done in accordance with manufacturer's installation instruction and OSHA standards.

COVID: SteelFab will not accept nor fund any fines, penalties, back-charges, change order deducts, etc. associated with subcontractor's inability to follow COVID-19 safety requirements as mandated by the controlling general contractor, local, state and federal governments nor their own site-specific safety plan. Subcontractor is required to submit a site-specific safety plan which specifically addresses precautions and protocols related to COVID-19 safety protocol. SteelFab will provide its corporate policy pertaining to COVID-19 upon request for reference only.

SCHEDULE

WEEKS TO SUBSTANTIAL COMPLETION:		**WEEKS TO FINAL COMPLETION:**	

EXHIBITS

COI RCVD:	No	**ERECTOR CHECKLIST RCVD:**	Yes

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Contract 32661NC501

SITE PERSONNEL RCVD: Yes

SITE SPECIFIC SAFETY PLAN RCVD: Yes

#	Budget Code	Description	Amount
1	4-03-80.S Subcontract - Furnish & Erect.Subcontract	Miscellaneous Metals	$9,025,800.00
2	4-03-81.O Taxes paid by Subcontractor.Other	Taxes paid by Subcontractor	$0.00
		Grand Total:	**$9,025,800.00**

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SteelFab, Inc. - HQ
3025 Westport Road
Charlotte, North Carolina 28208

DocuSigned by:
Colby Mavropoulos
2AED8233CA8D483...
10/31/2023
SIGNATURE **DATE**

Ben Hur Construction Co
2191 LEMAY FERRY RD STE 200
ST. LOUIS, Missouri

DocuSigned by:
6A071F07A8CA478...
10/31/2023
SIGNATURE **DATE**

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BEN HUR STEEL WORX

2191 Lemay Ferry Road, Suite 200
St. Louis, MO 63125
314.298.8007

10/12/2023

BID PROPOSAL

Estimate No. 23.150

SteelFab, Inc.
3025 Westport Rd.
Charlotte, NC 28208

Attention: Mr. Travis Woodward

Reference: Ascend Elements – PCAM North
Hopkinsville, KY
Steel Fabrication & Erection Proposal (REV1)

Gentlemen:

Based on the Bid Documents and Clarifications listed below we are pleased to quote the lump sum price of

Nine Million Twenty Five Thousand Eight Hundred USD ($ 9,025,800.00)

(TAX INCLUDED)

to **FURNISH & INSTALL** fabricated steel materials for the above referenced project.

1. Bid Documents

1.1 Drawings: Structural dated 8/30/2023
1.2 Other Documents:
1.3 Addenda:

2. Scope (furnished only)

2.1 Structural Steel (051200)

2.1.1 Includes all structural steel shown and sized on the structural design drawings, fabricated in accordance with AISC Specifications and Code of Standard Practice.
- 2.1.1.1 Approx. 2,046 tons structural steel.
- 2.1.1.2 Main members (columns, beams, bracing)
- 2.1.1.3 (2) Roof trusses (shipped in two pieces each)
- 2.1.1.4 Pipe rack framing (hangers, beams, welded frames)
- 2.1.1.5 Girt framing, sag rods
- 2.1.1.6 Jambs and headers at wall openings (knock-down)
- 2.1.1.7 Attachments and connection material
- 2.1.1.8 Perimeter angles/plates
- 2.1.1.9 Misc. angle braces, kickers, etc. as shown on plans
- 2.1.1.10 Shop fasteners
- 2.1.1.11 Paint material

2.1.2 Finishes:
- 2.1.2.1 Majority of structural framing will be furnished bare, without prep or primer, to receive field applied fireproofing
- 2.1.2.2 Girt framing & pipe rack framing to receive clean/prep per SSPC-SP2 and one shop applied coat of standard alkyd primer. (Sherwin Williams Steel Spec Primer B50AV11 or equivalent)
- 2.1.2.3 Sag rods are included as galvanized threaded rods, painting of sag rods is not included

2.1.3 Price does not include reinforcement of SEOR designed members to account for local effects at connection points unless specifically shown and sized on the current design documents.
2.1.4 Price is based on using tension control (twist-off) shop bolts.
2.1.5 Price includes hauling to Hopkinsville, KY
2.1.6 Girder connections to columns have been assumed where no connection detail is called out on the framing plan. In general the connections are assumed to be similar to connection details on D-SS-501.
2.1.7 Infill beam connections to girders are assumed to be 3/8" thick shear plates with standard rows of bolts.
2.1.8 Ref. Detail 2/D-SS-504 – Girt clips on columns are assumed to be WT4x9.

2.2 Installation only of the following materials
2.2.1 Metal decking
2.2.2 Field fasteners (field bolts, expansion anchors, epoxy anchors, etc.)
2.2.3 Field welded headed shear studs

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3. Alternate Pricing (NOT included in base bid)

3.1 PCAM North OCIP/CCIP Credit (Worker's Comp supplied by others) ……***DEDUCT ($ 41,802.00)***

3.2 PCAM North Total Impact (Erection): See attached erection proposal for more details. ***INCLUDED IN BASE BID***

4. Clarifications

4.1 Price includes applicable tax on materials only (value = $422,032).

4.2 Pricing is firm for 30 days and is based on current material pricing and availability. Price does not include escalation or contingency.

4.3 Time is of the essence. Shop availability is subject to prior sale.

4.4 Schedule:

4.4.1 Price is tentatively based on delivery starting February 19, 2024 and an erection duration of (11) weeks.

4.4.2 A detailer produced ABM for main material must be received no later than 10/17/2023.

4.4.3 Approximately first half of "For Fabrication" shop drawings must be received no later than 11/16/2023. Remainder of shop drawings must be received no later than 12/22/2024.

4.4.4 Final schedule for delivery and duration to be mutually agreed upon at time of award.

4.4.5 We have not included allowance for delays caused by weather or any other conditions beyond our control.

4.4.6 See attached erection proposal for additional schedule information.

4.5 Field measurements, if required, will be provided by customer in a timely fashion to avoid delays in fabrication.

4.6 We require fully functional CNC files be provided with released for fabrication shop drawings

4.7 Erection Specific:

4.7.1 Crane and truck access area must be firm, level and rocked to support a large capacity crane, we will require crane access throughout the entire area including inside the footprint. Access road for deliveries to the crane must be a firm, level and rocked roadway.

4.7.2 Crane access shall be in compliance with 29 CFR 1926 OSHA Subpart CC, Section 1926.1402 and OSHA Subpart R, Section 1926.752 and is to be provided and maintained by others at no cost.

4.7.3 Customer to provide sufficient clear and accessible area to perform our work, including all-weather truck and crane access, free from all interferences, obstructions and utilities including those located overhead and underground. (In accordance with 29 CFR 1926 OSHA Subpart CC, Section 1926.1402 and OSHA Subpart R, Section 1926.752(c))

4.7.4 Fall protection during truck unloading will be accomplished by using a safety monitoring system in lieu of tie-off protection.

4.7.5 We will perform an informal survey of anchor bolts prior to erection. Necessary corrections to be done by others before erection begins.

4.7.6 See attached erection proposal for additional clarifications.

5. Exclusions

5.1 Payment & Performance Bond

5.2 Liquidated and consequential damages

5.3 Independent (3rd party) testing and inspection in shop or field including non-destructive testing (ultrasonic, magnetic particle, etc.) of materials or welds. **(NOTE: If the owner/customer does not engage an inspection/testing firm to perform the required NDT in our shop, BHSW will engage a firm directly and will be reimbursed via change order for all costs incurred; however, this service is not included in our base bid price and is not part of the AISC certification program.)**

5.4 Commercial or labor diversity requirements

5.5 Field Work Specific:

5.5.1 Demolition or patching of existing construction; Excavation; Dewatering or dust control; Street cleaning; Cleaning of embeds to bare metal; Caulking/sealing/mastic; Dedicated labor or machinery to assist in testing; Location of utilities; Protection of installed steel

5.5.2 Design, installation, maintenance and removal of site access (crane and truck roads/paths, temporary roads, access ramps, lay down area, etc.)

5.5.3 Crane mats or other supplemental material below the crane tracks, outrigger pads or truck tires.

5.5.4 Unloading or staging of materials furnished by us but installed by others (embeds, lintels, etc.)

5.5.5 Installation of metal deck on light gauge supports.

5.5.6 Painting/touch-up; Grouting; Core drilling; Certified surveys; Cleaning/sweeping of metal deck including ferrule removal; Safety cable at roof-decked levels; Field welded splices at cont. perimeter plates/angles;

5.5.7 See attached erection proposal for additional exclusions

5.6 Shoring or temporary supports for other trades; Light gauge metal framing/clips; Flexible closure strips for deck; Asphaltic/bitumastic coatings; Fireproofing coatings; Grout; Corner guards or other wall protection; Mock-ups; Abrasive stair nosings; Joist reinforcing angles;

5.7 Additional coatings on galvanized or shop primed steel (unless noted otherwise in scope above)

5.8 Material or holes for other trades U.N.O. (i.e. for precast, tilt-up, MEPF, etc.)

5.9 Column anchor bolts and other embedded steel materials

5.10 Plate washer material for column anchor bolts (if required)

5.11 Field fastener material (field bolts, expansion anchors, epoxy anchors, etc.)

5.12 Field welded headed shear stud material

5.13 Threaded rod material for attaching to pour stop (4/D-SS-506) (shop welded nut is included in price)

5.14 Metal decking material and accessories

5.15 Metal grating material and accessories

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BEN HUR STEEL WORX
2191 Lemay Ferry Road, Suite 200
St. Louis, MO 63125
Office: 314.298.8007

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5.16 Misc. metals (stairs, railings, ladders, bollards, dock embeds, etc.)
5.17 Frames/framing for roof openings; All details on D-SS-503 (quantity/locations unknown)
5.18 Shims or leveling nuts for columns
5.19 Steel detailing or connection design

6. Commercial Terms

6.1 This proposal is based on the ability to reach mutually agreeable terms and conditions prior to entering into a contract agreement. Upon release by customer to proceed with any portion of the work described herein, this proposal becomes a binding agreement, unless and until formal contract terms have been agreed upon.
6.2 We require full payment for mill ordered materials upon receipt without retainage. Progress payments are due within (30) days of properly executed invoices for work satisfactorily completed. Final retention to be paid within (30) days of final completion of our scope of work.
6.3 All extra work to be done after written or verbal approval with no retention, paid when completed.

We would like to thank you for the opportunity to bid this project and look forward to discussing our proposal with you in more detail at your earliest convenience. If you should have any questions, please call.

Very truly yours,

BEN HUR STEEL WORX, LLC

Jim Medlin
Sales & Estimating

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BEN HUR STEEL WORX
2191 Lemay Ferry Road, Suite 200
St. Louis, MO 63125
Office: 314.298.8007

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BEN HUR CONSTRUCTION CO.
3250 Profit Drive ♦ Fairfield, Ohio 45014 ♦ (513) 874-9228 ♦ (513) 874-1655 Fax

October 11, 2023

BHC Estimate # 23-036 REV2

Ben Hur Construction Co.
2191 Lemay Ferry Rd.
Ste. 200
St. Louis, MO 63125

Attn: Mr. Jim Medlin

Re: Ascend Elements
pCam Buidling
Hopkinsville, KY

Gentlemen:

Ben Hur Construction Company is certified by the American Institute of Steel Construction to have the personnel, organization, experience, capability and commitment meeting the requirements of Advanced Certified Steel Erector category as set forth in the AISC Certification Program.

We propose the following price to furnish the necessary tools, labor, equipment and supervision required to erect the structural steel in accordance with the drawings and specifications submitted with subject inquiry.

North Base Price		$ **INCLUDED IN BASE**
North OCIP/CCIP Credit (Workers Comp supplied by others)	DEDUCT	$ **SEE ALT ABOVE**
pCam North Total Impact	*ADD*	$ **SEE ALT ABOVE**
Breakdown		
Additional Manlifts	*$75,123*	
Scope Inefficiency	*$32,179*	
Firewatch	*$ 2,977*	
Spotters	*$ 5,954*	
General Conditions	*$30,389*	

This work will have an impact of 3 working days to the overall construction schedule listed below.

PCAM North

- *Level 2 will be erected and detailed (bolts) out of lifts. 2@86', 3@66', & 2@46'.*
- *5% inefficiency amount factored into the erection and bolt up work on Level 2.*
- *Roof will be erected and detailed off of the steel, same with landing deck on all levels*
- *Firewatch will only be required if we are welding over combustibles.*
  - *We a have included a minimal amount Spotters for if the lift basket platform is above 30' or if there is lift congestion.*

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Project Schedule:
pCam North
All fieldwork is to be performed in 11 weeks for erecting + 2 additional weeks to complete final detailing starting directly after the completion of pCam South with zero downtime on one (1) shift per day, nine(9) hours per shift, six (6) days per week, Monday through Saturday. Excludes all cost to work Sunday, holidays, and additional shifts. We are anticipating a manpower average of 20 men on this project. No consideration for lost time due to weather.

Project Specific Clarifications and Qualifications:

1.) Crane access inside the footprint and around the entire perimeter within 20 feet immediately adjacent to the footprint of the structure. Crane access area must be firm, level and graveled to support a large capacity crawler crane. Access road for steel deliveries to the crane must be firm, level and graveled roadway.

2.) We acknowledge receipt of zero addendums.

3.) We have included 2 line safety protection at the perimeter and around interior openings. Maintenance and removal are by others. We exclude perimeter protection at the roof. We will require **pCam North: 400** perimeter posts provided by the fabricator at no cost to BHC.

4.) Continuous plates and angles such as those shown on 4/D-SS-506 are shop attached.

5.) We have included the installation and furnishing of shear connectors.

6.) We have included our preferred equipment supplier rates in this proposal.

7.) General or special provisions for the project have not been included. Once documents have been provided and reviewed we reserve the right to adjust our pricing as needed.

8.) We have included 1 full-time safety representative in our base price for the duration of the project.

9.) Our price is based on working on the steel, not out of lifts. (Refer to ADD price on page 1)

10.) We have included the cost to shoot the roof and floor deck with Hilti pins.

11.) We have added the cost to pay for hookups and power for our office trailer.

Our price is based on the following General Conditions:

1.) All truck and crane access in compliance with 29 CFR 1926 OSHA Subpart CC, Section 1926.1402 and OSHA Subpart R, Section 1926.752(c) is to be provided by others at no cost. This includes access inside the building footprint.

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2.) Suitable ground conditions will be provided and maintained by others for our cranes, trucks & man lifts.

3.) One mobilization to the job site is included in this quotation. Additional mobilization(s) or downtime of equipment and/or personnel (necessitated by others) will be at additional cost.

4.) Customer to provide sufficient clear and accessible area to perform our work, free from overhead or underground obstructions.

5.) Interferences are to be removed by others prior to the start of our work.

6.) Continuous erection of steel without interruption beyond our control, with one erection crew.

7.) BHC will require "constructibility" input and review of steel, deck and miscellaneous iron shop drawings.

8.) Steel and deck to be in sequence, delivered to the crane in a mutually acceptable manner. No mixed loads.

9.) We will perform a survey of anchor bolts prior to erection. Necessary corrections to be done by others before erection begins.

10.) Reaching mutually agreeable contract terms and conditions.

11.) This proposal will become part of the contract.

12.) Work must be completed by April 2024 or we will require a contract adjustment due to subsequent wage increase.

13.) If bond is required, add $8.50 per $1,000.00.

14.) All field connections are to be bolted unless welding is specifically shown on the structural drawings, with tension control or snug tight bolts, connections are assumed to be A.I.S.C. Type 2, bolted.

15.) Column splice plates are to be shop welded or shop bolted to the lower shaft.

BEN HUR CONSTRUCTION COMPANY specifically excludes:

a. Touch up painting.
b. Grout or grouting.
c. Testing or inspection.
d. Light gauge metal framing
e. The setting of bearing or leveling plates.
f. Cutting holes in the metal deck for use by others. We also exclude installation of hanger tabs if required.
g. Unloading, layout and installation of embedded items
h. Steel appearing on electrical, mechanical and architectural drawings which are not shown on structural drawings.

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i. Liquidated damage and consequential damages.
j. Furnishing materials which become part of the structure, with the exception of welding electrode.
k. Removing or patching fireproofing.
l. Dewatering or dust control.
m. Cleaning of roads/streets.
n. Field measurements for fabrication.
o. Firewatch, lift spotters, shuttling of manpower, cleaning of steel.

Payment Terms: Net thirty days with 90% of work complete, invoiced each month, with balance due 30 days after completion of our work.

Calculations of insurance costs for CCIP and OCIP purposes is based on the costs that are included (or would have been included) in our price. Ben Hur has a large deductible program with $100,000 work comp deductible and $50,000 general liability deductible. Our cost calculation is based on premiums paid plus the Expected Loss Ratio for claims under the deductible. The OCIP/CCIP insurance costs we are providing are not subject to audit or adjustment except for adjustments caused by increases or decreases in payroll.

We carry Workers' Compensation Insurance with Statutory Limits, Automobile Liability with a $1,000,000 limit and Commercial General Liability Insurance with limits of $1,000,000 per occurrence, $2,000,000 Aggregate. In addition, Umbrella Liability coverage is provided. Certificates indicating such coverage will be furnished prior to starting operations on this project.

In the event Ben Hur Construction is considered for the award of this contract, we request a "Pre-Award" meeting to review our assumptions and scope of work.

This proposal is subject to review if not accepted within 30 days.

Thank you for this opportunity to be of service.

Very truly yours,
BEN HUR CONSTRUCTION COMPANY

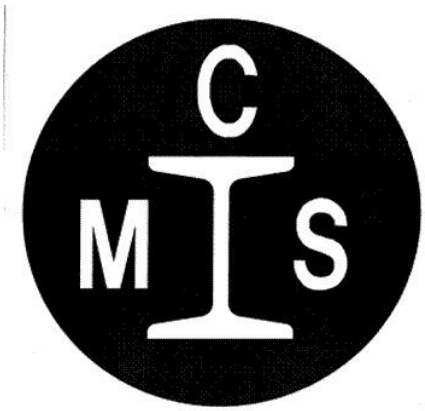
David E. Brown
Director of Estimating

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SUBCONTRACT AGREEMENT

"Contractor", Inc.

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SECTION 1
SCOPE OF WORK

1.1 This Subcontract Agreement (hereinafter "Agreement") is made and entered per the date on the cover page between SteelFab, Inc. and its affiliated companies **(SteelFab, Inc. (Virginia), SteelFab, Inc. (Texas), SteelFab, Inc. (Oregon), C Beams, Baltimore Fabrication, LLC, C.M. Steel, Inc. Texas Miscellaneous Iron) collectively (the "Contractor")** and the Subcontractor named on the cover page.

SECTION 2

SCOPE OF WORK

2.1 **SUBCONTRACTOR'S WORK**. SteelFab contracts with the Subcontractor as an independent contractor to supply, perform and pay for the Work described in the Scope of Work (the "Work") set forth generally on Exhibit A in strict accordance with the Subcontract Documents (as defined in Section 2.2), as well as all work reasonably inferable as necessary to produce the results intended by the Subcontract Documents, except to the extent work is specifically indicated in the Subcontract Documents to be the responsibility of others. The Subcontractor shall perform such Work under the general direction of SteelFab. Subcontractor alone shall be solely responsible for and have control over job site safety for the Work and the construction means, methods, techniques, sequences and procedures and for coordinating its Work under the Subcontract Documents. The presence of and review of the Work by employees, agents and consultants of SteelFab shall be for SteelFab's benefit only and shall not operate in any manner to relieve Subcontractor from its responsibilities. The Subcontractor shall perform each activity necessary or incidental to complete the Work, which is described more particularly, but not exclusively, on Exhibit A, including but not limited to furnishing all the work, labor, services, materials, equipment, tools, scaffolds, appliances and all other things necessary for performing and completing the Work. The provisions of this Subcontract and Exhibit A are intended to complement each other, but if there is any irreconcilable inconsistency Exhibit A shall govern.

2.2 **SUBCONTRACT DOCUMENTS**. In addition to this document, the documents which form this Subcontract and which are binding on the Subcontractor (collectively the "Subcontract Documents") include the contract and the contract documents identified in any contract between SteelFab and the party with whom SteelFab has a contract for the performance of the Work, whether that be the General Contractor, Construction Manager, and/or the Owner, or other entity as the case may be (referred to herein as "General Contractor"), and/or any contract documents between any General Contractor and the Owner or other entity that are in turn binding on SteelFab, all of which are incorporated by reference herein (together, "Contract Documents") and all Modifications issued subsequent hereto. The documents referenced in Section 18.4 are also a part of the Subcontract Documents.

Subcontractor assumes toward SteelFab all of the duties, obligations and responsibilities that SteelFab by those Contract Documents assumes toward the General Contractor and/or the Owner not only as to construction activities but also including all managerial, engineering, administrative, documentation, and all other obligations ancillary to the Work., The Subcontractor agrees further that along with the rights and remedies provided for in this Subcontract , SteelFab shall also have the same rights and remedies as against the Subcontractor that the Owner or General Contractor has under the terms and provisions of the other Contract Documents against SteelFab with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Subcontract with respect to the Work to be performed and furnished by the Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of any General Contract and other Contract Documents.

This Subcontract Agreement, the provisions of the General Contract and the other Subcontract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Subcontract Documents (a "Discrepancy"), the Subcontractor shall immediately notify SteelFab in writing seeking clarification from SteelFab before proceeding with the affected work. If Subcontractor fails to so notify SteelFab of such a Discrepancy, Subcontractor assumes all responsibility at its sole cost and expense of correcting or adjusting work containing a defect or improper workmanship as a result of the Discrepancy. If any provision of this Subcontract Agreement irreconcilably conflicts with a provision of the General Contract or the other Subcontract Documents, the provision imposing the greater duty or obligation on the Subcontractor and that which will further SteelFab's best interests shall govern.

In the event that Subcontractor has performed any of the Work prior to the date of this Subcontract, pursuant to authorizations to proceed, letters of intent or otherwise, this Subcontract and the Contract Documents shall govern such prior Work to the same extent as though such Work was performed after the date hereof. Should the Contract Documents specify that any of the Drawings, Plans or Specifications are "criteria" or "preliminary" or otherwise not final, and that further Drawings, Plans or Specifications (or any combination thereof) are to be supplied and are to become a part of the Contract Documents, then such further Drawings, Plans and Specifications shall also become a part of the Subcontract Documents, and the Subcontract Price shall not be increased or decreased as a result thereof, except to the extent that the price between SteelFab and General Contractor is increased or decreased as a result thereof relative to Subcontractor's Work.. All Drawings, Specifications and other items defined herein as Contract Documents that have been prepared for the Project and furnished to SteelFab by or on behalf of Owner or other third party are without any representation or warranty by SteelFab as to the acceptability, accuracy or suitability thereof for the Work and Subcontractor accepts all risks in respect of any and all defects, deficiencies, errors and omissions therein. The Contract Documents shall be deemed to include and require all items and aspects of labor, material, equipment, supervision, administration and other services and transportation incidental to or necessary for the proper and efficient execution and completion of the Work as it relates to the Project.

SteelFab may from time to time issue policies or directives applicable to electronic communications, electronic infrastructure and electronic data and Subcontractor shall comply with such policies and directives whether issued as part of this Subcontract or hereafter, and the cost and expense of such compliance shall be borne by the Subcontractor.

2.2.1 **DRAWINGS, PLANS AND SPECIFICATIONS**. SteelFab will make available to Subcontractor the Drawings, Plans and Specifications included in the Subcontract Documents, a listing of which is provided in Exhibit A. A copy will be furnished, on request, at the Subcontractor's expense.

2.3 **EXAMINATION OF SUBCONTRACT DOCUMENTS; SITE INSPECTION**. The Subcontractor warrants and represents that it has visited the site of the proposed Work, has familiarized itself with existing conditions and the character of the operation to be carried on under the

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Subcontract Documents and that it fully understands the facilities, difficulties and restrictions attending the execution of the Work. The Subcontractor acknowledges that it has examined all Subcontract Documents, and the requirements of the various governmental agencies, departments and bureaus having jurisdiction over the Project and from its own investigation has satisfied itself as to the nature and location of the Work, the general local conditions, and all matters which in any way affect the Subcontractor's Work or its performance thereof. The Subcontractor further acknowledges that having made said visitation and examination, it is not aware of any existing conditions, circumstances, or requirements that will necessitate any change in the scope of the Work, the Subcontract Price, or the Schedule of Work. Subcontractor enters into this Subcontract on the basis of its own investigation and evaluation and not in reliance upon any opinions or representations of SteelFab, the General Contractor or the Owner, as the case may be.

SECTION 3
SCHEDULE OF WORK AND COMPLETION

3.1 **CONTRACT TIME.** The "Contract Time" shall be the period of time commencing on the Start Date and ending upon the Substantial Completion Date (also addressed in Paragraphs 1.8 and 3.2). The Start Date is that date on which Subcontractor is authorized pursuant to a Notice to Proceed ("Notice to Proceed") to begin the Work on the Project required by the Contract. Any Work performed by Subcontractor in furtherance of the Project prior to execution of the Subcontract shall be deemed to have been performed as "Work" pursuant to the Subcontract and shall be governed by and subject to its terms. Any payments made for such work shall be deemed to have been made under the Subcontract Documents.

3.2 Subcontractor shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, in accordance with those project schedules as may be issued from time to time during the performance of the Work and any other scheduling requirements listed in Subcontract Documents, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the Project, and in such a manner as necessary or requested by SteelFab from time to time to ensure that SteelFab satisfies its obligations in a timely manner under the Contract Documents. Subcontractor shall achieve completion as follows, pursuant to the construction schedule set forth on Exhibit C, subject to adjustments of the Contract Time as provided in the Subcontract Documents, if any:

3.2.1 Subcontractor shall achieve Substantial Completion of the entire Work no later than the date set forth in paragraph 1.8 ("Substantial Completion Date"); provided however, Subcontractor shall endeavor to achieve Substantial Completion of its entire Work by **TBD**.

3.2.2 In addition to achieving Substantial Completion as set forth above, Subcontractor agrees to complete and make available certain portions of the Work as set forth on Exhibit C no later than the dates indicated on Exhibit C (the "Interim Completion Dates"), and such Interim Completion Dates shall be shown on Subcontractor's construction schedule for the Work set forth on Exhibit C.

3.2.3 Final completion of the entire Work shall be achieved no later than the date set forth in Section 1.8(b) ("Final Completion Date").

3.2.4 In agreeing to complete the Work within such times, Subcontractor represents that it has taken into consideration and made allowances for all reasonably foreseeable hindrances and delays incident to performance of the Work. No interruption, cessation, postponement or delay in the commencement or progress of the Work for any cause whatsoever, including disputes, shall relieve Subcontractor from its duty to perform, although such circumstances may be the subject of Subcontractor's request for an extension of time under the Subcontract Documents, if allowed under the Subcontract Documents. Nothing contained in this Paragraph shall be construed as an agreement by SteelFab that Subcontractor would be entitled to an adjustment to the Subcontract Time. Any such extension or adjustment may only be made pursuant to and in strict compliance with the Subcontract Documents. Notwithstanding the forgoing, the Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation, damages or extensions of time attributable to any changes, additions and/or omissions, directed by SteelFab or for delay, obstruction, hindrance, inefficiency, acceleration, or interference except to the limited extent that SteelFab has actually recovered corresponding cost reimbursement, compensation, damages or extensions of time from the Owner or General Contractor under the Contract Documents for such changes, additions and/or omissions or for delay, obstruction, hindrance, inefficiency, acceleration, or interference to Subcontractor's Work.

3.2.5 If Subcontractor fails to provide sufficient manpower or materials to progress its Work in such a manner that in SteelFab's sole opinion Subcontractor will not be able to meet its obligations for Interim Completion Dates, Substantial Completion and/or for Final Completion, then SteelFab may give Subcontractor 24 hours' notice that Subcontractor must supply additional manpower or procure sufficient materials to properly progress its Work in order to meet its Subcontract obligations. In addition to any other remedies allowed herein or by law, if Subcontractor fails to supply additional manpower or materials, then after an additional 24 hours' notice, SteelFab may terminate Subcontractor's performance for default or alternatively supplement Subcontractor's work force or supply such materials as necessary. Subcontractor shall be liable to SteelFab for all costs associated with any termination or supplementation, plus 20% for overhead and profit.

3.3 In the event Subcontractor fails to meet any Interim Completion Date provided for in Exhibit C for any reason or otherwise fails to meet Schedule commitments, SteelFab shall be entitled to direct Subcontractor to immediately implement whatever means are necessary to bring the Project back on schedule, including supplying additional manpower, working overtime at Subcontractor's sole expense, or by re-sequencing and/or accelerating the Work, provided such re-sequencing and/or acceleration is possible. In the event SteelFab directs Subcontractor to re-sequence and/or accelerate the Work to bring the Project back on schedule due to causes for which Subcontractor is not entitled to an extension of time under the Subcontract Documents, such re-sequencing and/or acceleration shall be done at Subcontractor's expense. In the event SteelFab directs Subcontractor to re-sequence and/or accelerate the Work due to causes for which Subcontractor is entitled to an extension of time under the Subcontract Documents, Subcontractor shall be reimbursed for extra labor, overhead and supervision costs related thereto but only to the extent that SteelFab actually recovers corresponding cost reimbursement, compensation, damages or extensions of time from the Owner or General Contractor under the Contract Documents, and these are the only time-related damages recoverable by the Subcontractor on account of time-related impacts to the Work of any kind or nature. Approval of any

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such plan by SteelFab pursuant to this Subparagraph 3.4 shall not constitute a waiver by SteelFab of any right hereunder, including the right to liquidated damages. Subcontractor shall use Subcontractor's best efforts to reserve the right to re-sequence and/or accelerate each subcontractor's portion of the Work in each subcontract entered into in connection with the Work, in a manner consistent with Subcontractor's obligation hereunder.

3.4 In the event Subcontractor determines at any time that the Project Substantial Completion Date or any Interim Completion Date cannot be met, Subcontractor shall immediately provide to SteelFab a plan to complete the Work in the shortest possible time. Approval of any such plan by SteelFab pursuant to this Subparagraph 3.5 shall not constitute a waiver by SteelFab of any right hereunder, including the right to liquidated damages.

3.5 **SCHEDULE CHANGES**. The Subcontractor recognizes that changes may be made in the Schedule of Work and agrees to comply with such changes without objection and without adjustment to the Subcontract Price. Subcontractor shall, at no additional cost, provide updates, additional or further detailed schedules and other information as frequently and in whatever form SteelFab may request, including but not limited to (1) manpower and cost loaded schedules; (2) information related to its operations as a whole, including but not limited to identifying lower tier subcontractors and suppliers and the status of payments to such subcontractors and suppliers; (3) unions and related benefit funds associated with labor used in the performance of the Work; (4) credit sources and banks providing financing or loans in connection with the performance of the Work or Subcontractor's operations as a whole and any covenants and requirements imposed upon Subcontractor in connection therewith and the status of Subcontractor's compliance with such covenants and requirements; and (5) the status of orders, fabrication and delivery of materials and arrangements for the provision of labor. The foregoing information shall include names and contact information, and Subcontractor acknowledges and agrees that SteelFab may contact any persons or entities as it deems necessary to verify or obtain such information.

3.6 **PRIORITY OF WORK**. SteelFab shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work. The Work will be performed as required by the composite construction schedule (or any other schedule to which SteelFab is bound), which may be changed periodically in order to maintain the overall schedule of Work.

3.7 **COOPERATION**. The Subcontractor shall cooperate with SteelFab by scheduling and performing Subcontractor's Work so as to avoid conflict, delay in, or interference with the Work of SteelFab, other subcontractors or the General Contractor's or the Owner's own forces. Subcontractor shall participate, as requested by SteelFab, in inspections related to Substantial and Final Completion.

3.8 **SUBCONTRACTOR'S DELAY**. Should the progress of the Subcontract Work, the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to SteelFab including legal fees and disbursements incurred by SteelFab (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Subcontractor and its surety hereunder or otherwise) or to the General Contractor or Owner or any damages or additional costs or expenses for which SteelFab, General Contractor or the Owner may or shall become liable, the Subcontractor and its surety shall and does hereby agree to compensate SteelFab, General Contractor and the Owner for and indemnify them against all such costs, expenses, damages and liability.

SECTION 4
SUBCONTRACT PRICE

4.1 SteelFab agrees to pay Subcontractor for the satisfactory performance and timely completion of the Work and of all of the duties, obligations and responsibilities of the Subcontractor under this Subcontract and the other Contract Documents the sum identified in Section 1.9 (the "Subcontract Price"). Payment is expressly conditioned on Subcontractor's strict compliance with all obligations set forth in the Subcontract Documents. Payment shall further be made only out of funds SteelFab actually receives from the General Contractor and/or the Owner, receipt of which is a condition precedent to the obligation to make payment to the Subcontractor (see section 5.4). Payment shall be made in accordance with Section 5, subject to additions and deductions as provided in Section 6 or any other Subcontract Document.

4.2 Unit prices, if any, are stated in Exhibit D. The Subcontract Price includes all Federal, State, County, Municipal and other taxes imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for and in connection with the Work, including, but not limited to, sales, use and personal property taxes payable by or levied or assessed against the Owner, the General Contractor, SteelFab, or the Subcontractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the Work plus the amount of such taxes shall not exceed the Subcontract Price.

SECTION 5
PAYMENT

5.1 **GENERAL PROVISIONS.**

5.1.1 **SCHEDULE OF VALUES.** The Subcontractor has or will provide SteelFab with a schedule of values which shall be revised, if necessary, for approval by SteelFab and the General Contractor/Owner, no later than the date of the Subcontractor's first application for payment. The Schedule of Values is (or will be) attached as Exhibit E and incorporated herein.

5.1.2 **PAYMENT USE RESTRICTION.** No payment received by the Subcontractor shall be used to satisfy or secure any indebtedness other than one owed by the Subcontractor for labor or materials furnished in performing the Subcontractor's Work on this Project. All payments by SteelFab to Subcontractor must first be applied to satisfy any indebtedness arising as a result of Subcontractor's Work. Subcontractor acknowledges and agrees that to the extent that payments received by Subcontractor include amounts for Work performed by subcontractors to Subcontractor or services or materials provided to Subcontractor by suppliers, vendors, workers employed by or through Subcontractor, all such payments received by Subcontractor shall be deemed to have been received by Subcontractor as trustee with those entitled to receive payment from Subcontractor as beneficiaries of such amounts, and Subcontractor shall hold such funds separately and utilize such amounts only for the purpose of making payment to these beneficiaries. In

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the event that Subcontractor subsequently determines that a beneficiary is not entitled to receipt of payment, Subcontractor shall return such unpaid funds to SteelFab.

5.1.3 **PAYMENT USE VERIFICATION.** The Subcontractor agrees that, if and when requested to do so by SteelFab, it shall furnish such information, evidence and substantiation as SteelFab may require with respect to the nature and extent of all obligations incurred by the Subcontractor for or in connection with the Work, all payments made by the Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefor. SteelFab shall have the right at all times to contact the Subcontractor's lower tier subcontractors and suppliers to ensure that the same are being paid by the Subcontractor for labor or materials furnished for use in performing the Subcontractor's Work on this Project. SteelFab shall have the right, at its sole discretion, to issue payments to Subcontractor by way of joint checks to Subcontractor and suppliers and/or vendors of Subcontractor, and Subcontractor agrees to cooperate fully in facilitating the making of such joint payments and executing all reasonable documents necessary to effect such payments including, without limitation, joint check agreements. Subcontractor shall establish and maintain a reasonable accounting system by which records are kept that enable SteelFab to readily identify all of Subcontractor's expenses, costs, payments (including to its workers, subcontractors and suppliers, unions, and benefit funds), obligations, budgets, and other financial information related to the Work or this Subcontract. Such records shall include, but not be limited to, all accounting records, written policies and procedures, subcontract files for all tiers, payment vouchers, ledgers, cancelled checks, contract amendments, change order information, insurance documents, and other similar information. SteelFab shall have the right to audit, examine, and make copies of all such records (whether written, electronic or another format) as SteelFab may determine, and Subcontractor shall facilitate and cooperate with SteelFab's efforts in this regard. Subcontractor shall impose similar obligations on its subcontractors and vendors to ensure that comparable records kept and SteelFab has the right to audit, examine and copy those records.

5.1.4 **PARTIAL LIEN WAIVERS AND AFFIDAVITS.** As an express condition precedent to payment, the Subcontractor shall provide, in the forms attached as Exhibits F and G or in a form as otherwise required by the General Contractor, Owner and/or SteelFab, sworn interim lien and claim waivers from the Subcontractor, and its subcontractors and suppliers for the completed Subcontractor's Work. Such waivers may be made conditional upon payment of a specific amount stated therein. The Subcontractor's Authorized Representative(s) designated in Section 1.2(b) of this Subcontract are hereby designated as authorized agents of Subcontractor to execute all lien waivers required of Subcontractor.

5.1.5 **SUBCONTRACTOR PAYMENT FAILURE.** In the event SteelFab has reason to believe that labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being properly paid, SteelFab shall give written notice of such claim or lien to the Subcontractor to demand that any progress payment shall be utilized to pay such obligations. If within three days of receipt of said notice, the Subcontractor does not:

(a) supply written evidence to the satisfaction of SteelFab that the monies owing to the claimant have been paid; or
(b) post a bond in a form and with surety satisfactory to SteelFab indemnifying the General Contractor, the Owner, SteelFab, SteelFab's surety, if any, and the premises from such claim or lien;

Then SteelFab shall have the right to exercise any or all of the following rights, until the claim or lien has been satisfied by the Subcontractor:

(a) withhold from any payments due or to become due to the Subcontractor for this Project or any other SteelFab project a reasonable amount to protect SteelFab from any and all loss, damage or expense including attorney's fees and other costs arising out of or relating to any such claim or lien;
(b) issue joint checks in payment of any payments due or to become due to the Subcontractor, payable to the Subcontractor and the claimant;
(c) make direct payments of sums due the Subcontractor to the claimant to satisfy such claims or liens.

5.1.6 **PAYMENT NOT ACCEPTANCE.** Payment to the Subcontractor (interim or final) is specifically agreed not to constitute or imply acceptance by SteelFab, the General Contractor or the Owner of any portion of the Subcontractor's Work nor shall it be evidence of the proper performance of the Work, , and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Subcontractor from any of its obligations under this Subcontract; nor shall entrance and use by the Owner constitute acceptance of the Work or any part thereof.

5.2 **PROGRESS PAYMENTS**.

5.2.1 **APPLICATION.** For Work performed during a payment period, the Subcontractor shall apply for a progress payment using SteelFab's standard Application for Payment, a copy of which is attached as Exhibit J. Applications shall be submitted to SteelFab at the address in Section 1. The application shall be for Work performed up to and including the last day of the pay period, indicating Work completed; and to the extent allowed under Section 5.2.4, materials suitably stored and protected during the payment period. Applications shall be accompanied by lien waivers from all sub-subcontractors and suppliers whose labor or materials are covered by the application; such waivers shall be in the form attached as Exhibit F.

5.2.2 **RETAINAGE.** Regardless of any agreements between the General Contractor, the Owner and SteelFab, or arrangements made by them, for the withholding or release of SteelFab's retainage, retainage shall be withheld by SteelFab from all progress payments made to Subcontractor. The amount of retainage withheld from each payment shall be equal to the amount of payment earned, multiplied by the percentage identified in Section 1.10 of this Subcontract. Retainage shall be released to Subcontractor only upon completion of all requirements for final payment as provided in Section 5.3 of this Subcontract, and provided that Subcontractor does not owe to SteelFab any sums as a result of Subcontractor's performance or non-performance on this or any other project.

5.2.3 **TIME OF APPLICATION.** "Pay period" as used herein is defined as beginning with the first day of each calendar month, and ending with the last day of each calendar month. The Subcontractor shall submit progress payment applications to SteelFab no later than the day of each payment period specified in Section 1.11 of this Subcontract.

5.2.4 **STORED MATERIALS.** Unless otherwise provided in the Subcontract Documents, and if approved in writing in advance by the General Contractor or the Owner, applications for payment may include materials and equipment not incorporated in the Subcontractor's Work but delivered and suitably stored and protected at the site or at some other location agreed upon in writing. Approval of payment application for such stored

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items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the General Contractor, the Owner and SteelFab to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and SteelFab's interest therein, including transportation to the site.

5.2.5 **TIME OF PAYMENT.** Receipt of payment by SteelFab from General Contractor or Owner for Subcontractor's Work is an express condition precedent to any and all payment obligations by SteelFab to Subcontractor. See Section 5.4. For projects where the Owner is not a governmental body, the requirements of any applicable state "prompt pay" or similar statutes relating to the timing of payments are hereby waived (to the extent permitted under applicable law) and in lieu of the payment periods and rates of interest contained in such statutes, it is hereby agreed that the Subcontractor shall receive its payment no later than seven days after the receipt thereof by SteelFab from the General Contractor or Owner and interest on any late payments shall only be payable out of the actual interest that SteelFab receives from the General Contractor or Owner and the amount of interest to be paid to the Subcontractor would be calculated on a pro rata basis based upon the ratio that the Subcontractor payment bears to the total Owner payment made to SteelFab. Progress payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made seven (7) business days after receipt by SteelFab of payment from the General Contractor or the Owner for such Subcontractor's Work, and provided that Subcontractor does not owe to SteelFab any sums as a result of Subcontractor's performance or nonperformance on this or any other SteelFab project.

5.3 **FINAL PAYMENT**.

5.3.1 **APPLICATION.** Upon completion and acceptance of the Subcontractor's Work by the General Contractor, the Owner, the Architect (or other applicable design professional) and SteelFab, and upon the Subcontractor's furnishing evidence of fulfillment of Subcontractor's obligations in accordance with the Subcontract Documents and Section 5.3.2, SteelFab shall, without unreasonable delay, forward the Subcontractor's application for final payment to the General Contractor and/or the Owner. The application shall be in the form of Exhibit J.

5.3.2 **REQUIREMENTS.** Before SteelFab shall be required to forward the Subcontractor's application for final payment to the General Contractor and/or the Owner, the Subcontractor shall submit to SteelFab:

(a) an affidavit and any other evidence satisfactory to Contractor that all payrolls, bills for materials and equipment, and all other indebtedness and claims connected with the Subcontractor's Work for which the General Contractor, the Owner, or its' property, or SteelFab, or SteelFab's surety, might in any way be liable, have been paid and released;

(b) consent of surety; if any, to final payment;

(c) satisfaction of required closeout procedures;

(d) other data or documents as required by the Subcontract Documents, SteelFab, the General Contractor, or the Owner, such as receipts, releases, as-built drawings etc.;

(e) Final lien and claim waivers in the forms attached as Exhibits H and I for it and its sub-subcontractors and suppliers, or to the extent and in such form as may otherwise be designated by SteelFab or the General Contractor or the Owner; and

(f) written warranties (and any required assignments thereof) for Subcontractor's materials, labor and equipment furnished under this Subcontract and the Subcontract Documents; and

(g) execution and delivery by the Subcontractor, in a form satisfactory to SteelFab of a general release running to and in favor of SteelFab, General Contractor and the Owner; and

(h) complete and full satisfaction of all claims, demands and disputes, and all obligations and responsibilities of Subcontractor, arising out of or related to the Subcontract, including those as between SteelFab and Subcontractor as well as those between Subcontractor and any third party.

Final payment shall constitute a waiver and release of any and all claims by the Subcontractor relating to the Project and Subcontractor's Work, but shall in no way relieve the Subcontractor of liability for third party claims, the obligations under the Subcontract Documents as well as those assumed under Section 10 hereof, or for faulty or defective Work.

5.3.3 **TIME OF PAYMENT.** Final payment of the balance due of the Subcontract Price shall be made to the Subcontractor:

(a) if applicable, upon receipt of the General Contractor's or Owner's (as the case may be) waiver of all claims related to the Subcontractor Work except for unsettled liens, unknown defective Work, and noncompliance with the Subcontract Documents or warranties; and

(b) seven (7) days after receipt by SteelFab of final payment from the Owner for such Subcontractor's Work, such receipt being a condition precedent to the obligation to make final payment to the Subcontractor. *See* Sections 5.2.5 and 5.4, which are incorporated by reference herein.

5.3.4 **RIGHT OF SETOFF.** If Subcontractor is indebted to SteelFab for any reason, whether related to this Project, another project, or otherwise, Subcontractor hereby expressly agrees to allow SteelFab to set off such amounts owed to SteelFab from any other payments due hereunder. The breach of any provision of any other subcontract between SteelFab and Subcontractor shall, at SteelFab's election, constitute a breach of this Subcontract and a breach of this Subcontract shall constitute a breach of any other subcontract between SteelFab and Subcontractor on any other project. SteelFab shall be entitled to offset, against any amounts due Subcontractor, any amounts due Subcontractor from SteelFab on any other project. Subcontractor's failure to perform shall include the failure of its sub-subcontractors to perform. Subcontractor's liability shall include but not limited to (a) damages or other delay costs payable by SteelFab to General Contractor or Owner (including liquated damages); (b) SteelFab's increased cost of performance, such as extended overhead and increased performance costs resulting from delays or improper work; (c) warranty or rework costs; (d) liabilities to third parties; (e) consultant's fees and (g) attorney fees and related costs.

5.4 **NON-PAYMENT BY GENERAL CONTRACTOR AND/OR OWNER**

5.4.1 **ASSUMPTION OF RISK-CONDITION PRECEDENT.** The Subcontractor agrees that SteelFab shall have no obligation to pay the Subcontractor for any Work done on this Project until SteelFab has been paid by the General Contractor or the Owner, as the case may be. The provisions of Section 5.2 and 5.3, stating the time and amount of progress and final payments, are subject to the condition that SteelFab shall receive from the General Contractor or the Owner interim, progress or final payments for amounts payable to the Subcontractor on account of Work done by the Subcontractor on this Project. The time when such payments shall be due the Subcontractor is expressly contingent upon and shall be postponed until SteelFab has received same from the General Contractor or the Owner, as the case may be. **THE SUBCONTRACTOR EXPRESSLY AGREES TO ACCEPT AND SHARE THE RISK THAT IT WILL NOT BE PAID FOR WORK PERFORMED BY IT IN THE EVENT THAT STEELFAB,**

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FOR WHATEVER REASON, IS NOT PAID BY THE GENERAL CONTRACTOR OR THE OWNER FOR SUCH WORK. The Subcontractor acknowledges that it relies for payment on the credit and ability to pay of the General Contractor or the Owner, and not of SteelFab. The Subcontractor agrees that payment by the General Contractor or the Owner to SteelFab for Work performed by the Subcontractor shall be a condition precedent to any payment obligation of SteelFab to the Subcontractor. The Subcontractor agrees that the liability of the surety on SteelFab's payment bond, if any, is subject to the same conditions precedent as are applicable to SteelFab's liability to the Subcontractor. These conditions apply to payments of every type, including progress payments, retention payments, change order payments, final payments or otherwise. This condition applies without regard to any provisions contained in the federal Miller Act or state Little Miller Act provisions and without regard to the reason that the General Contractor and/or the Owner has failed to pay.

5.4.2 **REMEDY.** If the General Contractor or the Owner or their designated agent does not authorize payment or SteelFab does not receive a payment due hereunder for any cause which is not the fault of the Subcontractor, SteelFab shall promptly inform the Subcontractor in writing. SteelFab also may, in its sole discretion, pursue with the assistance of the Subcontractor, the release by the General Contractor or the Owner of the payment due for the Subcontractor's Work. At the Subcontractor's request, SteelFab may institute all reasonable legal remedies to mitigate the damages and pursue full payment of the Subcontractor's application for payment including interest thereon. In that event, the cost for pursuing the Subcontractor's remedies, including attorney's fees, shall be Subcontractor's responsibility. SteelFab, at its discretion, may require that the Subcontractor make financial arrangements satisfactory to SteelFab before undertaking this effort and at all times during the progress thereof. Notwithstanding the foregoing, however, in no event shall SteelFab be liable to Subcontractor for any compensation not actually recovered by SteelFab on Subcontractor's behalf.

SECTION 6
CHANGES, CLAIMS AND DELAYS

6.1 **CHANGES.** Without nullifying this Subcontract, SteelFab may by written Subcontract Work Order or Subcontract Change Order, make changes in the Work within the general scope of this Subcontract and the Subcontractor shall perform such changes. Adjustments in the Subcontract Price or Schedule of Work, if any, resulting from such changes shall be set forth in a Subcontract Change Order. No such adjustment shall be made for any such changes performed by Subcontractor that have not been so ordered in writing by SteelFab, and approved by the General Contractor and/or the Owner. Any performance of changes by Subcontractor without a written Work Order or Change Order signed by SteelFab and without compliance with all Subcontract Documents results in a waiver by Subcontractor of any right to any additional compensation or time for such changes.

A Subcontract Change Order is a written instrument prepared by SteelFab and signed by the Subcontractor stating their agreement upon the change in the scope of the Work, and/or adjustment in the Subcontract Price or Schedule of Work. A Subcontract Work Order is a written instrument prepared by SteelFab directing a change in the Work and stating a proposed adjustment, if any, in the Subcontract Price or Schedule of Work or both. A Subcontract Work Order shall be used in the absence of agreement on the terms of a Subcontract Change Order.

6.2 **CLAIMS RELATING TO GENERAL CONTRACTOR OR OWNER.** The Subcontractor agrees to make all claims for which the General Contractor or the Owner (as the case may be) is or may be liable in the manner provided in the Subcontract Documents for like claims by SteelFab upon the General Contractor and/or the Owner.

Written notice of such claims shall be given by the Subcontractor to SteelFab within sufficient time for SteelFab to make such claims against the General Contractor and/or Owner in accordance with the Subcontract Documents or within five (5) calendar days prior to the beginning of the Subcontractor's Work or within five (5) calendar days of the event for which such claim is to be made, whichever shall first occur, otherwise such claims shall be deemed waived.

6.3 **CLAIMS RELATING TO STEELFAB.** The Subcontractor shall give SteelFab written notice of all claims not included in Section 6.2 within five (5) calendar days of the beginning of the event for which claim is made; otherwise, such claims shall be deemed waived.

All unresolved claims, disputes and other matters in question between SteelFab and the Subcontractor not relating to claims included in Section 6.2 shall be resolved in the manner provided in Section 16 herein.

6.4 **ADJUSTMENT IN SUBCONTRACT PRICE.** If a Subcontract Change Order or Subcontract Work Order requires an adjustment in the Subcontract Price, the adjustment shall be established by one of the following methods:

(a) mutual agreement on a lump sum with sufficient substantiating data to permit evaluation;
(b) unit prices already established in the Subcontract Documents or if not established by the Subcontract Documents, then established by mutual agreement for this adjustment; or
(c) to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

6.5 **SUBSTANTIATION OF ADJUSTMENT.** If the Subcontractor does not respond promptly or disputes the method of adjustment under Section 6.4, the method and the adjustment shall be determined by SteelFab on the basis of reasonable costs and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Price, an allowance for overhead and profit proportionate to SteelFab's recovery of overhead and profit, if any, under the Subcontract Documents. Regardless of any disagreement as to the adjustment, Subcontractor shall perform the changed Work without delay to the Project.

The Subcontractor shall maintain for SteelFab's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order or Subcontract Work Order:

(a) labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and State Workers' Compensation insurance;
(b) costs of materials, supplies and equipment, whether incorporated in the Work or consumed, including transportation costs; costs of renting, either from SteelFab or from others, of machinery and equipment other than hand tools;
(c) costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
(d) costs of additional supervision and field office personnel services necessitated by the change.

6.6 **DELAY.** If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Change Order to the extent any extension is obtained by SteelFab from the General Contractor or the Owner, and the Schedule of Work shall be revised accordingly.

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SteelFab shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of delays caused by any person not a party to this Subcontract unless SteelFab has first recovered the same on behalf of the Subcontractor from said person, and then only to the extent of such recovery after payment of all SteelFab's attorney's fees and other costs relating thereto. It is expressly understood and agreed by the Subcontractor that apart from recovery from said person, the Subcontractor's sole and exclusive remedy for delay or any time-impact resulting or relating to delay, whether resulting in acceleration, ripple effect, out-of-sequence work, inefficiencies, unabsorbed overhead or any other time or impact related costs or damages, regardless of type or cause, including but not limited to delays or other impacts caused in whole or in part by SteelFab, shall be an extension in the time for performance of the Subcontractor's Work, with Subcontractor expressly waiving any right to delay or other time related or time impact damages except as provided in Section 6.6 or as set forth as to acceleration or re-sequencing in Section 3.4

6.7 **LIQUIDATED DAMAGES ASSESSED BY GENERAL CONTRACTOR OR OWNER.** If the Contract Documents between the General Contractor and/or the Owner and SteelFab permit the General Contractor or the Owner to assess SteelFab for liquidated or other damages for delay beyond the completion dates set forth in the Subcontract Documents (interim, milestone and final), and such damages are so assessed, then SteelFab shall be entitled to assess same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay.

SECTION 7
STEELFAB'S AUTHORIZED REPRESENTATIVES

7.1 SteelFab has designated one or more persons in Section 1.2(a) of this Subcontract who shall be SteelFab's authorized on-site and off-site representative(s). Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

SECTION 8
SUBCONTRACTOR'S OBLIGATIONS

8.1 **OBLIGATIONS DERIVATIVE.** The Subcontractor shall be bound to SteelFab by the terms of this Subcontract and by the terms of the Subcontract Documents and the Contract Documents between the General Contractor and/or the Owner and SteelFab, and shall assume toward SteelFab all the obligations and responsibilities which SteelFab, by those Contract Documents, assumes toward the General Contractor or the Owner. The Contract Documents are incorporated by reference herein and made a part hereof.

8.2 **RESPONSIBILITIES.** The Subcontractor shall furnish and pay for all of the labor, supervision, materials, tools, equipment, services, and incidentals necessary for the proper performance of the Subcontractor's Work. The Subcontractor shall provide a list of proposed sub-subcontractors and suppliers, and further is responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work and to insure the proper matching and fitting of the Work with contiguous work.

8.3 **WORKMANSHIP.** Every part of the Subcontractor's Work shall be executed in strict accordance with Subcontract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be the best of its kind performed by others engaged in the same trade. All materials used in the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work and shall be new and of the highest quality, except such materials as may be expressly provided in the Subcontract Documents to be otherwise.

8.4 **TEMPORARY SERVICES.** The Subcontractor shall furnish all temporary services and facilities necessary to perform its Work.

8.5 **COORDINATION.** The Subcontractor shall:

(a) cooperate with SteelFab and all others whose work is dependent upon the progress of the Subcontractor's Work;

(b) specifically note and immediately advise SteelFab of any interference with the Subcontractor's Work; and

(c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

8.6 **SHOP DRAWINGS AND SUBMITTALS.** The Subcontractor shall submit shop drawings, product data, samples, and any other submittals required by the Subcontract Documents expeditiously and in such manner and sequence so as to avoid delay in the progress of the Work or the activities of SteelFab or other subcontractors and/or within time to meet any General Contract requirements for same. The Subcontractor shall be responsible for accuracy and conformity with Subcontract Documents and other submittals. Unless specifically noted by SteelFab, action on shop drawings and submittals by SteelFab shall not be deemed to authorize deviation from the Subcontract Documents.

The review of shop drawings or other submittals by SteelFab shall not constitute an undertaking by SteelFab, nor does it constitute an acceptance by SteelFab that such submittal is in conformance with the Subcontract Documents.

8.7 **PROGRESS REPORTS AND MEETINGS.** The Subcontractor shall furnish periodic progress reports on the Work including information on the status of materials and equipment which may be in the course of preparation or manufacture.

8.8 **AUTHORIZED REPRESENTATIVE AND NOTICE.** The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s): (a) on-site and (b) off-site, which persons are identified in Section 1.2(b). Such authorized representative(s) shall be the only person(s) to whom SteelFab shall issue instructions, orders or directions, except in an emergency. Notices as required by this Subcontract and other communications made to any one of the Subcontractor's Authorized Representative(s) shall be binding as if given to the Subcontractor. The authorized representative shall attend project meetings as required. Subcontractor's key personnel and their positions are set forth on Exhibit B. At all times that Subcontractor has personnel at the Project site, it shall also have present an authorized representative of Subcontractor who shall supervise and direct Subcontractor's personnel and be responsible for their actions. Such representative shall be fluent in spoken and written English and shall be authorized to act on behalf of Subcontractor and communications to such representative shall be binding upon Subcontractor.

8.9 **PROVISION FOR INSPECTION.** The Subcontractor shall notify SteelFab when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish SteelFab, the Owner, and their representatives adequate means and facilities for inspecting the Work, including materials at the site or any place where materials under this Subcontract may be in the course of storage, preparation, process, manufacture or treatment. The Subcontractor shall, within twenty-four (24) hours after receiving written notice from SteelFab, proceed to take down all portions of the Work and remove from the premises all materials whether worked or unworked, which the Architect, General Contractor, Owner or any of its design consultants shall condemn as unsound, defective or improper or as in any way failing to conform to this Subcontract or the Plans, Specifications or other Contract Documents, and the Subcontractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make

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good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof

8.10 **CLEAN-UP.** The Subcontractor shall follow SteelFab's clean-up directives and those of the Subcontract Documents, and

(a) at all time keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and

(b) broom clean each Work area daily prior to discontinuing Work in the same.

Should Subcontractor fail, after 24 hours' notice from SteelFab, to appropriately clean an area as required by this Section, SteelFab shall assess the Subcontractor for the actual daily clean-up cost or a daily charge of $150.00, whichever is greater, for each day such condition is not remedied.

8.11 **SAFETY PRECAUTIONS AND PROCEDURES**.

8.11.1 **GENERAL.** The Subcontractor shall take reasonable safety precautions with respect to performance of the Work, shall comply with all safety measures and protocols applicable to the Project whether initiated by General Contractor, SteelFab or other parties representing the interest of Owner or General Contractor. In addition, Subcontract shall comply with Occupational Safety and Health Standards and other applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property and in accordance with requirements of the Subcontract Documents and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of Subcontractor's failure or failures of Subcontractor's agents, employees, materialmen and suppliers to so comply. Subcontractor shall indemnify, defend and hold harmless SteelFab, General Contractor and Owner (including their agents and employees) from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees, claims or liability for harm to persons (including death resulting therefrom,) or property, expenses incurred pursuant to or attendant to any hearing or meeting or any other applicable cost caused or alleged to have been caused by Subcontractor's failure to fulfill the covenants set forth in this paragraph, including but not limited to the use of SteelFab's or others' equipment, hoist, elevators, and/or scaffolds. The Subcontractor shall report to SteelFab within 24 hours any personal injury or property damage occurring at the site.

Subcontractor will provide as part of their Site Specific Erection Plan**, a schedule to conduct daily safety inspections, and at a minimum shall comply with all Federal, State, and Local safety laws, rules, regulations, or ordinances relating to safety inspections, including but not limited to OSHA standard 1926.20(b)(2). Subcontractor's safety programs SHALL provide FREQUENT and REGULAR inspections of the job site, materials and equipment, with such inspections to be made by competent and qualified persons designated by Subcontractor's project superintendent, with SteelFab reserving the right to reject such person if incompetent or unqualified, or if said person fails to undertake the duties described herein.**

Subcontractor shall provide safety vests, clothing, equipment, eye protection, fall protection and any and all other items required by law and good safety practices.

8.11.2 **COMPLIANCE WITH SAFETY MATERIAL(S).** Subcontractor shall comply with SteelFab's, the General Contractor's and/or the Owner's safety manuals, if any.

8.11.3 **ALCOHOL AND DRUG FREE PROJECT.** The Subcontractor recognizes that an alcohol and drug free Project is necessary to ensure the safety of the persons employed at the Project site by the Owner, the General Contractor, SteelFab, the Subcontractor and others, and to protect the health and safety of the community. The Subcontractor agrees that its employees shall not distribute, be under the influence of, or be in possession of, any form of alcohol or unlawful drug while at the Project site or while in the performance of Project-related activities. Subcontractor's employees shall also be prohibited from using or being subject to the effects of any lawful drug while at the Project site or in the performance of Project-related activities without approval of the employee's supervisor. The Subcontractor acknowledges that it is familiar with SteelFab's Alcohol and Drug Free Project Policy. The Subcontractor represents that it has established written procedures for compliance with this policy and agrees that it will implement and enforce the policy throughout the course of the Project. The Subcontractor shall indemnify and hold the General Contractor, the Owner and SteelFab harmless from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or related to Subcontractor's implementation, application, or enforcement of compliance procedures.

If any employee or agent of Subcontractor is found to be under the influence of alcohol or an illegal drug, or a legal drug without approval of the employee's supervisor, Subcontractor, if requested by SteelFab, shall immediately terminate said employee. If Subcontractor refuses to do so such refusal shall be an event of default, and SteelFab shall have all remedies set forth in Section 11. A second infraction of this zero-tolerance drug and alcohol policy during the performance of the Work shall subject Subcontractor to immediate termination for default without further notice.

8.12 **ENVIRONMENTAL AND MISCELLANEOUS MATTERS**.

8.12.1 If Hazardous Chemicals of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to exposure of any employees on the site to such substance, provide a current copy of the Material Safety Data Sheet (MSDS) for such Hazardous Chemical in sufficient time to permit compliance with such laws by SteelFab, other subcontractors and other employees on the site. The Subcontractor shall be responsible for the removal of any Hazardous Chemicals and Hazardous Substances which are brought to Project sire in connection with the Work but are not used or consumed.

8.12.2 In the event the Subcontractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl ('PCB'), or other Hazardous Substances which have not been rendered harmless, the Subcontractor shall immediately stop Work in the area affected and report the condition to SteelFab in writing. The Work in the affected area shall resume in the absence of asbestos, PCB, or other Hazardous Substances, or when it has been rendered harmless, by written agreement of SteelFab and Subcontractor. The Subcontractor shall not be required to perform without consent any Work relating to asbestos, PCB, or other Hazardous Substances.

8.12.3 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the General Contractor, the Owner, SteelFab, other subcontractors, and their respective agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos, PCB, or other Hazardous Chemical or Hazardous Substance and has not been rendered harmless; provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property (other than the Work itself) including loss of use resulting

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therefrom, but only to the extent caused in whole or in part by failure to comply with Sections 8.12.1 or 8.12.2 or by negligent acts or omissions of the Subcontractor, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, regardless of whether or not such claim, damage, loss or expenses is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 8.12.3.

8.12.4 For purposes of this Subcontract, (a) the term "Hazardous Chemical" means any chemical defined as hazardous in the Hazardous Communication Standard, 29 C.F.R. §§ 1926.59 or 29 C.F.R. §§ 1910.1200, promulgated pursuant to the occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*; and (b) the term "Hazardous Substances" means any substance, including solid, liquid or gaseous material, which is listed or defined as "hazardous" in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S. §§ 9601, et *seq*. or regulations promulgated pursuant thereto; oil and oil waste as those terms are defined in the Clean Water Act 33 U.S.C. §§ 1251, *et seq*., or regulations promulgated pursuant thereto; and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. §§ 301 i, *et seq*., or regulations promulgated pursuant thereto; and includes any other substance defined by federal, state or local statute, regulation, or ordinance relating to any hazardous, toxic or dangerous waste or substance.

8.13 **PROTECTION OF THE WORK AND PROPERTY.** The Subcontractor shall take all necessary precautions to protect properly the Subcontractor's Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the work or property of the General Contractor, the Owner, SteelFab or others, the Subcontractor shall promptly remedy such damage to the satisfaction of SteelFab, or SteelFab may so remedy and deduct the cost thereof from any amounts due or to become due the Subcontractor.

8.14 **COMPLIANCE WITH LAWS.** The Subcontractor shall at all times and at its own cost comply with all federal, state and local statutes, codes, rules, regulations, ordinances, executive orders and other laws relating to the Project and the Work. The Subcontractor warrants and represents that it is authorized to transact business in the state and local jurisdictions where the Project is located, that it holds any and all licenses necessary to perform the Work, and that it is not currently in violation of any statutes, codes, rules, regulations, ordinances, orders, or other laws on any projects in which Subcontractor is presently engaged.

8.15 **PERMITS, FEES AND LICENSES.** The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary for performance, completion or use of the Subcontractor's Work.

8.16 **TAXES, WAGES, FRINGE BENEFITS, ASSESSMENTS.** The Subcontractor shall timely comply with all requirements applicable to payment of taxes, wages, fringe benefits, retirement benefits, unemployment compensation and other assessments, and shall upon request furnish SteelFab and the General Contractor or the Owner with satisfactory proof of compliance.

8.17 **LAYOUT RESPONSIBILITY AND LEVELS.** Either SteelFab or the General Contractor shall establish principal axis lines of the building and site whereupon the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to SteelFab or others by reason of the Subcontractor's failure to set out or perform its Work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

8.18 **MATERIALS FURNISHED BY OTHERS.** In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure satisfactory and proper installation. Loss or damage due to acts or inactions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

8.19 **SUBSTITUTIONS.** No substitutions shall be made in the Subcontractor's Work unless permitted in the Subcontract Documents and only then upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions. The Subcontractor shall indemnify SteelFab for any increased costs incurred by SteelFab as a result of such substitutions, whether or not the Subcontractor has obtained approval thereof.

8.20 **USE OF STEELFAB'S EQUIPMENT.** The Subcontractor, its agents, employees, sub-subcontractors or suppliers shall not use SteelFab's equipment without the express written permission of SteelFab's authorized representative.

If the Subcontractor or any of its agents, employees, suppliers or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of SteelFab, the Subcontractor shall be liable to SteelFab, as provided in Section 14, for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely and exclusively to the negligence of SteelFab's employees operating such equipment.

8.21 **ASSIGNMENT AND SUBCONTRACTING.** The Subcontractor shall not assign this Subcontract, nor its proceeds, nor subcontract the whole or any part of the Subcontractor's Work, without the prior written approval of SteelFab. SteelFab may assign its rights and obligations under this Subcontract freely in its sole, absolute discretion.

8.22 **NON-CONTRACTED SERVICES.** The Subcontractor agrees that no claim for non-contracted construction services rendered or materials furnished shall be valid unless the Subcontractor provides SteelFab notice:

(a) prior to furnishing of the services or materials, except in an emergency affecting the safety of persons or property;
(b) in writing of such claim within three (3) days of first furnishing such services or materials; and
(c) the written charge for such services or materials to SteelFab no later than the fifteenth day (15) of the calendar month following that in which the claim originated.

8.23 **COORDINATION.** Subcontractor is responsible for coordinating its Work areas and schedule with other trades in order to perform the overall project as a team.

8.24 **NORMAL WORK WEEK.** Unless otherwise directed in writing by SteelFab or unless otherwise provided in the General Contract, the Subcontractor's Work shall be performed during a five (5) day Work week extending from Monday through Friday. If the Subcontractor's Work becomes behind schedule the Subcontractor shall Work overtime during the normal Work week and on Saturdays, Sundays and holidays. The extended Work week shall be at no cost to SteelFab.

SECTION 9

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SUBCONTRACT BONDS

9.1 **PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS.** Unless otherwise provided at Section 1.12 of this Subcontract, the Subcontractor shall provide a separate Performance Bond and Labor and Material Payment Bond, in a form and with surety satisfactory to SteelFab in the full amount of this Subcontract. The premiums for these Bonds shall be paid by the Subcontractor and the cost thereof is included in the Subcontract Price.

9.2 **ASSURANCE OF PERFORMANCE.** If Performance and Payment Bonds are not required of the Subcontractor under Section 9.1, then throughout the duration of this Subcontract, SteelFab may require such bonds and the Subcontractor shall provide same. Said bonds shall be in full amount of this Subcontract in a form and by surety satisfactory to SteelFab. The Subcontractor shall be compensated for the cost of same pursuant to progress payments made hereunder after the Subcontractor furnishes the required bonds. The reimbursement amount for the bonds shall not exceed the actual rate for such subcontract bonds. In the event the Subcontractor shall fail to promptly provide such requested bonds, SteelFab may terminate this Subcontract (and/or Subcontractor's performance) and re-let the Work to another Subcontractor and all SteelFab's costs and expenses incurred thereby shall be paid by the Subcontractor.

SECTION 10
WARRANTY AND CORRECTIONS OF WORK

10.1 **WARRANTY.**

10.1.1 The Subcontractor hereby guarantees the Work to the full extent provided in the Subcontract Documents. Without limiting the foregoing, the Subcontractor warrants to the General Contractor, the Owner and SteelFab that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents; that the Work will be performed in the best workmanlike manner, be free from defects in materials and workmanship; and that the Work will conform with the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the sole judgment of SteelFab. This warranty shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Subcontract Documents. Subcontractor agrees to defend, indemnify, and hold SteelFab, Owner, General Contractor and Architect harmless from any losses, costs or other damages or expenses (including attorney fees) resulting from any breach of the foregoing warranty. Subcontractor shall bear all expenses incurred in connection with the inspection, removal, repair, correction, handling and transportation of defective or nonconforming Work or Work for which acceptance has been revoked. In addition, at SteelFab's option, Subcontractor shall: (i) bear the costs of replacement materials, equipment and labor and all damages incurred by SteelFab and (ii) pay SteelFab for all expenses incurred in and delay caused by remedying defective or otherwise nonconforming Work. The provisions of this paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents and shall survive the making and acceptance of final payment and/or termination of this Subcontract.

10.1.2 The Subcontractor further agrees to execute and assign any additional guarantees or warranties specified in the Subcontract Documents.

10.1.3 The Subcontractor shall promptly correct Work rejected by SteelFab, or which fails to conform to the requirements of the Subcontract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed.

10.1.4 The Subcontractor shall be obligated to correct Work that is found not to be in accordance with the Subcontract Documents before or after Substantial Completion to the same extent that SteelFab is bound to the General Contractor or the Owner for correction of said Work. The Subcontractor shall begin the corrective Work immediately after receipt of written notice from SteelFab to do so. This obligation shall survive acceptance of the Work and termination of this Subcontract and/or Subcontractor's performance. This obligation is in addition to, and not in limitation of, the warranty obligations under Section 10.1. It is the intent of this Subcontract that warranty obligations are not restricted by Subcontractor's obligations to correct defective Work.

10.2 **SATISFACTION OF WARRANTY AND CORRECTIVE WORK OBLIGATIONS.** The Subcontractor agrees to satisfy warranty and corrective work obligations without cost to the General Contractor, the Owner or SteelFab. In the event of Subcontractor's failure to satisfy these obligations, all costs for design, labor, supervision, materials, travel (including meals, lodging and mileage), equipment and overhead (at 18% of costs) incurred by SteelFab in the ~~investigation, review~~, redesign and correction of such problem shall be paid to SteelFab by Subcontractor. Design and service team costs shall be computed using SteelFab's standard hourly rates. A verbal request for corrective action by SteelFab to the Subcontractor, together with a written confirmation of the action requested, will be provided. If corrective action is not initiated within 5 days and completed within a time reasonable under all the circumstances, SteelFab will itself commence investigation and implement corrective measures at the Subcontractor's expense. SteelFab's rights hereunder are in addition to all other rights and remedies pursuant to the Subcontract Documents, and the institution of such measures by SteelFab shall in no way relieve Subcontractor of its primary responsibility for performing and warranting the Work in accord with the Subcontract Documents.

SECTION 11
RECOURSE BY STEELFAB

11.1 **DEFAULT-NOTICE TO CURE.** If the Subcontractor refuses or fails to supply enough properly skilled Workers, proper materials, or maintain the Schedule of Work, or fails to achieve Substantial or Final Completion, or it fails to make prompt payment for its Workers, sub-subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to indemnify SteelFab as required by this Subcontract or by law, or otherwise is guilty of a breach of any provision of the Subcontract Documents and fails within two (2) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then SteelFab, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

(a) supply such number of workers and quantity of materials, equipment and other facilities as SteelFab deems necessary for the completion of the Subcontractor's Work, or any part thereof which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of such costs, including reasonable overhead, profit, as well as for other damages, and attorney's fees and dispute resolution costs;

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(b) contract with one or more additional subcontractors to perform such part of the Subcontractor's Work as SteelFab shall determine will provide the most expeditious completion of the total Work, and charge the cost thereof to the Subcontractor;

(c) withhold payment of any monies due the Subcontractor pending corrective action or completion of the Subcontractor's Work to the extent required by and to the satisfaction of SteelFab; and

(d) set-off SteelFab's damages attributable to Subcontractor's default against any monies due Subcontractor under this Subcontract or under any other contract between SteelFab and the Subcontractor. In the event of an emergency affecting the safety of persons or property, SteelFab may proceed as above without notice.

11.2 **TERMINATION BY STEELFAB.** If the Subcontractor fails to commence and satisfactorily continue correction of a default under the Subcontract, including but not limited to those defaults identified in Section 11.1, within three (3) working days after receipt by the Subcontractor of the notice issued under Section 11.1, then SteelFab may either immediately terminate Subcontractor's performance (or this Subcontract) or issue a second written notice, by hand delivery or by certified mail, to the Subcontractor and its surety, if any, that shall state that if the Subcontractor fails to commence and continue correction of a default within three (3) days after receipt by the Subcontractor of the second notice, SteelFab may terminate this Subcontract (or Subcontractor's performance) and use any materials, equipment and/or employ such Workers or Subcontractors as SteelFab deems necessary to complete the Work.

All of the costs incurred by SteelFab in so performing the Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price, and agrees to pay said amount within seven (7) working days of receipt of an invoice from SteelFab.

SteelFab has the right for whatsoever reason to terminate this Subcontract for its convenience and if so, SteelFab shall be liable to the Subcontractor, if at all, solely for the reasonable value of Work performed by the Subcontractor prior to SteelFab's termination, including reasonable overhead and profit on work properly performed, less prior payments made. Subcontractor shall not be entitled to recover any other direct, incidental or consequential damages, including, but not limited to, profits attributable to unperformed Work. In the event a termination for cause pursuant to Section 11 is later deemed to have been improper, then the termination shall be converted to, and treated as, a termination for convenience, and Subcontractor shall have only those rights and remedies set forth herein for a termination for convenience.

11.3 **BANKRUPTCY**.

11.3.1 **TERMINATION ABSENT CURE.** If Subcontractor files a petition under the Bankruptcy Code, this Subcontract shall terminate if the Subcontractor or the Subcontractor's trustee (a) rejects the Subcontract, or (b) if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Subcontract, or (c) is otherwise unable to comply with the requirements for assuming this Subcontract under the applicable provisions of the Bankruptcy Code.

11.3.2 **INTERIM REMEDIES.** If the Subcontractor is not performing in accordance with the Schedule of Work at the time a petition in bankruptcy is filed, or at any subsequent time, SteelFab, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Subcontract and provide adequate assurance of its ability to perform hereunder, may take such steps as are reasonably necessary to maintain the Schedule of Work. SteelFab may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

11.4 **SUSPENSION BY STEELFAB.** SteelFab may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of SteelFab. Phased or interrupted Work when required shall not be deemed a suspension of Work.

The Subcontractor shall notify SteelFab in writing within five (5) calendar days after receipt of SteelFab's order of the effect of such order upon the Subcontractor's Work. To the extent, and only to the extent, allowed SteelFab under the Subcontract Documents, the Subcontract Price or Schedule of Work shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Subcontract caused by such suspension, delay, or interruption. Neither the Subcontract Price, nor the Schedule of Work, shall be adjusted under this Section for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible.

11.5 **WRONGFUL EXERCISE.** If SteelFab wrongfully exercises any option under this Section 11, SteelFab shall be liable to the Subcontractor, if at all, solely for the reasonable value of Work performed by the Subcontractor prior to SteelFab's wrongful action, including reasonable overhead and profit, less prior payments made. Subcontractor shall not be entitled to recover any other incidental or consequential damages, including, but not limited to, profits attributable to unperformed Work.

11.6 **REMEDIES CUMULATIVE.** All the rights and remedies of SteelFab in the event of a default by Subcontractor under this Subcontract shall be cumulative to the greatest extent permitted by law and shall be in addition to all other rights and remedies available to SteelFab at law or in equity.

SECTION 12
SUSPENSION OR TERMINATION BY THE GENERAL CONTRACTOR OR OWNER

12.1 **SUSPENSION BY GENERAL CONTRACT OR OWNER.** Should the General Contractor or Owner suspend SteelFab's contract or any part of SteelFab's contract which includes the Subcontractor's Work, SteelFab shall so notify the Subcontractor in writing and, upon receipt of said notice, this Subcontractor shall immediately suspend the Work.

12.2 **TERMINATION BY GENERAL CONTRACTOR OR OWNER.** If the General Contractor or Owner, for any reason, terminates SteelFab's contract or any part that includes the Subcontractor's Work, SteelFab shall so notify the Subcontractor in writing and upon receipt of said notice, this Subcontract shall also be terminated and the Subcontractor shall immediately stop the Work.

12.3 **CLAIMS FOR GENERAL CONTRACTOR OR OWNER SUSPENSION OR TERMINATION.** In the event of such General Contractor or Owner suspension or termination, SteelFab's obligation to the Subcontractor is limited to the extent of SteelFab's recovery from the General

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Contractor or Owner, on the Subcontractor's behalf, under the Contract Documents. SteelFab agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of a General Contractor or an Owner suspension or termination and to permit the Subcontractor to prosecute said claim, in the name of SteelFab, for the use and benefit of the Subcontractor. Administrative and overhead costs, attorney's fees and other expenses incurred by SteelFab while assisting the Subcontractor in the prosecution of such claim shall be deducted from any recovery paid to Subcontractor.

12.4 **STIPULATION.** The provisions of this Section 12 shall not be construed to create any obligation upon SteelFab to pursue any claim or litigation on behalf of the Subcontractor.

SECTION 13
LABOR RELATIONS

13.1 **LABOR HARMONY.** Subcontractor and its lower tier subcontractors shall not employ anyone in the Subcontractor's Work whose employment may be objectionable to SteelFab, the General Contractor or the Owner. All labor used throughout the Work by Subcontractor or any of its lower tier subcontractors shall be of a standing or affiliation that will permit the Project to be carried on harmoniously and without delay, and that will not, in any case, or under any circumstances, cause any disturbance, interference, or delay to the progress of the Project.

~~13.2 **LABOR DISPUTES.** In respect of all Work covered by this Subcontract, Subcontractor and persons in privity with it agree to recognize and comply with all agreements that SteelFab has, or may have, with respect to any union, or unions, concerning labor and conditions applicable to the Work covered by this Subcontract.~~

~~Subcontractor and all persons in privity with it agree that, where its Work or any of the Work of SteelFab or other subcontractors is stopped or delayed or interfered with by strikes, slow-downs or Work interruptions or the threats thereof, resulting from an act or failure to act of Subcontractor and/or those in privity with it, or any of their employees or agents, then SteelFab, at its sole option, shall afford Subcontractor twenty-four (24) hours' notice wherein Subcontractor shall execute a requisite union contract or contracts, in order to maintain the harmony of the Work, or make such other arrangements, satisfactory to SteelFab that will ensure the harmonious continuation of the Work Subcontractor's failure to so comply within the allotted time shall be an event of default for which SteelFab may, at its sole option, terminate this Subcontract pursuant to Section 11.~~

SECTION 14
INDEMNIFICATION

14.1 To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless SteelFab and all of its related entities, General Contractor/Construction Manager, Architect, and Owner, including for each its respective parents, subsidiaries, agents, directors, officers, consultants, and employees ("Indemnitees") from and against any and all claims (including claims relating to liability contractually assumed by Subcontractor), damages, losses, judgments, awards, fines, injuries, settlements and expenses, including but not limited to attorneys' fees and expenses, arising out of, resulting from, or relating to the Subcontract and/or the Work or performance of the Work (including loss of use resulting therefrom), if caused in whole or in part by Subcontractor's default, failure to perform the Work in strict compliance with the Subcontract Documents, breach of the Subcontract, or negligent acts or omissions or willful misconduct of Subcontractor and/or its Sub-Subcontractors, Sub-Sub-Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such indemnity obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as a party or person described in this Paragraph 14.1. Subcontractor's obligation to indemnify shall not include any obligation to indemnify which is prohibited by applicable law. To the extent that any portion or obligation under this Paragraph is held to be unenforceable, such portion or obligation shall be severed and the remainder of this subparagraph shall be enforced, and if rendered entirely unenforceable, then Subcontractor agrees to indemnify the Indemnitees, their officers and employees, from liabilities, damages, losses and costs, including not limited to, reasonable attorney's fees, to the extent caused by the breach of this Subcontract, negligence, recklessness, or intentional wrongful misconduct of the Subcontractor and persons employed or utilized by Subcontractor in the performance of this Subcontract. The foregoing indemnification shall apply irrespective of whether claims are asserted by a party, by its employees, agents or subcontractors, or by unrelated third parties. Subcontractor shall not be required to indemnify an Indemnitee for the consequences of such Indemnitee's sole negligence. If any demand is made against Subcontractor by an Indemnitee pursuant to this Section 14.1, any payment due or which thereafter becomes due to Subcontractor, shall be held by SteelFab to cover such losses and expenses, including all reasonable attorney's fees. In the event that the money then due or that thereafter becomes due to Subcontractor in insufficient to cover such costs, Subcontract shall, upon demand, reimburse SteelFab for any such costs.

14.1.1 To the fullest extent permitted by law, in addition to the express duties to indemnify, protect and hold harmless, there is a duty, separate from the duties in Section 14.1, to defend each Indemnitee in connection with a claim, demand or suit described in Section 14.1. The duty to defend includes all costs of litigation, attorney's fees, expert's and consultant's fees, settlement costs and reasonable expenses in connection with the claim or litigation, regardless of whether the claims made for loss, damage or property damage are valid or groundless as long as the claims asserted can be causally connected to Subcontractor's alleged or actual failure to timely or fully perform as described in Section 14.1, or to an alleged or actual negligent act or omission or intentional wrongful act as described in Section 14.1. If an Indemnitee tenders the defense of a claim to Subcontractor and Subcontractor fails or neglects to assume the defense thereof, any Indemnitee facing liability for the claim may defend, compromise and/or settle any such suit or action, and Subcontractor will be bound and obligated to reimburse each Indemnitee for the amount expended by it in defending, settling or compromising any such claim, or in the amount expended in paying any judgment rendered therein, together with all reasonable attorney's fees and costs of litigation incurred by reason of the defense, settlement or compromise of such claims, so long as the Indemnitee demonstrates that the settlement or compromise was made in good faith.

14.2. Subcontractor specifically agrees that this indemnification obligation shall include the obligation to defend, indemnify, and hold SteelFab harmless from any assertion of security interests, and/or liens or claims of liens by Sub-Subcontractors, Sub-Sub-Subcontractors, suppliers, materialmen or any other person or entities which provided labor, materials, equipment, and/or services to the Project and/or for the Work. In the event that security interests or liens or claims of liens are asserted or filed by anyone in relation to labor, materials, services, and/or equipment furnished by any

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Sub-Subcontractor, Sub-Sub-Subcontractor, suppliers or other persons or entities, Subcontractor agrees to have the same discharged at Subcontractor's own expense within ten (10) days of receipt of notice from SteelFab, by procuring and posting a bond with the appropriate court or authorities or by settlement or otherwise. Any and all such security interests and liens or claims of liens shall be discharged by Subcontractor, regardless of any dispute relating thereto. Should Subcontractor fail to discharge such security interests or liens or claims of liens within such ten (10) day period, SteelFab may, at its option discharge such liens or claims of liens by bond, settlement or otherwise and Subcontractor shall be liable to SteelFab for all damages, costs, losses and expenses incurred by SteelFab (including, without limitation, all attorneys' fees).

~~14.3 Subcontractor acknowledges and agrees that the Work and all labor and materials herein contracted for are being provided solely for the development and improvements of the Project and that any claim of lien of Subcontractor or its Sub-Subcontractors or suppliers with respect to labor or materials furnished for the improvement of the Project is, and shall be, subordinate and inferior to the lien and security title of any deed to secure debt and security agreement encumbering the Project. Such subordination is and shall be effective without the need for any further written agreement or instrument of Subcontractor; but Subcontractor nonetheless agrees promptly to execute and deliver, in recordable form, any such written lien subordination agreement or acknowledgement which SteelFab may from time to time request. Subcontractor agrees to require each Sub-Subcontractor to assume, toward Subcontractor, the subordination of lien rights set forth in this Paragraph 14.4.~~

14.4 In claims against any person or entity indemnified under Section 14.1 by an employee of Subcontractor, a Sub-Subcontractor, or a supplier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Subcontractor or a Sub-Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

14.5 Subcontractor's indemnity obligations shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), punitive damages (if any) arising out of, or in connection with, any (1) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by Subcontractor, a Sub-Subcontractor, a Sub-Sub-Subcontractor, a supplier or any person or entity for whom Subcontractor is responsible, (2) means, methods, procedures, techniques, or sequences of execution or performance of the Work, or (3) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Subcontract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by Subcontractor, a Sub-Subcontractor, or any person or entity for whom any of them are responsible.

14.6 Subcontractor shall indemnify and hold harmless SteelFab from and against any costs and expenses (including reasonable attorney's fees and expenses) incurred by SteelFab in enforcing any of Subcontractor's defense, indemnity, and hold-harmless obligations under this Agreement.

14.7 Subcontractor acknowledges that the first $100.00 of the Subcontract consideration paid to the Subcontractor constitutes specific consideration for all indemnity obligations undertaken by the Subcontractor in the Agreement.

14.8 **PATENTS.** Except as otherwise provided by the Subcontract Documents, the Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims of infringement or alleged infringement of any patent, copyright, trade secret or other proprietary right of any third party relating to the Work, arising out of the Subcontractor's work, which may be brought against SteelFab, the General Contractor or Owner, and shall indemnify SteelFab, the General Contractor and Owner for all loss, including ll costs, expenses and attorney's fees.

14.9 Notwithstanding any other provision contained in this Subcontract, the provisions of this Section 14 will survive the termination of the Subcontract for any reason whatsoever. All indemnification obligations of Subcontractor under this Agreement shall remain in full force and effect as to claims occurring after this Subcontract is terminated or completed, and shall not be limited by the insurance requirements contained herein.

14.10 In the event that this Subcontract is, for whatever reason, executed after Work on the project has begun, then SteelFab and Subcontractor agree that they intend the indemnity and defense provisions of Section 14 to have application from the outset of Subcontractor's Work.

14.11 The foregoing obligations of Subcontractor shall not be affected or limited in any way by any insurance required of or provided to Subcontractor under this Subcontract.

SECTION 15
INSURANCE

15.1 **SUBCONTRACTOR'S INSURANCE.** Prior to commencing Work, the Subcontractor shall procure and maintain insurance of the types and in the amounts described herein from insurer(s) authorized to transact business in the state where the Work or operations will be performed, at Subcontractor's sole expense, including payment of all premiums, deductibles and self-insured retentions applicable to such policies or claims thereunder. The insurance described herein shall be maintained uninterrupted for the duration of the Project, including warranty periods, and shall protect SteelFab, and others as required by the contract documents, for liabilities in connection with Work performed by or on behalf of Subcontractor, its agents, representatives, employees, vendors, suppliers or subcontractors. Subcontractor shall permit SteelFab to examine the actual policies upon request. The insurance provisions contained in the Agreement are intended to be a separate and distinct obligation on the part of the Subcontractor. Therefore, these provisions are enforceable and Subcontractor shall be bound thereby regardless of whether or not the indemnity provisions of the Subcontract Agreement are determined to be enforceable, in whole or in part, in the jurisdiction in which the Project is located.

15.1.1 **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY.**

(a) Statutory coverage as proscribed by the jurisdiction where the Project is located. Said coverage shall be for the benefit of Subcontractor's owners, partners and employees who are engaged in the performance of the Work. Regardless of the statutory or regulatory ability of any owner, partner or employee to opt out of the workers compensation coverage, all

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persons performing work under this Subcontract, whether at the Project site or not, shall be covered by workers compensation insurance within the minimum limits set forth in the Subcontract.

(b) Employees Liability:
$500,000 - bodily injury for each accident
$500,000 - policy limit for bodily injury by disease
$500,000 - for each employee for bodily injury by disease

(c) Waiver of Subrogation. The Workers Compensation and Employer's Liability policy shall contain a waiver of subrogation as to SteelFab and other Indemnitees (as defined in Section 14).

(d) The insurance required in this Section 15.1.1 shall be provided by Subcontractor whether or not Subcontractor utilizes some or all of its own employees, leased employees, temporary employees or other labor services. Subcontractor shall require any firm providing leased employees to meet all the same workers compensation and employers liability coverages as are required of the Subcontractor in this Section, as well as the notice and waiver of subrogation obligations found elsewhere in Section 15. Such employee leasing company shall (i) amend the Workers Compensation to include an Alternate Employer endorsement naming Subcontractor as the alternate employer and (ii) maintain Employers Liability for a limit of $1,000,000/$1,000,000/$1,000,000. A copy of the Alternate Employers endorsement naming Subcontractor as alternate employer must accompany the certificate of insurance from the leasing company.

15.1.2 **COMMERCIAL GENERAL LIABILITY.**

(a) Limits of Liability:
$2,000,000 - general aggregate
$2,000,000 - products completed operations hazard and contractual liability
$1,000,000 - personal and advertising injury
$1,000,000 - each occurrence

(b) Coverage shall be written on ISO occurrence form CG 0001 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, contractual liability, products-completed operations, personal injury, and damages arising from defective Work, including the costs to repair the damaged Work. Contractual liability coverage shall be sufficient to meet the requirements of the Subcontract, including defense costs and attorney's fees assumed under contract, which shall be paid in addition to the limit of liability.

(c) The general aggregate limit shall apply separately to each project.

(d) Additional Insureds shall mean SteelFab, General Contractor, Owner and other entities required to be added as additional insureds by the Subcontract Documents (as defined by Section 2.2). Subcontractor shall provide additional insured status to the Additional Insureds using ISO Additional Insured Endorsement forms CG 2010 0704(on-going operations) and CG 2037 0704(completed operations) or a substitute form(s), acceptable to SteelFab, providing equivalent coverage. Subcontractor shall maintain additional insured status for the Additional Insureds under the products-completed operations coverage for the time required to satisfy the statute of repose of the state in which the project is located. Verification of additional insured status shall be furnished to SteelFab by including a copy of the endorsement(s) with the Certificate of Insurance. In the event that any insurer issues a reservation of rights to any Additional Insured as respects coverage required by this Section, the Additional Insured shall be entitled to employ independent counsel at Subcontractor's expense.

(e) Unless expressly approved by SteelFab, Subcontractor's obligation to name SteelFab and other parties as Additional Insureds cannot be satisfied by Subcontractor arranging for the issuance of an Owner and Contractor Protective liability insurance policy.

(f) This insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the Additional Insureds.

(g) The requirement for naming SteelFab, General Contractor, Owner and other entities required to be added as additional insureds, is in addition to and not in any way in substitution for all other protection provided under the Subcontract Agreement, including Article 14 (indemnification).

(h) Limits shown in this requirement are minimum acceptable limits and in no way limit available coverage to the Additional Insureds. Subcontractor's Commercial General Liability coverage shall contain no provision providing that the limits available to an Additional Insured are less than limits available to Subcontractor.

(i) If the liability coverage does not contain the standard ISO separation of insureds provision, or a substantially similar clause, the liability policy shall be endorsed to provide cross liability coverage. In as much as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsement, with the exception of limits of liability, the policy shall operate in the same manner as if there were a separate policy covering each insured. There shall be no restrictions in the policy that limits coverage for a claim brought by an Additional Insured against a named insured.

(j) There shall be no endorsements or modifications of the liability insurance required in this Section that limits the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or residential construction without express approval of SteelFab.

(k) After completion of the work, Subcontractor shall maintain general liability coverage to include liability coverage for damage to Subcontractor's completed work equivalent to that provided under ISO form CG 00 01. Such liability coverage shall include additional insured insurance per the provisions of Section 15.1.2(d).

15.1.3 **AUTOMOBILE LIABILITY.**

(a) Limits of liability: $1,000,000 per accident

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(b) Such insurance shall cover liability arising from the use, loading, unloading or operations of any auto, including those owned, hired or otherwise operated or used by or on behalf of Subcontractor.

(c) SteelFab, General Contractor, Owner and other entities as required by the Subcontract Documents shall be included as additional insureds.

15.1.4 **PROFESSIONAL LIABILITY.** If Subcontractor's scope of work includes any design or other professional services usually associated with architect or engineering work product, Subcontractor shall carry Professional Liability (Errors and Omissions) coverage with a minimum limit of $1,000,000 per occurrence. Professional services for the purpose of this paragraph include, but are not limited to, performing one or more of the following: signing or stamping shop drawings, design, consulting, engineering or building information modeling ("BIM") services. If coverage is provided by a claims-made policy, the retroactive date shall preceed the start date of any Work and coverage shall be renewed annually, or include an extended reporting period , for the coverage duration required by statute of repose for the state in which the Project is located.

If any such design or professional services are contracted by Subcontractor to a separate party, Subcontractor shall communicate and require this insurance to said party.

15.1.5 **UMBRELLA OR EXCESS LIABILITY.** Subcontractor shall provide an occurrence-based Umbrella/Excess Liability policy which shall provide excess liability coverage over its employer's liability, general liability and automobil liability insurance. The policy must be written on a "following-form" coverage basis.

(a) Minimum limits of liability: $3,000,000 per occurrence
$3,000,000 aggregate

(b) Umbrella/Excess Liability shall include as Insureds all entities that are Additional Insureds on the General Liability coverage as defined in Section 15.1.2(d).

(d) Policy aggregate limit must apply on a per project basis.

(e) This Umbrella/Excess Liability insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to, maintained by the Additional Insureds.

15.1.6 **PROPERTY INSURANCE.** Subcontractor shall procure, at Subcontractor's own expense, property insurance for tools, equipment and other business property, whether owned, leased or borrowed, used by Subcontractor in the performance of the work. The property insurance shall extend to equipment, materials and supplies stored off the project site or in transit to the project site. Subcontractor waives all recovery and subrogation rights against SteelFab, General Contractor and Owner for any such loss or damage. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's costs from any applicable Builder's Risk policy which may provide coverage for said loss

15.1.7 **WAIVER OF SUBROGATION and OTHER RIGHTS of RECOVERY.** Subcontractor agrees to waive all rights of subrogation and other rights of recovery against SteelFab, General Contractor, Owner, other parties named as additional insureds, and all of their respective agents and employees, for recovery of loss and/or damages to the extent covered, or should have been covered, by the insurance required of Subcontractor in the Subcontract Documents. All policies, as allowed by law and excluding Professional Liability, must contain a provision that the insurer recognizes and will honor this waiver agreement. Such waivers shall be provided by specific endorsement if the policy itself does not otherwise provide the required waiver.

Subcontractor shall cause each lower-tier subcontractor to contractually waive all rights of subrogation and other rights of recovery against SteelFab, General Contractor, Owner and other parties named as additional insureds, as respects loss, damage, claims, expenses, suits or demands, howsoever caused.

SteelFab and Subcontractor waive all rights against each other, the General Contractor, and the Owner, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or other similar insurance covering improvements or materials at the Project site, except such rights as they may have to the proceeds of such insurance and except as to damages not covered by insurance. Subcontractor shall require similar waivers from its lower-tier subcontractors

15.1.8 **CANCELLATION, RENEWAL OR MODIFICATION.** All insurance policies shall contain a provision that the coverages afforded thereunder shall not be canceled, non- renewed, nor restrictive modifications added, until at least thirty (30) days prior written notice had been given to SteelFab. Additionally, Subcontractor shall be required to provide written notice to SteelFab within twenty-four (24) hours of an actual or proposed cancellation, suspension or non-renewal of the required insurance. In the event of a threatened cancellation for non-payment of premium, SteelFab may, at its option, pay the same on behalf of the Subcontractor and deduct the payment from the amounts then or subsequently owing to the Subcontractor.

15.1.9 **EVIDENCE OF INSURANCE.** Prior to commencing Work, Subcontractor shall furnish SteelFab with a certificate(s) of insurance for all insurances require by this Section 15. Such certificate shall be on an ACORD form. No progress payment will be made unless SteelFab has been furnished evidence of all required coverages and endorsements. Subcontractor warrants and represents that such certificates of insurance are true and accurate representation of Subcontractor's existing insurance coverage. The description of operations section of the certificate shall state the following:

- The project name and SteelFab project number.
- SteelFab, General Contractor, Owner and other entities as required by the Subcontract Documents are additional insureds as respects General Liability, Automobile Liability and Umbrella Liability. This statement must identify the specific form number of the endorsements or policy language that conveys the additional insured coverage. A copy of General Liability additional insured endorsements or conforming policy language must be attached to the certificate.
- General Liability, Automobile Liability and Umbrella Liability coverages are primary and non-contributory as respects any other insurance or self-insurance maintained by the Additional Insureds.
- General Liability and Umbrella/Excess Liability aggregate limits apply on a per project basis.
- Umbrella Liability is follow form coverage in excess of General Liability, Automobile Liability and Employers Liability.
- Waiver of Subrogation applies to all coverages where permitted by law.

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- The specific coverage and deductible amount for any coverage with a deductible greater than $25,000.
- Renewal certificates shall be provided to SteelFab prior to the expiration of any of the insurance policies specified herein.

Subcontractor shall be liable to SteelFab for any failure to provide or maintain the required coverage or limits. The following actions do not constitute a waiver of Subcontractor's obligation to maintain insurance that is in full compliance of the insurance requirements set forth herein: (1) acceptance by SteelFab of a certificate from Subcontractor that does not satisfy full compliance with these insurance requirements, (2) failure of SteelFab to demand such certificates or other evidence of full compliance with these insurance requirements, or (3) failure of SteelFab to identify a deficiency from the certificate or other evidence that is provided.

Failure to maintain insurance required by Section 15 shall constitute an event of material breach and default pursuant to Section 11 of this Agreement.

15.1.10 **OCIP/CCIP PROGRAMS**. Subcontractor may be required by General Contractor or Owner to enroll in an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP). Such requirements may or may not include the enrollment of SteelFab in the OCIP or CCIP. Subcontractor shall strictly comply with all requirements of the program in which it is required to enroll and, if required by the terms of the OCIP or CCIP, the Subcontract Amount/Purchase Order Amount shall be reduced per the directions therein to represent the insurance coverages replaced by the OCIP or CCIP.

The insurance requirements contained in this Section 15 shall apply to all exposures, operations and locales not included in the OCIP or CCIP scope of coverage.

When Subcontractor is enrolled in an OCIP or CCIP, Subcontractor shall refer to the OCIP/CCIP manual for any additional insurance requirements or obligations. The OCIP/CCIP manual is hereby incorporated by reference to this Agreement.

15.1.11 **LOWER-TIER SUBCONTRACTOR'S INSURANCE.** All lower-tier subcontractors (i.e. sub-subcontractors) are subject to the same insurance requirements as Subcontractor. Subcontractor must cause all sub-subcontractors providing equipment, materials and/or services directly to Subcontractor in connection with Subcontractor's work to furnish the same indemnity and insurance with sufficient limits as reasonably determined by SteelFab to protect the interests of SteelFab, General Contractor and Owner. Each sub-subcontractor must name SteelFab, General Contractor, Owner and all other entities as required by the contract documents as additional insured under their General Liability, Automobile Liability and Umbrella/Excess Liability policies as provided in Section 15.1.9, and all such insurance shall be on a primary basis. All insurance maintained by SteelFab, General Contractor and Owner shall be considered excess and non-contributory. Subcontractor shall require all sub-subcontractors to waive their rights of subrogation in each if their respective contracts as required of Subcontractor hereunder and show evidence thereof. Subcontractor must obtain certificates of insurance evidencing such coverage and provide same to SteelFab upon request. Subcontractor shall verify that each sub-subcontractor has satisfied the Workers Compensation requirements, as required by law, including but not limited to collecting all required certificates of insurance.

15.1.12 **GENERAL INSURANCE PROVISIONS**

(a) Deductibles and Self-Insured Retentions. The funding of deductibles or self-insured retentions maintained by Subcontractor shall be the sole responsibility of Subcontractor, including any deductibles or self-insured retention amount applicable to claims involving SteelFab, General Contractor or Owner as additional insureds. Any deductible or self-insured retention greater than $25,000 must be communicated to SteelFab prior to commencing operations on the Project and stated on the certificate(s) of insurance filed with SteelFab. Subcontractor shall be considered a self-insurer with respect to its additional insured obligations under Section 15.1.2(d) for any deductible or self-insured retention applied by its insurer to any of the Additional Insureds.

(b) All insurance is to be issued by companies acceptable to SteelFab, must be provided by companies having an AM Best rating of A- VII or better, and must be authorized to do business in the state where the Project is located.

(c) No Representation of Coverage Adequacy. By requiring the insurance set forth in this Section 15, SteelFab does not represent that coverage or limits will necessarily be adequate to protect Subcontractor, and such coverage and limits shall not be deemed as a limitation on Subcontractor's liabilities under the indemnities obligations owed to SteelFab in this Agreement, or any other provision of the Subcontract Documents.

(d) SteelFab reserves the right to require that Subcontractor provide certified copies of any and all insurance policies and endorsements to which this Agreement is applicable.

(e) The insurance requirements set forth in this Section 15 are independent from all other obligations of Subcontractor under this Agreement, and apply whether or not required by any other provision of this Agreement. The insurance coverages maintained by Subcontractor shall not limit any of Subcontractor's indemnity obligations or other liabilities under the Subcontract. Insurance coverages maintained by Subcontractor that exceed the minimum requirements in this Section 15 shall be applicable to the Subcontract.

(f) Reports of Accident and Injury. All incidents and near misses, regardless of severity, shall be reported to SteelFab, Inc. in writing withing 24 hours of incident occurrence.

(g) Breach of Insurance Requirements. Subcontractor's failure to obtain and maintain the insurance coverages set forth in this Section 15 or any other attachment shall constitute a material breach of the Subcontract Agreement. In such event, in addition to any and all other rights and remedies contained in the Subcontract Agreement, (i) SteelFab may, at its option, terminate the Subcontractor for default, (ii) SteelFab may, at its option, purchase such coverage and backcharge the premium and associated costs to Subcontractor, (iii) SteelFab and any Additional Insured may require that Subcontractor pay for all attorney fees, expenses and liabilities as a result of any claim or lawsuit for which coverage would have been provided to SteelFab and the Additional Insureds under Subcontractor's insurance program, but for a breach by Subcontractor.

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SECTION 16
ARBITRATION AND DISPUTE RESOLUTION

16.1 **STEELFAB'S OPTION TO MEDIATE, ARBITRATE OR LITIGATE.** All claims, disputes and matters in question arising out of, or relating to, this Subcontract, the Project or the breach thereof, except for claims which have been waived by interim and final lien and claim waivers and by the making or acceptance of final payment and the claims excluded or limited by Sections 6.2 and 6.6 shall be resolved by mediation, arbitration, or litigation, at SteelFab's sole election. The site for mediation and arbitration shall be in the appropriate jurisdiction where the Project is located, or in the State and county of SteelFab's office as identified in Section 1.0, as selected by SteelFab. In the event of a conflict between this provision and the dispute resolution provisions of the General Contract, this provision shall control. Subcontractor expressly consents and agrees to submit to the personal jurisdiction and venue in the appropriate jurisdiction where the Project is located, and/or the State and county of SteelFab's office as identified in Section 1.0. Subcontractor irrevocably waives, to the fullest extent permitted by law, the defenses of lack of personal jurisdiction and/or an inconvenient forum to the maintenance of such action or proceeding in any such court or arbitral body.

16.2 **DISPUTE RESOLUTION PROCEDURE.** If and only if SteelFab so elects, prior to a demand for arbitration or initiation of litigation, as elected by SteelFab, the parties shall proceed as follows, as an express condition precedent to Subcontractor commencing formal claims against SteelFab relating to or arising out of the dispute:

(a) Subcontractor asserting a claim shall do so in writing and within the notice period, if any, established for such claims by the Subcontract Documents. In the absence of a notice period set by the Subcontract Documents, the notice of claim shall be given as soon as practicable but in no event no later than five (5) calendar days after Subcontractor is aware of the event from which the claim arises. If no notice is given, the claim is waived. SteelFab may give notice to Subcontractor of any claim by SteelFab against Subcontractor at any time.

(b) The parties shall then attempt in good faith to resolve the dispute during the next twenty (20) calendar days before pursuing any other means of dispute resolution.

(c) If the matter remains unresolved, the parties shall endeavor to resolve the dispute by proceeding at SteelFab's election to non-binding mediation conducted under the Commercial Mediation Rules of the American Arbitration Association.

(d) If the matter has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) days of the commencement of such procedure (which period may be extended by mutual agreement), or if SteelFab elects not to participate in a mediation, then such dispute shall be resolved either by binding arbitration before the American Arbitration Association in accordance with the Construction Arbitration Rules of the American Arbitration Association or before JAMS in accordance with its rules, or, at SteelFab's election, by litigation in federal or state court. The site for the arbitration or litigation shall be at the location of the Project, or in the State and county of SteelFab's office as identified in Section 1.0, at SteelFab's election. The arbitration panel shall consist at SteelFab's election of either one or three independent and impartial persons who have experience in the construction industry or construction law. If a three member panel is selected, the Subcontractor and SteelFab shall each appoint one member of the panel and the third member shall be appointed according to the aforementioned Rules.

16.3 **AWARD.** The arbitration award shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

16.4 **WORK CONTINUATION AND PAYMENT.** Unless otherwise agreed in writing, the Subcontractor shall continue with the Work and maintain the Schedule of Work pending dispute resolution, and, if so, SteelFab shall continue to make undisputed payments earned by the Subcontractor in accordance with this Subcontract, subject to the provisions of the Subcontract Documents.

16.5 **CONSOLIDATION OF CLAIMS**. To the extent not prohibited by SteelFab's contracts with others, at SteelFab's sole election, the claims and disputes of the General Contractor, Owner, SteelFab and Subcontractor and other subcontractors and suppliers involving a common question of fact or law shall be heard by the same arbitrator(s) in consolidated arbitration proceedings or in the same litigation in a consolidated proceeding.

16.6 **DOCUMENT PRODUCTION AND EXCHANGE OF ARBITRATION EXHIBITS.** After a demand for arbitration, each party shall have the right to immediate production of the records of the other party relating to the Project for inspection and copying except for those portions which are covered by an unwaived attorney-client privilege or which were prepared in anticipation of arbitration or litigation. No later than fifteen (15) days prior to the arbitration hearing, the parties shall make available to each other, for inspection and copying, the exhibits, photographs, and other documents which they intend to introduce or refer to during the arbitration, and shall provide the other with a "may call" witness list. Any additional discovery shall be at the agreement of the parties or by order of the Arbitrator. The Arbitrator shall allow limited reasonable discovery.

16.7 **ATTORNEY'S FEES, ARBITRATION COSTS, AND COURT COSTS.**

(a) Attorney's fees and expenses shall be awarded to the prevailing party.

(b) The prevailing party shall recover its attorney's fees and court costs incurred in any judicial proceedings necessary to obtain (i) enforcement of this arbitration clause or (ii) confirmation, enforcement, or collection of an arbitration award or court judgment, or (iii) in any appeal by the losing party.

(c) To the extent the Subcontract Documents require Subcontractor to pay SteelFab's attorney's fees and expenses, SteelFab shall be entitled to recover such fees and expenses as a matter of right.

SECTION 17
MISCELLANEOUS PROVISIONS

17.1 **GOVERNING LAW**. This Subcontract shall be governed by and interpreted in accordance with the laws of the State of SteelFab's office as identified in Section 1.0applicable to agreements executed and delivered solely within that State. For purposes of conflict of laws analysis, the same State's laws shall control.

17.2 **SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision, with the partial or completely invalid provision being severed. The failure of

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either party hereto to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of this Subcontract or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

17.3 **STEELFAB'S CONTINUING RELATIONSHIP WITH GENERAL CONTRACTOR, CONSTRUCTION MANAGER AND/OR OWNER.** Subcontractor acknowledges the likelihood that SteelFab will have a continuing business relationship with the General Contractor, Construction Manager and/or the Owner, or at least the opportunity for a continuing business relationship, that may result in future work for SteelFab. Subcontractor agrees that it will not solicit, negotiate, or appropriate for itself future work with the Owner and that it will not interfere with SteelFab's relationships with them or its prospects for future work.

17.4 **TITLES.** The titles given to the Sections of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose.

17.5 **ATTORNEY'S FEES.** The Subcontractor shall reimburse SteelFab for all of SteelFab's attorney's fees, court costs and other expenses incurred in enforcing or declaring the Subcontractor's obligations under this Subcontract, incurred in exercising any right or remedy hereunder or under law or equity in the event of a default by the Subcontractor, or incurred in any litigation or arbitration between the parties and/or in which SteelFab, without its fault, becomes involved by reason of the existence of this Subcontract.

17.6 **WRITTEN NOTICES.** Written notices to SteelFab required by this Subcontract shall be addressed to SteelFab's address in Section 1 of this Subcontract. Written notices to Subcontractor required by this Subcontract shall be sent to the address given in Section 1.1 of this Subcontract. Any notice sent by mail shall be deemed to have been received the third (3rd) calendar day after the date of mailing. Notice may also be delivered by hand delivering, email, or fax, in which event notice shall be deemed effective on the date such notice is given.

17.7 **ENTIRE AGREEMENT.** This Subcontract is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the parties hereto and supersedes all prior or contemporaneous negotiations, representations, understandings or agreements, either written or oral. This Subcontract shall not be modified except by a written instrument signed by the parties' authorized representative. This Subcontract has been freely negotiated and accepted by both parties and shall not be construed against either party.

17.8 **INTEREST.** Subcontractor acknowledges that this is a commercial transaction and that SteelFab has the right to charge Subcontractor and Subcontractor agrees to pay 1.5% per month on any amount owed by Subcontractor to SteelFab under the provisions of this Subcontract until such amount is paid in full.

17.9 **CONSEQUENTIAL DAMAGES WAIVER**. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL STEELFAB BE LIABLE TO SUBCONTRACTOR FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, DATA, PROFITS, BUSINESS, REPUTATION OR FINANCING WHETHER OR NOT STEELFAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17.10 **PROFESSIONAL SERVICES**. The Subcontractor may be required to procure professional services in order to carry out its responsibility for construction means, methods, techniques, sequences and procedures for such services specifically called for by the Subcontract Documents. The Subcontractor shall obtain these professional services and any design certifications required from licensed design professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner and Architect shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. The Subcontractor shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

17.11 **DIGITIZED DOCUMENTS**. If the Contract Documents require the exchange of documents and data in electronic or digital form, prior to any such exchange, the parties shall agree on a written protocol governing all exchanges which, at a minimum, shall specify: (A) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (B) management and coordination responsibility; (C) necessary equipment, software and services; (D) acceptable formats, transmission methods and verification procedure; (E methods for maintaining version control; (F) privacy and security requirements; and (G) storage and retrieval requirements. The parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

17.12 **JOINT DRAFTING**. The Parties expressly agree that this Subcontract was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Subcontract shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

17.13 **SURVIVAL**. All warranty indemnity, defense, hold harmless, insurance, dispute resolution, attorney's fee and damages limitation provisions shall survive the termination or expiration of this Subcontract and/or termination of Subcontractor's performance under this Subcontract. In addition, every provision that by its terms is intended to survive termination or expiration of this Subcontract will do so.

17.14 **HEADINGS.** The headings of any paragraph, article or section of this Subcontract are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof..

SECTION 18
SPECIAL PROVISIONS

18.1 **BINDING EFFECT.** This Subcontract shall be binding upon and inure to the benefits of SteelFab, Subcontractor, and their successors and assigns, provided however that Subcontractor may not assign this Subcontract without SteelFab's written permission.

18.2 **INCONSISTENCIES AND OMISSIONS.** Should inconsistencies or omissions appear in the Subcontract Documents, it shall be the duty of the Subcontractor to so notify SteelFab in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, SteelFab shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with SteelFab's instructions.

18.3 **CROSS REFERENCE OF DOCUMENTS.** Subcontractor shall review all specifications, drawings, reports and existing conditions which affect the relationship of Subcontractor's Work to the complete project, and be responsible for that relationship.

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18.4 **SUBCONTRACT DOCUMENTS.** The Subcontract Documents include this Subcontract as well as the documents below that are identified as follows and incorporated by reference:

(a)	Scope of Work, Drawings, Specifications, Documents Exhibit A (Procore Subcontract)	
(b)	Key Personnel	Exhibit B
(c)	Construction Schedule	Exhibit C
(d)	Alternates and Unit Prices	Exhibit D
(e)	Schedule of Values	Exhibit E
(f)	Subcontractor's Interim Lien and Claim Waivers	~~Exhibit F~~ (Levelset Online)
(g)	Sub-Subcontractor's Interim Lien and Claim Waivers	~~Exhibit G~~ (Levelset Online)
(h)	Subcontractor's Final Lien and Claim Waivers	~~Exhibit H~~ (Levelset Online)
(i)	Sub-Subcontractor's Final Lien and Claim Waivers	~~Exhibit I~~ (Levelset Online)
(j)	Application for Payment	Exhibit J
(k)	Drawing list	Exhibit K
(l)	Insurance Requirements	Exhibit L
(m)	Job Site Safety Requirements	Exhibit M
(n)	Other Provisions	Exhibit N

(o) The Contract Documents identified in any contract between the General Contractor or the Owner and "Contractor", as well as any contract between the General Contractor and the Owner, conditions of such contract(s) (general, supplementary, special, or other conditions), drawings, specifications, addendums, change orders, written modifications, and other documents therein.

IN WITNESS WHEREOF, the Parties have caused this Subcontract to be executed by their duly authorized representatives, under seal, as of the day and year first above written.

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STATE AND COUNTY SALES/USE TAX STATEMENT

Contractor/Subcontractor:

Project Name:

Period: Project No.:

County (use separate form for each County):

Invoice Number	Invoice Date	Vendor	Total Amount of Invoice	Sales/Use Tax	
				State	County
Total				$ 0.00	$ 0.00

I hereby certify that the above taxes were paid upon purchases of building materials during the period specified.

Sworn to and subscribed before me, this
day of

Notary Public:

My commission expires:

_____
Signature

Printed Name and Title

This form must be completed in its entirety, and attached to each Application for Payment and Sales Tax Invoice in order for reimbursement of tax to be received.

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Billing Instructions

ALL BILLING DUE BY THE 20TH OF THE MONTH

Contract work must be on Pay Apps:

G702 and G703 are to be received by the 20th of each month. The billing will be through the last day of the month.

If your contract includes taxes, you must include a line item on G703 (SOV) and bill monthly.

Pay Apps will be on hold until the following is received.

SteelFab will request necessary waivers via www.Levelset.com

Exhibit L - Job Specific Certificate of Insurance

List of Site Personnel

Site Specific Safety Plan

Erector Checklist

Tax Statement, if applicable

Time and Material work can be on a standard invoice:

SteelFab will request necessary waivers via www.Levelset.com.

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EXHIBIT 4

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Melinda A. Humphries, County Clerk
Christian County, KY
Received By: Y. WICKHAM
Transfer Tax Paid: $0.00

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STATEMENT OF MECHANICS' AND MATERIALMEN'S LIEN UNDER KRS 376.010

Affiant, Cassidy Ruschell Rosenthal, Counsel of Ben Hur Construction Company ("Ben Hur"), a Missouri corporation whose principal office is located at 2191 Lemay Ferry Road, Suite 200, St. Louis, Missouri, 63125, pursuant to KRS 376.010, et. seq., after having been duly sworn, states as follows:

1. Ben Hur furnished labor, materials, and/or equipment under a subcontract with SteelFab, Inc. ("SteelFab"), a North Carolina corporation whose principal office is located at 3025 Westport Road, Charlotte, NC 28208, for the construction of improvements (the "Project") at 6505 John Rivers Road, Hopkinsville, Kentucky (the "Property").

2. The Project and Property upon which the labor, materials, and equipment were furnished and against which Ben Hur asserts its lien is 6505 John Rivers Road, Hopkinsville, Kentucky 42266, in Christian County. The Property is more particularly described in Christian County Deed Book 797, Page 420 – 423, as:

> Parcel I: Lot 1 of the Division Plat of Hopkinsville Industrial Foundation, Inc. Property, recorded in Plat Cabinet 12, Slide 519 in the Christian County, Kentucky Clerk's Records.
>
> Parcel II: Lot 2 of the Division Plat of Hopkinsville Industrial Foundation, Inc. Property, recorded in Plat Cabinet 12, Slide 519 in the Christian County, Kentucky Clerk's Records.
>
> Each parcel being a portion of the property acquired by Grantor pursuant to (a) that Deed, dated November 16, 2022 and recorded at Deed Book 797, Page 308 in the Christian County, Kentucky Clerk's Office and (b) that Deed, dated January 24, 2022, recorded at Deed Book 786, Page 334 in the Christian County, Kentucky Clerk's Office.

3. Ben Hur furnished labor, materials, and/or equipment to the Project under a subcontract with SteelFab, 3025 Westport Road, Charlotte, NC 28208, for the construction of improvements at the Property.

4. Ben Hur last provided labor and/or materials on or about November 4, 2024.

Return to Preparer:
Cassidy Ruschell Rosenthal
Stites & Harbison, PLLC
250 West Main St., Ste. 2300
Lexington, KY 40507

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5. The amount due to Ben Hur is the sum of One Million Two Hundred Seventy-Seven Thousand Eighty-One Dollars ($1,277,081.00) for the labor and materials furnished for the Project plus interest and costs for filing and enforcing this lien.

6. The Owner of the Project is Ascend Elements, Inc., whose registered agent for service of process in Kentucky is Cogency Global, Inc., 828 Lane Allen Rd., Suite 219, Lexington, KY 40504.

7. The service of process agent for Ben Hur is Registered Agent Solutions, Inc., 828 Lane Allen Rd., Suite 219, Lexington, KY 40504.

Return to Preparer:
Cassidy Ruschell Rosenthal
Stites & Harbison, PLLC
250 West Main St., Ste. 2300
Lexington, KY 40507

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BEN HUR CONSTRUCTION COMPANY

By: _____
Cassidy Ruschell Rosenthal
Stites & Harbison, PLLC
Counsel for BEN HUR CONSTRUCTION COMPANY

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was subscribed and sworn to before me this 24th day of February, 2025, by Cassidy Ruschell Rosenthal as counsel for BEN HUR CONSTRUCTION COMPANY, on behalf of said corporation.

My commission expires: 5-16-2025

_____
NOTARY PUBLIC

[SEAL]

Prepared by:

_____
Cassidy Ruschell Rosenthal
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, KY 40507-1758
(859) 226-2300

CERTIFICATE OF SERVICE

I hereby certify that in accordance with KRS 376.080 a copy of the foregoing Lien was served by United States First Class Mail and Certified Mail, postage prepaid, on this 24th day of February, 2025 upon:

Ascend Elements, Inc.
133 Flanders Road
Westborough, MA 01581

Ascend Elements, Inc. Registered Agent
Cogency Global Inc.
828 Lane Allen Rd.
STE 219
Lexington, KY 40504

_____
Cassidy Ruschell Rosenthal

9593059 v3

640EBC97-329E-4AE9-AEAE-EE15DCCD0824 : 000132 of 000132

EXH : 000122 of 000122

EXHIBIT B

Filed: 02/24/2025 03:16:59 PM
BK 8 PG 68 - 70 (3) DOC# 10062011
Melinda A. Humphries, County Clerk
Christian County, KY
Received By: Y. WICKHAM
Transfer Tax Paid: $0.00

STATEMENT OF MECHANICS' AND MATERIALMEN'S LIEN UNDER KRS 376.010

Affiant, Cassidy Ruschell Rosenthal, Counsel of Ben Hur Construction Company ("Ben Hur"), a Missouri corporation whose principal office is located at 2191 Lemay Ferry Road, Suite 200, St. Louis, Missouri, 63125, pursuant to KRS 376.010, et. seq., after having been duly sworn, states as follows:

1. Ben Hur furnished labor, materials, and/or equipment under a subcontract with SteelFab, Inc. ("SteelFab"), a North Carolina corporation whose principal office is located at 3025 Westport Road, Charlotte, NC 28208, for the construction of improvements (the "Project") at 6505 John Rivers Road, Hopkinsville, Kentucky (the "Property").

2. The Project and Property upon which the labor, materials, and equipment were furnished and against which Ben Hur asserts its lien is 6505 John Rivers Road, Hopkinsville, Kentucky 42266, in Christian County. The Property is more particularly described in Christian County Deed Book 797, Page 420 – 423, as:

   Parcel I: Lot 1 of the Division Plat of Hopkinsville Industrial Foundation, Inc. Property, recorded in Plat Cabinet 12, Slide 519 in the Christian County, Kentucky Clerk's Records.

   Parcel II: Lot 2 of the Division Plat of Hopkinsville Industrial Foundation, Inc. Property, recorded in Plat Cabinet 12, Slide 519 in the Christian County, Kentucky Clerk's Records.

   Each parcel being a portion of the property acquired by Grantor pursuant to (a) that Deed, dated November 16, 2022 and recorded at Deed Book 797, Page 308 in the Christian County, Kentucky Clerk's Office and (b) that Deed, dated January 24, 2022, recorded at Deed Book 786, Page 334 in the Christian County, Kentucky Clerk's Office.

3. Ben Hur furnished labor, materials, and/or equipment to the Project under a subcontract with SteelFab, 3025 Westport Road, Charlotte, NC 28208, for the construction of improvements at the Property.

4. Ben Hur last provided labor and/or materials on or about November 4, 2024.

Return to Preparer:
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Stites & Harbison, PLLC
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Lexington, KY 40507

5. The amount due to Ben Hur is the sum of One Million Two Hundred Seventy-Seven Thousand Eighty-One Dollars ($1,277,081.00) for the labor and materials furnished for the Project plus interest and costs for filing and enforcing this lien.

6. The Owner of the Project is Ascend Elements, Inc., whose registered agent for service of process in Kentucky is Cogency Global, Inc., 828 Lane Allen Rd., Suite 219, Lexington, KY 40504.

7. The service of process agent for Ben Hur is Registered Agent Solutions, Inc., 828 Lane Allen Rd., Suite 219, Lexington, KY 40504.

Return to Preparer:
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Stites & Harbison, PLLC
250 West Main St., Ste. 2300
Lexington, KY 40507

BEN HUR CONSTRUCTION COMPANY

By: _____
Cassidy Ruschell Rosenthal
Stites & Harbison, PLLC
Counsel for BEN HUR CONSTRUCTION COMPANY

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

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My commission expires: 5-16-2025

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NOTARY PUBLIC

[SEAL]

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